


# 29. Treating people fairly

## This guidance note contains:

### HFEA guidance

- Treating people fairly
- Conscientious objection ●
- Addressing communication barriers

 Refer to principles 1, 2, and 5

### Other legislation, professional guidelines and information

● Section includes mandatory requirements



## HFEA guidance

### Treating people fairly



#### Interpretation of mandatory requirements

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The law, mainly the Equality Act 2010, protects people who have a ‘protected characteristic’ (including centre staff, current and prospective patients, and donors) from less favourable treatment than others who do not have that characteristic. There are nine protected characteristics:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex, and
- sexual orientation.

Equality law applies to both NHS and private centres, as employers and providers to the public of goods, facilities or services (paid for or free of charge).

The law protects people by prohibiting the following:

- Direct discrimination: where, because of a protected characteristic, a person with that characteristic is treated less favourably than others who do not share that characteristic.
- Discrimination by perception: where a person who is thought to have a protected characteristic is treated less favourably than others, even though they do not, in fact, have that characteristic.
- Discrimination by association: where a person is treated less favourably than others because of their association with someone who has a protected characteristic.
- Discrimination arising from disability: where a person with a disability is treated less favourably than others because of something that is a result of their disability.
- Combined discrimination: where a person who has two protected characteristics is treated less favourably than others who have neither of those characteristics.



### Interpretation of mandatory requirements (cont)

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- (f) Harassment: where a person experiences unwanted conduct related to a protected characteristic (other than characteristics (d) and (e)) that violates their dignity or creates an intimidating, hostile, degrading or offensive environment for them, or is intended to do so.
- (g) Victimisation: where a person is treated badly because they have made or supported a complaint or grievance under the Equality Act.
- (h) Indirect discrimination: where a rule, policy or practice applies to everyone but disadvantages people who have a protected characteristic.

For some protected characteristics and in some contexts, unequal treatment may be justified if it is a proportionate way of achieving a legitimate aim.

The law requires reasonable adjustments to be made for people with a disability, including finding a way around arrangements that disadvantage them, helping them overcome disadvantage caused by physical features of the premises, and providing auxiliary aids (for example, extra equipment).

The law also requires those carrying out a public function to consider the need to eliminate prohibited conduct, promote equal opportunities, and encourage good relations between people with protected characteristics and those without.

The Human Rights Act 1998, which gives effect to the rights guaranteed in the European Convention for the Protection of Human Rights and Fundamental Freedoms, is also relevant to broader issues of equality, discrimination and human rights.

- 29.1** The person responsible should ensure that the centre's systems, policies and procedures comply with current equality legislation and guidance. A list of relevant legislation is included in the 'Other legislation, professional guidelines and information' section at the end of this guidance note.
- 29.2** Centres should ensure that staff, donors, patients and other visitors to the centre are treated fairly and with respect for their dignity and human rights. Centre staff should have received up-to-date training and be able to show they are competent in their obligations under equality law.
- 29.3** Attitudes towards assisted conception, gamete donation, embryo testing, and the use of gametes and embryos may vary significantly between individuals, cultures and religions. All healthcare professionals should be sensitive to this; the person responsible should ensure employees have access to training and support to help them identify and meet the widest possible range of patients' and donors' needs and preferences.
- 29.4** Centres should ensure that all business and clinical structures and functions show respect for equality and diversity. Centres should review policies and procedures regularly to ensure they reflect equality and diversity adequately. Centres should also consider having equality policies.
- 29.5** Centres should put in place suitable procedures for monitoring and auditing the number and quality of services they provide for people with protected characteristics.
- 29.6** Centres should provide or arrange investigations and treatments based on professional assessment and clinical judgment. They should take into account the needs and preferences of prospective or current patients, donors and others visiting the centre, including any reasonable adjustments, aids or help they may need.
- 29.7** Centres must decide fairly whether to offer or refuse treatment. Staff at a centre should not refuse or delay treatment because they believe that what a patient has done or not done has contributed to their condition. The reasons for any refusal, delay or interruption of treatment should be fully documented.
- 29.8** The person responsible for an NHS centre should consider relevant policies of their primary care trust or NHS board before refusing treatment.



- 29.9** Staff at the centre must not harass or victimise patients or donors by allowing their own personal views or judgments<sup>1</sup> to adversely affect their professional relationship with the patients or donors, or the treatment they provide or arrange. Staff should challenge colleagues if they believe that their behaviour does not comply with this guidance, or with the relevant legislative requirements.<sup>2</sup>
- 29.10** Centres carrying out a public function should consider taking positive action to help people overcome disadvantage or to meet their needs, where this is consistent with centres' duties towards others.

