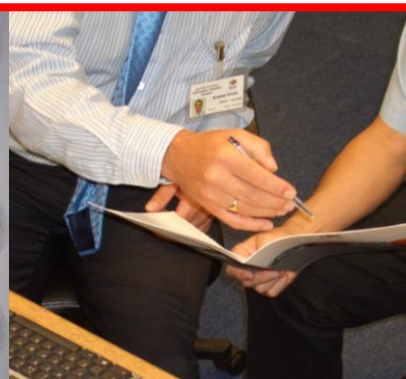




**Isle of Man  
Government**

*Reiltys Ellan Vannin*



# Isle of Man Government

## Promoting Equal Opportunities Employee Handbook

The Personnel Office



**INVESTOR IN PEOPLE**  
*Fir-Tashtee Pobble*

February 2007

# Promoting Equal Opportunities

## Employee Handbook

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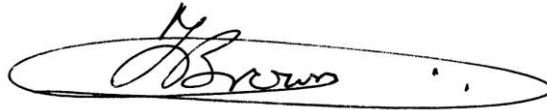
# Foreword

**by Hon J A Brown MHK, Chief Minister**

This Equal Opportunities Handbook has been developed to provide a basis for good management practices for the benefit of all employees of the Isle of Man Government.

The policies contained within the Equal Opportunities Handbook have been endorsed by the Council of Ministers, which recognises that the continued development of Equal Opportunities is essential for the Isle of Man Government to retain recognition as a fair and caring employer.

The success of our Equal Opportunities policies depends upon the full support of every member of the Government's workforce and I am sure that commitment to these policies will increase the scope for job enhancement and organisational efficiency, whilst improving the quality of service available to our customers.

A handwritten signature in black ink, appearing to read 'J A Brown', enclosed within a simple, hand-drawn oval border.

## **IOM Government**

### **Policy to Promote Equal Opportunities**

The Isle of Man Government is committed, both as an employer and as a provider of services, to promoting equal opportunities and fairness at work for all, subject to any statutory obligations which impact on employment.

To achieve its objective it will ensure that equal opportunity principles are applied in all its personnel policies and procedures particularly those relating to recruitment, training and development and career progression.

No employee should be subjected to discriminatory treatment on the grounds of gender, marital status, age, sexual orientation, colour, race, disability, religion, or ethnic origin; or be disadvantaged by conditions or requirements which cannot be shown to be justified for sound operational reasons.

Selection procedures for vacant posts will be monitored and reviewed to ensure that all posts are recruited on the basis of merit and ability and free from bias.

An employee who believes that he/she has grounds for complaint will be encouraged to raise this through the grievance procedures set out in their terms and conditions of service. All complaints will be dealt with promptly and in confidence, subject to the need to thoroughly investigate any alleged breaches of the policy and to take appropriate action.

All employees, without exception, are expected to observe the requirements of equal opportunities legislation and adhere to the principles of equal opportunity as set out in this policy at all times.

Any breach of the policy is potentially misconduct and any major breach may be treated as potential gross misconduct. Complaints regarding breaches will be dealt with confidentially and as quickly as possible under the relevant disciplinary procedures.

## **Isle of Man Equal Opportunities Legislation**

The Policy on Equal Opportunities at the beginning of this handbook is a general policy to promote fairness at work. Current IoM Legislation relating to the Policy is set out below. In addition the Government is planning to introduce further equal opportunities legislation (Employment Equality Act) into the Branches to address other types of discrimination, such as race, disability, age and sexual orientation.

### **Employment Act 1991 and Employment (Amendment) Act 1996**

The Employment Act 1991 and Employment (Amendment) Act 1996 currently provide protection against discrimination in respect of :-

- Dismissal on grounds of pregnancy, race or religion.
- Discrimination on grounds of trade union membership (or non membership) and activities where coverage includes:-
  - ◇ protection against unfair dismissal and against action being taken against an employee short of dismissal (for example, withholding opportunities for transfer, training and promotion); and
  - ◇ protection against discrimination at the recruitment stage.

