Introduction

The primary law setting our out duties to promote equality and your rights to not be discriminated against are in the Equality Act 2010. These come from various European Directives. The Equality Act replaces, rationalises and expands previous legislation, notably: the Race Relations Act 1976 (as amended); Sex Discrimination Act (1975), and the Disability Discrimination Act (1995). It also replaces and expands the protections from discrimination within the Employment Equality Regulations: Religion or Belief (2006), Sexual Orientation (2003), and Age (2006).
Anti-Discrimination Obligations

England’s anti-discrimination legislation can protect people in different situations from less favourable (or sometimes unfavourable) treatment connected with certain ‘protected characteristics’:

Protected Characteristics
These are the differences in peoples’ identity and circumstances that the Equality Act creates rights for people to claim protection from discrimination and also creates obligations on the Trust to promote equality within our work. These are:

- Age
- Disability
- Gender Reassignment
- Pregnancy and Maternity
- Race
- Religion or Belief
- Sex
- Sexual Orientation
- Marital / Civil Partnership Status (discrimination only)

All people can expect us to avoid discrimination, including: patients and service users, carers, family members, visitors, residents, workers and contractors. Their rights to not be discriminated against change in different situations laid out in the Equality Act. Those relevant to East Sussex Healthcare NHS Trust may include:

- Services and public functions (e.g. provision of healthcare)
- Premises (e.g. employee accommodation)
- Work (including employment and terms)
- Association (including Trust membership)

Discrimination
The different types of discrimination are listed here:

- Direct discrimination (S. 13)
  - Direct discrimination by association (e.g. carers)
  - Direct discrimination by perception
- Discrimination arising from disability (S.15)
- Gender reassignment discrimination: cases of absence from work (S.16)
- Pregnancy and maternity discrimination: non-work cases (S.17)
- Pregnancy and maternity discrimination: work cases (S.18)
- Indirect discrimination (S.19)
Failure to comply with duty to make reasonable adjustments (S.21)
Harassment (S.26)
Victimisation (S.27)
Equal Pay (S.66)
Instructing, causing or inducing discrimination (S.111)
Aiding Contraventions (S.112)

The duties on the Trust to avoid discrimination as a service-provider, employer or public authority creates rights for individuals. These rights can be used to lodge a claim for damages before a Tribunal or Court.

In addition to avoiding discrimination for individuals, the Trust must be proactive in eliminating discrimination through the equality duty for all people.

**Equality Duty**

The strategy contains actions that meet our obligations from the public sector equality duty (Section 149 of the Equality Act 2010). This obliges that the Trust in the exercise of its functions, has due regard to the need to:

**Public Sector Equality Duty**

a. Eliminate discrimination, harassment and prohibited conduct

b. Advance equality of opportunity between different people

c. Foster good relations between different people.

**Due Regard**

The Trust must have due regard to the need to meet the equality duties. Due regard means the weight given by the Trust to meet the equality duties should be in proportion to the relevance of the matter in hand. Relevance will depend upon the effect on different protected groups: disabled people; different ethnic groups; sexes etc.

**Public Functions**

This refers to any activity assigned to; required by; or, expected of the Trust. Any such activity contracted out to a private organisation by the Trust remains a public function, and both the Trust and the contractor have accountability for it before the commission or a court.

**Equality of Opportunity**

Further the Trust whilst advancing equality of opportunity must have particular due regard to the need to:

- Remove or minimise the disadvantage experienced by people connected to ‘protected characteristics’ (see below).
Take steps to meet the needs of people who share a protected characteristic that are different from people who do not share it.

Encourage people who share a protected characteristic to participate in public life or any other activity where participation is disproportionately low.

Taking steps to meet the needs of different people may involve treating some people more favourably (e.g. reasonable adjustments for disabled people to help them overcome disadvantage or positive action in recruitment), but this does not permit unlawful discrimination.

**Specific Duties**

To help deliver the general duty, there are also specific duties which inform the aims of this strategy:

a. **Publication of Information**
   Publish information annually about employees, patients and service-users to demonstrate compliance with the general duty.

b. **Equality Objectives**
   Publish specific and measurable objectives to deliver the general duty.

c. **Accessible Publication**
   Ensure that information published to meet the other two specific duties is accessible to the public.

