

NHS Education for Scotland

Disability Policy

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Policy Statement

1. NHS Education for Scotland (NES) is committed to equality for all employees regardless of whether or not they have a disability. We see the disability policy as a way of supporting and enabling staff ability at work. This creates a mutual obligation of staff, managers and colleagues to actively promote a culture which promotes inclusion.

NES will aim to ensure that its workforce reflects the diverse population it serves and will take positive measures where it is appropriate to achieve this. We will actively promote inclusion of disabled people and commit to challenging stigma and stereotypes.

2. NES aims to promote the social model approach to disability, which holds that society can contribute to disabling individuals by failing to take account of and include all regardless of any differences. It recognises that there is an organisational responsibility to take positive action in the removal of barriers faced by disabled people. It is recognised that ensuring equal opportunities for disabled people may involve adjustments being made to the working environment or other employment arrangements. These adjustments will be made wherever reasonable and within a reasonable time frame.
3. The barriers faced by disabled employees may be environmental, institutional or attitudinal, or they may arise from issues related to communication or information. NES will aim to ensure the removal of such societal and cultural barriers which disable individuals in the workplace.
4. NES recognises the importance of taking proactive measures to remove barriers from the working environment for disabled people. It is recognised that this will benefit not only disabled employees and prospective employees but also in many cases customers and visitors.
5. NES aims to ensure that disabled employees are treated as individuals, and that their abilities and expertise are valued within the organisation. This reflects a genuine commitment to equality of opportunity and fair treatment for all employees and applicants.
6. Discrimination against disabled people is unlawful under the Equality Act 2010. This includes direct discrimination, indirect discrimination or harassment because of a disability, less favourable treatment for a reason related to the disability that cannot be justified or failure to make reasonable adjustments (see Section 14 below for further details). It is also unlawful to discriminate against any person because it is assumed they have a disability or because they are associated with someone who has a disability (eg, as a family member or a carer). Any employee who believes that he/she has been discriminated against for a reason related to disability can use the organisation's grievance procedure to raise the matter with management.

7. NES will not tolerate discrimination or harassment in the work place because of disability. Disciplinary action will be taken against any employee who is found to have committed a serious breach of this policy or bullying & harassment of a disabled person for a reason related to their disability. Any such breach will be treated as serious misconduct under the NES Disciplinary Policy & Procedures.
8. NES is committed to ensuring that visitors to NES premises or NES events are treated with dignity and respect. The overarching principles of this policy are also to be applied to the treatment of visitors to NES.

Definition of Disability

9. Disability is defined in the Equality Act 2010 as being 'a physical or mental impairment' which has a substantial and long term adverse effect on an individual's ability to carry out normal day to day activities. In the Act, 'substantial' means more than minor or trivial. In addition, some long term conditions eg. cancer, HIV and multiple sclerosis are deemed disabilities under the Act from the point of diagnosis.

In some circumstances, progressive conditions and those with fluctuating or recurring effects will also be considered disabilities.

Legal Framework

10. Under the Equality Act 2010, disabled people have the legal right to fair treatment.
11. The Equality Act 2010 also protects non-disabled people against direct disability discrimination where they are perceived to have a disability or are associated with a disabled person.
12. The Equality Act 2010 places an Equality Duty on public authorities, which must have due regard, in the exercise of their functions, to the need to:
 - a. Eliminate discrimination, harassment and other unlawful behaviour;
 - b. Advance equality of opportunity; and
 - c. Foster good relations.

The Equality Duty applies to all protected characteristics; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act goes on to say that "advancing equality" may involve:

- taking action to remove or minimise disadvantages that are connected to that characteristic;
- taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of others;
- encouraging participation in public life or in any other activity in which participation is disproportionately low.

The Equality Duty also includes specific requirements about taking steps to account for disabled persons' disabilities and, in the area of fostering good relations, for tackling prejudice and promoting understanding.