### **Employment (Sex Discrimination) Act 2000**

The Employment (Sex Discrimination) Act 2000 provides that it is unlawful in connection with employment to discriminate (including victimisation) either directly or indirectly against any person (man or woman) on the grounds of their sex or because they are married.

The Act covers recruitment, access to opportunities for promotion, transfer or training; or to benefits, facilities or services; or dismissal or other detriment. It also provides an entitlement for men and women to receive equal pay if they are doing the same work or work which has been graded the same.

### **Rehabilitation of Offenders Act 2001**

The Rehabilitation of Offenders Act 2001 provides for certain criminal convictions to be considered spent for the purposes of employment (eg recruitment, promotion). Failure to disclose a spent conviction by an applicant is not a proper ground for an employer to prejudice that person in any way in any occupation or employment.

## **Equal Opportunities Unfair Treatment - Confidential Support & Guidance**

One of the measures put in place for promoting equal opportunities and fairness at work for all is a network of Contact Officers established across the public service. Each government Department, Office and Board has employees who are designated as Contact Officers to assist in cases of alleged unfair treatment or unlawful discrimination, including harassment and bullying.

They have undertaken formal training for the role which is to provide confidential guidance and support, independently of the line management structure to anyone who believes that they are being treated unfairly in some way. As Contact Officers they will not make judgements or investigate complaints.

Contact Officer's will provide support to:-

- Employees who believe that they are being treated unfairly;
- Employees against whom allegations of unfair treatment etc have been made.

However, the same Contact Officer will not support both the complainant and the alleged offender.

The Contact Officer network aims to provide a confidential and informal avenue to enable employees to talk through what has happened, decide what if anything, they wish to do about it and generally help to deal with the situation. The main role of the Contact Officer is to empower employees to identify steps to stop unfair treatment, discrimination, bullying or harassment. Contact Officers will facilitate decision-making by the individual and may provide support in any action taken to resolve complaints. It is however important to distinguish between the support offered by a contact officer, and representation, which is the proper role of a trade union/staff association official.

The core functions of the CO can be described as being:

- To listen to what has happened
- To provide initial support and encouragement to the individual
- To draw the individual's attention to whatever further formal or informal course of action is available to them, and to explain what is meant by informal and formal action
- If the individual wishes, to draw the problem to the attention of line managers, senior managers or other key organisational personnel
- If the individual wishes, to assist her or him in taking formal action. ***NOTE this does not include the Contact Officer acting as a "friend" in formal***

***disciplinary, grievance or capability procedures. Individuals who act as Contact Officers may undertake this role if they so wish but it would be as a work colleague, trade union/staff association representative (if they are one) etc, it is not part of the duties of a Contact Officer.***

If you believe that you are being treated unfairly at work (this may be by a colleague, subordinate or manager), you can approach any of the people listed as contact officers. You are not obliged to seek help from the contact officers in your own Department/Office/Board. Making use of the contact officer network is entirely voluntary. Alternative sources of help and support are available from your union/staff association, HR Department and the Personnel Office, including the Staff Welfare Service.

A list of contact officers can be found on the Government Intranet under "Equal Opportunities".

## **Contact Officers - Confidentiality**

Any enquiries or requests for assistance to Contact Officers will be treated as strictly confidential.

However, there are circumstances in which disclosure may be made which are set out below.

- **With the client's consent**

Before any disclosure the Contact Officer and Client should agree:-

- (a) to whom the disclosure is to be made;
- (b) the extent of the disclosure (precisely what will be revealed);
- (c) the purpose for disclosure;
- (d) the method of disclosure;
- (e) any safeguards to prevent it extending beyond the agreed limits.

- **By order of a court trying a civil dispute**

- **By order of a court in criminal procedures**

- **By order of a tribunal holding power to compel the giving of evidence.**

This applies to Employment Tribunals, who may order disclosures if they form the opinion it will be in the interests of justice to do so. It is for the judge or chair of a tribunal to determine what has passed in confidence with a client. Confidence should not be broken simply because the advocate or organisation thinks that an order will be made. It is entirely appropriate to wait until the order is made. This principle also applies to any written or recorded material gathered or held.