**European Directives**

The main European Directives affecting domestic discrimination legislation are:

- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
- Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services;

Also relevant in this context is Article 141 of the Treaty Establishing the European Community. (Official Journal C 325/33 of 24 December 2002).

**Human Rights Laws**

Human rights are the legally binding and written part of the social contract humans have evolved through cultural, religious, philosophical and legal advancements.

**Universal Declaration of Human Rights (UDHR)**

Human rights were first given legal status when the United Nations (UN) passed the United Declaration of Human Rights in 1948.

‘Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood’

The UDHR also included the first modern statements of the rights to protection from discrimination, in accessing the declarations rights, freedoms and access to the law (Articles 2 and 7).

Articles 3–11 constitute rights of the individual. Articles 12–17 constitute the rights of the individual in civil and political society. Articles 18–21 deal with religious, public and political freedoms. Articles 22–27 state social, economic and cultural rights.

The declaration is essential, but it is the individual members of the UN, including the United Kingdom, that are meant to give human rights and freedoms actual effectiveness through their laws.

**European Convention on Human Rights (ECHR)**

Human rights and freedoms in the United Kingdom are largely given legal effect from the European Convention on Human Rights (ECHR).

The European Convention aims to take the first steps for the collective enforcement of certain rights from the Universal Declaration (see above)

The European Convention applies to all member states of the Council of Europe, to protect human rights and fundamental freedoms by understanding and observing them.

1 Universal Declaration of Human Rights, 1948
Each right is defined in an ‘Article’ which also states any permitted exceptions. Some Articles form part of Protocols, which are sections added later.

The United Kingdom was the first to sign up to the Convention in 1951, which came into force in 1953.

The Convention also allows establishes the European Court of Human Rights (Article 19), which ensures member states observe human rights. The court allows any individual or group (Article 34) to take a member state to court if they have had their rights violated.

**Human Rights Act 1998 (HRA)**

The Human Rights Act 1998 (HRA) gives more direct legal effect within the United Kingdom to some of the rights under the European Convention of Human Rights.

The HRA sets out that any person with standing can raise an action before a court in the United Kingdom against a public authority which has acted or intends to act in a way that contravenes the European Convention.

The HRA largely came into force in the year 2000.

**Convention Rights**

The HRA makes it unlawful for a public authority to contravene ‘Convention Rights’. Public authority includes any organisation or person ‘whose functions are functions of a public nature’, so could include any body that the Trust contracts with to perform services upon our behalf. Convention Rights are a specific set of rights take from Section 1 of the European Convention:

- The right to life
- The right not to be tortured or treated in an inhuman or degrading way
- The right to be free from slavery or forced labour
- The right to liberty
- The right to a fair trial
- The right to no punishment without law
- The right to respect for private and family life, home and correspondence
- The right to freedom of thought, conscience and religion
- The right to freedom of expression
- The right to freedom of assembly and association
- The right to marry and found a family
- The right not to be discriminated against in relation to any of the rights contained in the European Convention
- The right to peaceful enjoyment of possessions
- The right to education
- The right to free elections

The relevance of particular rights to the Trust and health care varies, but some are highly relevant in terms of potential risk. The types of situations
which are particularly relevant could include (but are not limited to: use of restraint, patient-on-staff harassment, patient consent, mental health deprivation of liberty and resuscitation orders.

Other Important Equality Laws

Civil Partnership Act 2004
This Act provides legal recognition and parity of treatment for same-sex couples and married couples, including employment benefits and pension rights.

Gender Recognition Act 2004
The Gender Recognition Act (GRA) gives transsexual people legal recognition of their ‘acquired gender’. To access this legal recognition a transsexual person must apply before a panel and if successful will become for all purposes the acquired gender.

The transsexual person will receive a full gender recognition certificate (GRC). The GRC in turn allows for a new birth certificate that reflects the acquired gender.

In certain situations the Act prohibits disclosure of the fact that someone has applied for a gender recognition certificate or disclosure of someone’s previous gender. This disclosure is a criminal offence and can result in a fine. A transsexual person may consent to a member of Trust staff disclosing the information only if they give explicit consent.