Employment Duties

13. The scope of the regulations applies throughout the employment relationship, from recruitment to termination of employment and includes the retention of staff who become disabled or whose disability changes.
14. Under the Equality Act 2010, disabled people are protected from:
 - a. Direct discrimination: being treated less favourably because of disability;
 - b. Indirect discrimination: where a disabled person would be disadvantaged by a provision, criterion or practice applied to everyone, which would put a disabled person or people sharing a particular disability at a disadvantage;
 - c. Discrimination arising from disability: being treated unfavourably because of something arising in consequence of one's disability;
 - d. Harassment: when a person engages in unwanted conduct related to disability which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.
 - e. Victimisation: being treated less favourably because a person has brought a claim or supported others to bring a claim or complaint of disability discrimination or harassment.
15. NES has a duty to make reasonable adjustments for disabled people, in employment and in its service delivery. NES must ensure that it takes all reasonable steps to remove any provision, criterion or practice or any physical feature of premises that may put a disabled person at a disadvantage at any stage of employment or in delivering its services.
16. As part of NES' commitment to the social model of disability, where organisations have a responsibility to remove barriers faced by disabled people, during the course of employment and where appropriate NES will aim to:
 - a. Promote an environment free from discrimination, harassment and victimisation;

- b. Remove barriers to accessing terms, conditions and benefits of employment;
- c. Put in place appropriate arrangements for recruitment, training, career development and retention of disabled employees;
- d. Investigate and make reasonable adjustments, including the provision of accessible information;
- e. Remove barriers, including physical barriers to premises and linguistic barriers, and provide specialist equipment;
- f. Appropriately train and manage all staff to ensure that attitudinal, cultural and social barriers are identified and removed, and
- g. Promote positive images of disabled people.

Management Responsibilities

17. In order to ensure that disabled people are able to focus on their individual skills, NES has a responsibility to remove any barriers that hinder this. Therefore, there is a positive duty on all NES managers and supervisors to take into account the needs of their staff and any disabled applicants.
18. Where, during the course of employment, a disabled employee recognises the need for a reasonable adjustment to working arrangements or to a feature of the premises, he/she should discuss this requirement with his/her line manager. The line manager, after seeking specialist advice from a variety of sources (including IT, Occupational Health where appropriate) and in consultation with HR&OD will then determine the appropriate action.
19. Managers will aim to ensure that where individuals provide any type of feedback it is treated confidentially and dealt with appropriately.
20. NES will work with individual employees to ensure that their specific needs are addressed and their abilities recognised.
21. Wherever it is appropriate, the organisation will take advice from and build ongoing relationships with appropriate and relevant disabled individuals and organisations, including the individual, medical professionals and disability advisers or other organisations and agencies that can offer specialist advice on adaptations, equipment or training.

Recruitment

22. Employees will be recruited solely on the basis of their ability to match the requirements of the post they have applied for. A disability will not itself justify the non-recruitment of an applicant.
23. Reasonable adjustments to the recruitment process, including making information accessible, shall be made as required to ensure that no applicant is disadvantaged because of their disability.

24. It is recognised that disabled applicants may face challenges during the recruitment process such as :

Issue	Possible solution
Travel and Access	Interviewed via video conference
Communication	Interpreter/job coach
People's Assumptions	Interview panel training
Completion of Application Form	Various options offered (software and paper based)

25. The Recruitment team will pro-actively assist with these challenges and will provide early opportunity for applicants to discuss what NES can do to assist.

26. Recruitment paperwork, including advertisements, job descriptions and person specifications, will be reviewed to ensure that there is no discrimination against disabled people.

27. NES are participants in the Department of Work and Pensions "Positive about Disabled People" scheme. All disabled applicants who meet the minimum requirements of the job as set out in the job description and person specification will be guaranteed an interview. Applicants are required to complete the relevant section of the application form to access this initiative.

28. Those involved in the recruitment and selection process will receive appropriate recruitment and selection training.

29. If auxiliary/physical aspects of a workplace require to be altered to enable a disabled person to take up employment (after the decision has been taken to appoint the applicant) or where there is uncertainty regarding a particular medical condition or there are safety implications of recruiting a disabled person, the HR representative, candidate and line manager concerned will liaise with and take advice from specialist advisers, including Occupational Health. As a result the application of reasonable adjustments should enable the new disabled employee to fulfil the duties of the post.

Induction

30. On starting work the disabled employee's line manager in conjunction with HR, will be responsible, in consultation with them, for ensuring such reasonable adjustments are made as are required to enable them to work safely and effectively and to secure equal access to the benefits of employment.

31. Where the line manager and human resources officer do not have the relevant knowledge or experience to make the reasonable adjustments he/she will consult appropriate specialist organisations for advice.