- **Under statutory powers compelling disclosure in the course of investigations by official agencies.**

For example a health and safety investigation into an accident at work where emotional stress caused by sexual harassment could have played a part, can disclose under Section 20 of the Health & Safety at Work Act 1974 (as applied to the Isle of Man) confidential material and/or evidence of confidential conversation(s) between contact officer and client.

- **Where public interest justifies the Contact Officer volunteering disclosure even though the client refuses consent and there is no court order or statutory compulsion.**

For example if a contact officer becomes aware that the client may do considerable harm to themselves or others.



## Equal Opportunities – Further sources of Advice

Further advice on equal opportunities is available from:-

- **Senior Manager** - appointed within each organisation who has responsibility for equal opportunity issues. The prime role of this manager is to:-
  - monitor equal opportunities;
  - ensure that any issues are dealt with promptly in accordance with procedures and good practice; and
  - provide advice to managers.

The post holder would not normally be involved in advising employees (except as the employee's line manager). Advice on individual cases is available from line managers or contact officers.

- **Trade Union Representatives** - are available to provide advice and assistance to members of the trade union/ staff association.
- **HR Staff**- further information and advice can be obtained from the Employee Relations Advisers on the staff of the Personnel Office, or from departmental HR staff.

## Discrimination

Sex Discrimination is defined by law as being direct or indirect.

### Direct discrimination

Direct discrimination refers to a situation in which a person is treated less favourably, in employment, than another on the grounds of sex or marital status.

Areas where this could occur include:

- Recruitment
- Selection
- Promotion
- Re-deployment
- Transfers
- Training
- Dismissal

### Examples of direct discrimination include:

- **Direct Sex Discrimination:** A female applicant is given preferential consideration for a job application. Only female candidates are interviewed.
- **Direct Marriage Discrimination:** A married employee is treated less favourably than an unmarried one. A post is given to an unmarried man in preference to a more suitably qualified married man.

### Indirect discrimination

Indirect discrimination occurs when a requirement or condition is applied to all employees or applicants equally but has the effect of disadvantaging a higher proportion of one sex than another and where the requirement or condition cannot be justified.

### Examples of Indirect Discrimination

**Indirect Sex Discrimination:** The application of an unjustifiable requirement or condition which precludes considerably more of one gender than the other from employment. For example selection criteria, which are not relevant to the job. The requirements set out in the person specification must be relevant to the duties of the post, requirements such as unnecessary qualifications or

unnecessarily long periods of experience may well be discriminatory and must be avoided

**Indirect Marital Discrimination:** Advertising a post stating an unnecessary requirement to work unsocial hours. The proportion of married men/women who can comply will be less than the proportion of single men/women.

The IoM Government Policy statement on Equal Opportunities makes it clear that direct and indirect discrimination on the grounds of gender, marital status, age, sexual orientation, colour, race, religion, ethnic origin or disability must be avoided.

## **Victimisation**

Victimisation occurs when a person is treated less favourably than others because he/she has made a complaint or allegation of discrimination in good faith, or has acted as a witness or informant in connection with proceedings under the Employment (Sex Discrimination) Act 2000, or has been involved in its application, or who has the intention of doing any of these things.

### **Examples**

- Transfers to another area.
- Allocate particular duties no one else wants to do.
- Verbal harassment.
- Poor staff appraisal.

## Positive Action

Some work in organisations seems to be carried out almost exclusively by people of one sex. Where this is the case, Positive Action enables an employer to encourage individuals of the opposite sex to apply for that work or to offer them training to equip them for the work.

Positive Action can only be taken where, during the previous 12 months, there have been no or comparatively few members of one sex doing the work.