### Conscientious objection



#### Mandatory requirements

##### Human Fertilisation and Embryology (HFE) Act 1990 (as amended)

##### 38 Conscientious Objection

- (1) No person who has a conscientious objection to participating in any activity governed by this Act shall be under any duty, however arising, to do so.
- (2) In any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.
- (3) In any proceedings before a court in Scotland, a statement on oath by any person to the effect that he has a conscientious objection to participating in a particular activity governed by this Act shall be sufficient evidence of that fact for the purpose of discharging the burden of proof imposed by subsection (2) above.

- 29.11** The centre should give prospective employees a full description of the centre's activities, and at the interview draw their attention to the provision that anyone who has a conscientious objection to participating in a particular activity done in the centre must not be obliged to do so.
- 29.12** If a staff member has a conscientious objection to providing a particular licensed activity governed by the Act, they should inform the person responsible. The person responsible should ensure that the patient, patient's partner or donor is given information on or referred to alternative sources of the treatment.
- 29.13** The person responsible should satisfy themselves that the staff member has a conscientious objection to providing a particular licensed activity, and is not unlawfully discriminating against a patient on the basis of a protected characteristic.
- 29.14** If all staff at the centre conscientiously object to providing a particular licensed activity, the person responsible should:
- (a) try to refer the person to another centre for treatment, and
  - (b) provide the patient with a written explanation of why the centre cannot treat them.
- 29.15** The person responsible should record:
- (a) the reason(s) for the conscientious objection of any member of staff
  - (b) their efforts to provide the particular activity at the centre, and
  - (c) if that activity cannot be provided at the centre, efforts they have made to ensure the patient receives treatment elsewhere.

<sup>1</sup> For instance, their views about a patient's age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

<sup>2</sup> This guidance is based on a paragraph taken from Good Medical Practice (GMC, 2006).



## HFEA guidance (cont)

### Addressing communication barriers

**29.16** The centre should consider the needs of people whose first language is not English and those who face other communication barriers. Where consent is obtained, the centre should record any difficulties in communicating the implications of giving consent and in providing other information to the person (eg, language barriers or hearing impairment) and an explanation of how these difficulties were overcome (eg, the use of an independent interpreter).<sup>3</sup>

See also guidance note:

- **5 – Consent to treatment, storage, donation and disclosure of information**
- **23 – The quality management system**

**29.17** The centre should ensure it establishes and accommodates the preferred means of communication of any patient or donor with a disability. If appropriate, it should consider providing information in a variety of formats such as large print, 'easy read' or Braille.



## Other legislation, professional guidelines and information

### Relevant requirements in the following legislation:

Equality Act 2010

Human Rights Act 1998

Copies of all the relevant legislation can be found at [www.opsi.gov.uk](http://www.opsi.gov.uk).

### Other information you may find helpful:

- The Equality and Human Rights Commission was established under the Equality Act 2006 to champion equality and human rights for all, and to work to eliminate discrimination. Among other things, its website - [www.equalityhumanrights.com](http://www.equalityhumanrights.com), provides practical information for businesses to help them meet their obligations, including a summary of relevant law. Case studies illustrate the various forms of discrimination. The Commission produces guidance and Codes of Practice for employment, service provision and other matters in relation to the Equality Act 2010.

To illustrate discrimination on the grounds of sexual orientation, the Equality and Human Rights Commission uses the example of a couple who are refused fertility treatment because they are lesbians – [www.equalityhumanrights.com/en/yourrights/equalityanddiscrimination/sexualorientation](http://www.equalityhumanrights.com/en/yourrights/equalityanddiscrimination/sexualorientation)

- General Medical Council – Valuing Diversity Guide – [www.gmc-uk.org/publications/valuing\\_diversity/index.asp](http://www.gmc-uk.org/publications/valuing_diversity/index.asp)  
Good Medical Practice guidance – [www.gmc-uk.org/guidance/good\\_medical\\_practice/GMC\\_GMP.pdf](http://www.gmc-uk.org/guidance/good_medical_practice/GMC_GMP.pdf)  
Links to a range of other diversity and equality websites can be found on the site.
- The HFEA's Diversity Strategy outlines the way we intend to promote diversity and a set of action plans in relation to race, disability, gender, sexual orientation, religion or belief, and age. Centres may wish to refer to this when producing or revising their own diversity strategy. It can be found at – [www.hfea.gov.uk](http://www.hfea.gov.uk)

<sup>3</sup> This guidance is based on a paragraph taken from the Human Tissue Authority's Code of Practice on Consent (2008).