Training and career development

32. NES is committed to ensuring that the access to and delivery of training is inclusive of all employees. NES's commitments to making education and training accessible are outlined in our Inclusive Education and Learning Policy. Inclusive education is an approach which recognises and values diversity so that the diverse learning needs and preferences of individual learners are identified and met. Inclusive education is an anticipatory approach which takes proactive steps to identifying and meeting the needs of learners, and anticipates those needs where possible. It also involves providing appropriate learning support so that all learners have the opportunity to maximise their learning outcomes. An inclusive approach to education means that each individual learner is valued and that they are treated with dignity and respect.
33. All employees will have equal access to training and opportunities for promotion and other aspects of career development based solely on their abilities.
34. NES will support disabled employees in their pursuit of career development through the provision of access to appropriate training and mentoring.

Benefits

35. Disabled employees will have equal access to all benefits and facilities of employment and reasonable adjustments will be made where necessary.

Disability Arising during Employment

36. If a disability renders an employee incapable of performing his or her normal duties, sympathetic consideration will be given to any reasonable adjustments to the job, working practices and conditions, training and redeployment. The disabled employee will be involved in discussions with a view to arriving at a mutually agreeable solution to any difficulty arising due to the disability. Advice will be sought at the earliest possible stage from the local Occupational Health provider.
37. Where an employee becomes disabled, NES will make every effort to ensure that the employee remains in his or her own job before considering alternatives, for example, redeployment.
38. If appropriate the HR representative will arrange for a disabled employee's capabilities to be assessed in conjunction with the

Disability Advisory Service in order that consideration can be given to arranging suitable alternative employment within NES.

39. NES will give consideration to requests from members of disabled staff to reduce their hours or redefine their jobs whether on a temporary or permanent basis.
40. Where adjustment will affect other members of staff, whether disabled or not, they will only be introduced after due consultation with those members of staff.

Reasonable Adjustments During Employment

41. Where an individual requires or may require an adjustment to the working arrangements or environment he/she should bring this to the attention of his/her line manager. The prime responsibility for arranging appropriate adjustments will lie with the line manager. However, in many cases a team approach will be appropriate.
42. Disabled employees have a responsibility under the Equality Act (2010) to co-operate with the reasonable adjustments proposed by NES or a medical practitioner.
43. Where the person with the prime responsibility for arranging reasonable adjustments does not have the relevant knowledge or experience he/she will consult with HR. Where required an outside specialist may be consulted with the agreement of the disabled employee.
44. The person responsible for arranging the adjustment will at all times consult the disabled employee concerned, whose agreement will be sought. The expertise of the disabled employee concerning his/her own disability will be recognised.
45. Once an adjustment has been made its operation may need to be reviewed at agreed intervals to assess its continuing effectiveness.
46. Examples of reasonable adjustments can include :
 - Part time employment
 - Job sharing
 - Phased return to work
 - Allocation of duties to one or more other colleagues
 - Additional training or re-training
 - Time off for rehabilitation or treatment
 - Flexible working options (e.g. home working)
 - Redeployment
 - Acquiring/modifying equipment
 - Increasing supervision

Retention

47. As part of its commitment to equal opportunities for disabled people NES will ensure that all reasonable measures are taken to retain disabled employees in employment.
48. NES will make such adjustments as are reasonable to enable a disabled employee to carry out his/her duties. These may include, but are not limited to, provision of specialist equipment and training, job redesign, retraining, flexible hours, remote working and/or redeployment to a suitable alternative vacancy.
49. NES will not tolerate bullying or harassment. NES will endeavour to ensure that all employees are treated with dignity and respect as outlined in the Dignity at Work Policy. Any employee who acts in contravention of this policy will be treated in accordance with the disciplinary procedure.

Sickness Absence

50. It is important to distinguish between general sickness absence and disability-related sickness absence. This helps to remove disadvantage experienced by disabled people and recognises that impairments and medical conditions may, at particular times, generate a greater level of sickness absence.
51. Therefore, when undertaking return to work interviews with disabled employees, the line manager will discuss the absence with the individual in order to ascertain if the absence was related to the disability, in such cases it may be appropriate to seek advice from occupational health. Particular attention should be given to determining if the disability is contributing to the absence.
52. The aim is to ensure that the absence is recorded appropriately on the self certification and personnel database as either sickness absence (e.g. where the absence was not as a result of the disability), or where it was an absence related to the disability such as:
 - ✚ hospital, doctors appointments
 - ✚ hospital treatment as an outpatient
 - ✚ assessment for such conditions as dyslexia
 - ✚ hearing and fitting of aids
 - ✚ training with guide or hearing dog
 - ✚ counselling/therapeutic treatment
 - ✚ dialysis treatment
 - ✚ recovery time after blood transfusion
 - ✚ physiotherapy (sessional or residential)