### Examples of Positive Action

- Targeting members of one sex by advertising in specialist papers.
- Encouraging job applicants from one sex – for example, the “welcome” messages which sometimes appear in job adverts like “*applications are particularly welcomed from...*” This does not preclude people from the opposite sex applying and there must be no discrimination at the point of selection.
- Training for certain existing employees for work, which is traditionally the preserve of the other sex. An example of this might be an employer offering typing courses to men, which might help fit them for secretarial posts. The employer can give assistance either providing training or helping the employee take advantage of training provided by any other organisation.
- Access Training – Giving assistance to prospective employees and employees to obtain the necessary skill to apply for a job/promotion. *This applies only where there have been no, or comparatively few, members of one sex doing the work in the Island in the preceding 12 months.*

Positive Action is permitted by the Employment (Sex Discrimination) Act 2000 and is likely to be permitted in forthcoming equal opportunities legislation.

However, the selection process must not be discriminatory. The post must be open to all candidates who meet the person specification and the successful applicant should be the best candidate based on that specification, subject to the provisions of the Control of Employment Legislation in respect of the appointment of “IoM Workers”.

### Positive Discrimination

Positive discrimination occurs when some applicants or employees receive preferential or more favourable treatment than others to meet quotas, targets or to improve the representation of their gender or ethnic group in the workplace. It is unlawful irrespective of whether it is unintentional or done with the best intentions.

Examples of Positive Discrimination include:

- **Positive Sex Discrimination:** Interviewing candidates of only one gender to ensure better representation by that gender in the workforce.
- **Positive Race Discrimination:** Applying less stringent criteria to members of one ethnic group to enable greater recruitment of that group.

## Liability

Both employer and employee can be liable for discriminatory acts under Equal Opportunities Legislation and may be ordered by the Employment Tribunal to pay compensation. The employer must be able to demonstrate that its employment policies and practices are applied fairly and effectively throughout the organisation. To avoid liability in individual instances it is essential that information and training on Equal Opportunities is made available to all staff.

## Genuine Occupational Qualifications

Some exceptions exist within the Employment (Sex Discrimination) Act 2000 whereby an employer is entitled to specify the sex of the person for a particular job. Jobs or parts of jobs exist where a Genuine Occupational Qualification may be applicable on the grounds of decency, privacy, authenticity or to provide personal services promoting welfare as well as other grounds. If a GOQ is claimed it is good practice for a written statement to be drawn up defining why it is necessary for the particular job. You should contact the Employee Relations Advisers for more

### Examples

- Recruiting a woman as an attendant for a female sauna.
- Casting a male actor to play Hamlet.
- Hiring women only to work in a refuge for female victims of domestic abuse.

Physical strength or stamina is **not** a Genuine Occupational Qualification and is specifically excluded by the Employment (Sex Discrimination) Act 2000.

## **Recruitment, Selection and Promotion**

The objective of the selection process is to select the most suitable person for the job/post in respect of skills abilities and qualifications, subject to the provisions of the Control of Employment legislation. Selection must be fair, unbiased and objective whether it involves recruitment assessment, internal job selection or promotion.

All criteria, conditions or requirements set must be relevant to the performance of the job.

Further guidance on this subject is given in the Recruitment and Selection Interviewing course provided by Public Service Training and in the recruitment handbook for the Civil Service which will be available to managers recruiting civil servants under the revised procedures scheduled for introduction in early 2002.

### **Examples of Discriminatory Practices**

- Selection criteria which are not relevant to the job. The requirements set out in the person specification must be relevant to the duties of the post, requirements such as unnecessary qualifications or unnecessarily long periods of experience may well be discriminatory and must be avoided.
- Making assumptions about women's physical ability to do particular jobs. The physical requirements should be identified, checked to ensure that they are wholly relevant and applied to all applicants.
- Offensive, discriminatory, or discouraging questions and remarks. The following questions could amount to direct sex discrimination, particularly if only directed to female applicants.
  - ◇ Do you have any plans to start a family?
  - ◇ Would your husband object to you working shifts?
  - ◇ Might you have to move if your husband changes jobs?
  - ◇ What arrangements will you make for looking after your children when you have to work late?

The questions must be relevant to the job and asked of all applicants eg:- "The post does require regular attendance in the evenings and at weekends at short notice to provide essential cover, would you be able to attend in these circumstances".

## **Training and Development**

It is essential that all employees are briefed to develop an awareness of equal opportunity issues as part of their induction immediately after appointment. Managers should ensure that all existing employees are made aware of new equal opportunities legislation and policies. Training, briefing and updates to this handbook will be provided to keep managers and employees informed of new developments.

Further training on equal opportunity issues will be given in the relevant training and development provided to IoM Government employees. In particular, management courses will cover key areas such as recruitment and addressing problems (through discussion and, if required, appropriate use of the discipline, capability and grievance procedures).

Managers and supervisors are responsible for ensuring that all staff receive training in equal opportunities appropriate to the duties of their post and should act as role models for the implementation of the equal opportunities policy.

### **Public Service Training**

Public Service Training will provide advice and training/development courses to contribute to an awareness of equal opportunities by:-

- Keeping abreast of legislation, policies and good practice.
- Including equal opportunity issues in training needs analyses.
- An ongoing review and development of existing courses.
- Using people who will provide good role models to deliver training and development.



## **Staff Appraisal**

It is essential that a fair and unbiased appraisal is given to staff in posts where an appraisal scheme is in operation.

Key principles in achieving fairness are:-

- To discuss and agree the future objectives for the post which will be referred to at the end of the appraisal period.
- To provide regular updates to the employee throughout the reporting period. Any areas of perceived weakness must be brought to the employee's attention as soon as they are identified and appropriate action taken to address the issue. Nothing contained in the report at the end of the period should come as a surprise to the officer.
- The assessment of performance must be based on evidence with specific examples being available to support the assessment. This should be a range of examples over the entire period, not based on a few isolated examples, to provide a balanced assessment.

Even where there is no formal appraisal scheme in place managers and supervisors should adopt the above principles to ensure fairness.

## Work Life Balance

The Isle of Man Government is committed to improving opportunities for staff to achieve a balance between their work and their responsibilities in their private lives within the limits of current legislation, policy and financial provision. Whilst this will often be of particular importance to those with domestic responsibilities, the opportunities to achieve a work/life balance are open to all staff.

The existing terms and conditions of service for government employees does provide the opportunity for staff to have or request more flexible working arrangements which include:-

- Job sharing
- Part-time working
- Paid and unpaid special leave
- Maternity leave
- Paternity leave
- Flexible working hours

In addition managers will consider any proposals submitted to assist staff in achieving a work life balance whilst maintaining the efficient and effective provision of services.

Managers should look favourably at requests to take up work/life balance options whilst recognising that organisational effectiveness cannot be impaired. In considering requests the question should be "how can we make this work?" rather than "this won't work".

Research has shown that the introduction or extension of opportunities such as those listed above has improved effectiveness, morale, absence rates and retention.

A refusal to grant a request for more flexible working without good operational reasons may also be contrary to the sex discrimination legislation. UK case law has a number of examples of successful actions against employers who have refused requests for flexible working.

## **Procedures for Addressing Equal Opportunity Issues**

### **(Grievance, Discipline and Capability)**

#### **Grievance Procedures - for employees to raise matters**

The grievance procedures are available to any employees who feel that they have not been treated fairly under the equal opportunities policy. Employees should follow the procedures provided for by the terms and conditions of service under which they are employed (a copy of which is available from their manager).

In general the first stage in the grievance procedure is to seek to resolve the matter by informal discussion. This is normally with the person concerned but, if the employee does not feel able to discuss the matter with this person, he/she may raise the matter informally with his/her line manager. If the source of the grievance involves the line manager this informal discussion may be with the line manager's manager.

If the informal discussion does not resolve the grievance to the employee's satisfaction he/she can move to the next stage which usually provides for a written submission with the support of a staff association/trade union representative if the employee so wishes.