53. Where such 'disability leave' can be planned this should be discussed and agreed in advance to ensure the leave is recorded appropriately. Occupational Health should be used to provide guidance where necessary.
54. It will be the responsibility of the disabled employee's line manager to identify issues of disability and retention with regard to an individual employee, for example where dismissal is being considered on the grounds of sickness or incapacity.
55. Disabled employee absence should be reported and managed in accordance with the NES Managing Sickness Absence Policy and where appropriate the Management of Employee Capability Policy.
56. If, as a result of a disability, an employee is frequently/ long term absent from work NES may request a medical, vocational or functional assessment of the employee. The aims and objectives of this assessment will be agreed by both parties. Following such an assessment a phased return to work will be arranged where possible and in consultation with the disabled employee.
57. If redeployment is necessary the disabled employee will be viewed as a priority within the redeployment procedure. Where the post to which the disabled employee is redeployed is of a lesser grade or salary, subject to Executive Team approval the employee's salary will normally be protected at the original salary during the trial period, after which he/she will be paid the salary for the new post.

Mentally Healthy Workplace

58. NES recognises the importance of promoting health and wellbeing at work, and of promoting a mentally healthy workplace. NES has committed to the 'see me' campaign. This campaign seeks to tackle the stigma associated with mental ill health. It contributes to our delivery of the Equality Duty, particularly the need to foster good relations, tackle prejudice and promote equality of opportunity.
59. NES recognises that there is no health without mental health. The commitment to the 'see me' pledge provides an opportunity for NES to raise awareness and to promote the anti stigma message to our workforce and also in the education, training and development we design.
60. NES has developed an action plan to support delivery of mental health awareness training for staff, in particular for managers and senior managers.

Termination of Employment

61. Where an employee's performance falls to an unacceptable standard due to a worsening of his or her disability, the HR Business/Associated Business Partner, Line Manager and employee concerned will:
 - a. assess whether it is possible for the job to be restructured in order to enable the employee to continue;
 - b. investigate whether redeployment into an alternative position within NES would be possible or practicable, and
 - c. consider whether any vacancy likely to occur in the near future would be a suitable and acceptable alternative post for the employee.

62. Where none of the above options brings about sufficient change to allow the disabled employee to continue working, the decision to dismiss the employee may be taken in line with the NES Capability Policy and Procedures. The disabled employee and chosen representatives will be given every opportunity to liaise with their senior manager/Chief Executive, HR Business/Associated Business Partner and disability support groups in order to ensure that all possible action has been taken before dismissal is considered.

63. When, for reasons unconnected with disability, a disabled employee's conduct is unacceptable, NES' disciplinary procedures will be followed.

64. The special circumstances of a disabled employee will be taken into account in any redundancy situation.

65. NES' Capability appeals procedure should be used by any disabled employee wishing to appeal against action or dismissal.

Harassment

66. As outlined in the NES Dignity at Work Policy, NES is committed to providing a working environment, which is free from harassment, bullying or intimidation of any nature.

67. Harassment is defined in the Equality Act 2010 as unwanted conduct related to a protected characteristic which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

68. Employers may also be liable for harassment of their staff by third parties. NES will take proactive steps to manage risk of harassment by third parties.

69. Employers are liable for acts committed by their employees in the course of their employment whether or not the acts were done with the employer's knowledge and approval. NES will ensure that staff are

aware of their obligations under the Dignity at Work Policy and will provide training as appropriate. NES will take swift and appropriate action against any member of staff who is harassing or otherwise discriminating against a disabled employee.

70. Harassment of disabled employees will be a disciplinary offence, and may constitute gross misconduct, which could lead to dismissal.

Disclosure and Monitoring

71. In order to monitor NES' performance in achieving the aims set out in this policy NES will request and retain data on the disability status of its workforce. This data is processed and retained in line with the Data Protection Act 1998.

72. The disclosure by applicants and staff of their disability status is voluntary but this data is invaluable to NES as it enables accurate review of progress and highlights any areas where NES is not succeeding in promoting equality. The data is anonymised prior to analysis, review and reporting and plays no part in making decisions about individual employees; rather its function is to make decisions about the organisation's performance.

73. NES will report on its performance in relation to disability equality every six months to the NES Staff Governance Committee and as part of its biennial report on progress delivering equality outcomes and mainstreaming equality and diversity in delivery of its functions.

Ratified by the Staff Governance Committee
on 19 April 2010
Reviewed and revised 25 Sept 2012