#### **NOTES**

The above outlines the formal procedures available. Employees should check the procedures in their terms and conditions of service.

In addition general advice and support is available through the Contact Officer network

#### **Discipline and Capability Procedures**

All employees are required to observe the rules and standards set by their employer to secure compliance with the provisions of equal opportunities legislation and policy.

Managers and supervisors will use the discipline or the capability procedures as appropriate to investigate any allegations that these rules/standards have not been met and take appropriate action if the allegation is found to be justified.

#### **NOTES**

The procedures used will be those applicable to the employee who is alleged to have breached the standards under his/her terms and conditions of service.

**Standalone Policy for the Prevention of Bullying, Harassment & Victimisation at Work (click [here](#) to view)**

## Policy Appraisal

Care must be taken to ensure that policies do not discriminate and do not go against any of the Equal Opportunities Legislation or the IOM Government's Policy to Promote Equal Opportunities. It is important to identify in good time any policy, which may in practice affect some people less favourably than others and to consider whether it would therefore be unlawful or unjustifiable. When the possibility of discrimination arises advice should be sought from the senior officer with responsibility for equal opportunities within your Department/Board/Authority/Office.

When formulating or putting a policy into practice the following steps should be taken.

### Preliminary Appraisal

For each policy area under consideration, the preliminary appraisal should include the following questions:

- Is there any evidence that the **current** policy, practice or situation leads to different effects:
  - ◇ For men and women?
  - ◇ For married and unmarried people?
  - ◇ For people with and without dependants?
  - ◇ For people of different racial groups?
  - ◇ For people of different religious beliefs or political opinions?
  - ◇ For disabled and non-disabled people?
  - ◇ For people of different ages?
  - ◇ For people of different sexual orientation?
- If so, are any of these people affected less favourably?
- If so, can this be objectively justified?

Policy options should then be prepared which, if appropriate, include proposals to eliminate discrimination, which might include taking positive action to remedy the effects of past discrimination.

### New Options

For each **new** policy option, the following questions should be asked, to ascertain whether it gives rise to practices or situations which might constitute direct or indirect discrimination.

## Direct Discrimination

- Does any aspect of the proposal refer to men and women separately?
  - o If so, does it treat either less favourably than the other?
  - o If so, is the reason for the less favourable treatment related to gender?
- Does any aspect of the proposal specify different treatment for married people compared with unmarried people?
  - o If so, does it treat either less favourably than the other?
  - o If so, is the reason for the less favourable treatment related to marriage?
- Does any aspect of the proposal refer to different racial, religious or political groups?
  - o If so, does it involve less favourable treatment of members of one racial, religious or political group compared with another?
  - o If so, is the reason for the less favourable treatment related to racial, religious or political grounds?
- Does any aspect of the proposal refer separately to people with and without dependants; to able-bodied and disabled people; or to people of different ages or sexual orientation?
  - o If so, does it treat either less favourably than the other?
  - o If so, is the reason for the less favourable treatment related to one of these factors?

## Indirect Discrimination

- Does any aspect of the proposal involve any requirements (e.g. height, age, language, qualification, place of birth, length of residence etc) or contain any conditions that may be more difficult for members of one group to meet than another or that are expected to have a substantially unfavourable impact on one group compared with another?
  - ◇ For women compared to men or vice versa?
  - ◇ For married compared to unmarried people?
  - ◇ For any racial group compared with another?
  - ◇ For people with or without dependants?
  - ◇ For people of different religious beliefs or political opinions?
  - ◇ For disabled people compared with non-disabled people?
  - ◇ For people of different ages?
  - ◇ For people of different sexual orientation?

If the answer to any of these questions is yes, are there important policy issues, which would objectively justify retaining the requirements or conditions?

In writing policy documents, orders, instructions etc care should be taken to ensure exclusionary language is not used.

### **Final Steps**

Consideration should be given to monitoring effects of policy in terms of fair treatment and equal opportunities by carrying out an impact review after implementation.



This document can be provided in large print or audio tape on request

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