

Practice Guidance - Disability Discrimination Duties People Supported by Hesley Group Services and Hesley Group Employees

Scope

This Guidance replaces the former Disability Discrimination Duty Policy and Guidance. By the time Equality Act was introduced in 2011, Hesley Group had become familiar with the duties in the Disability Discrimination Act (DDA), and the equivalent race and sex discrimination legislation.

Whilst the majority of the DDA has been repealed and replaced by the Equality Act, most of the duties have broadly similar practical implications for Hesley Group services. The duties are referred to throughout a range of regulations and standards for Children's Homes, Schools and Adults Residential Care, all of which require compliance.

The duties of the Equality Act 2010 apply to the nine different aspects of equalities and to most aspects of our national life. The focus of this Guidance is mainly on how the duties apply to (1) adults and children using Hesley Group adults' residential services, schools and children's homes and (2) disabled employees.

Whilst there are general duties in respect of all nine aspects (protected characteristics), particular duties in the Equality Act only apply to disabled people. The purpose of this Guidance is to bring together all the duties that apply to disabled children and adults using Hesley Group Services and our employees. Where possible we make adjustments to support visitors access the service and or the person they are visiting. However, these should be reasonable. For example, it would be unlikely to be judged reasonable to move a person to a ground floor flat to accommodate a visitor who has developed mobility problems. In this situation other arrangements would be made to positively support the visit. It is, however, reasonable for visitors to expect to be able to access a toilet and washing facility whilst visiting a service.

People Using Children's Services

Disability responsibilities in the Children and Families Act 2014 changed the Special Educational Needs (SEN) framework and brought in responsibilities for local authorities (LAs) that apply to disabled children and young people as well as those with SEN. As a provider of services commissioned by public bodies, this duty applies to Hesley Group.

The Children's Homes Regulations 2015 and the Children's Quality Standards in addition to the Education Guidance include the importance of: taking into account the views, wishes and feelings of children, their parents and of young people; their full participation in decision-making; information and support to enable them to participate in decision-making; and of support to achieve the best possible educational and other outcomes. Every child or young person receiving a service from Hesley Group Schools or Colleges has special educational needs. Therefore, it is expected that Hesley Group staff will follow regular consultation and listening processes in

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arranging and delivering child-centred services. This includes making reasonable adjustments in order to provide a service. If children receive a truly child centred service (including environmental factors) and follow agreed Hesley Group Policy, Guidance and Procedures in relation to planning and delivery of services, this will satisfy the requirements of the Duty.

If the child or young person is aged 16 or over and lacks capacity in relation to a matter listed above the duties under the Mental Capacity Act 2005 will be followed by staff. See HG policy Mental Capacity Act 2005 - Capacity and Consent, [ReS 6.4A](#).

See also link to Children's Disability Rights booklet:

http://www.legislation.gov.uk/ukxi/2015/64/pdfs/ukxi_20150064_en.pdf

with detailed guidance and advice for schools reference the Equality Act 2010.

People Using Adult Services

Hesley Group has a duty to comply with The Health and Social Care Act Regulated Activities Regulations 2014, Registration Regulations 2009 and the Fundamental Standards. These state that:

People must receive an assessment of their needs and preferences from the provider of services (i.e. by Hesley Group in collaboration with relevant persons).

People will receive a service that is designed to meet their preferences and make sure their specific needs are met.

People will be supported to understand their choices of care or treatment and supported to make decisions to the maximum extent possible.

People should be consulted about the way the service is run (so far as it relates to their own care and treatment).

The service will make reasonable adjustments to enable the person to receive their care or treatment.

People must be treated with dignity and respect by ensuring the privacy of the service user within the context of their agreed plans, supporting the autonomy, independence and involvement in their community AND having due regard to any relevant protected characteristics (see [Corp 9.1](#)).

If the service user is aged 16 or over and lacks capacity in relation to a matter listed above the duties under the Mental Capacity Act 2005 will be followed by staff. See HG policy Mental Capacity Act 2005 - Capacity and Consent, [ReS 6.4A](#).

If people using Hesley Group services receive a truly person-centred service (including environmental factors) and follow agreed Hesley Group Policy, Guidance and Procedures in relation to planning and delivery of services, this will satisfy the requirements of the Duty.

Disabled Employees

What this covers

It's against the law for Hesley Group to discriminate against employees/potential employees because of a disability. The Equality Act 2010 protects them and covers areas including application forms, interview arrangements, aptitude or proficiency tests, job offers, terms of employment (including pay), promotion, transfer and training opportunities, dismissal or redundancy, discipline and grievances.

Reasonable adjustments in the workplace

As an employer Hesley Group has to make 'reasonable adjustments' to avoid their employees being put at a disadvantage compared to non-disabled people in the workplace. For example, adjusting working hours or providing a special piece of equipment to help someone do their job.

Recruitment

See also Recruitment, Selection & Appointment of Support Workers & APS Workers using Values Based Recruitment, [Per 2.1](#)/All Other Employees - Recruitment, Selection and Appointment, [Per 2.1A](#). When recruiting staff Hesley Group may make limited enquiries about an applicant's health or disability.

Applicants can only be asked about their health or disability:

- to help decide if they can carry out a task that is an essential part of the work
- to help find out if they can take part in an interview
- to help decide if the interviewers need to make reasonable adjustments for them in a selection process
- to help monitoring
- if the employer wants to increase the number of disabled people they employ
- if the employer need to know for the purposes of national security checks.

Applicants may be asked whether they have a health condition or disability on an application form or in an interview. Hesley Group managers will need to think about whether the question is one that is allowed to be asked at that stage of recruitment.

The Children's Homes Regulations 2015 and the Health and Social Care Act Regulations 2014 both make it clear that all staff employed in a regulated setting (i.e. children's home or residential care home) **must** be physically and mentally fit to do the job they are appointed to do (this continues throughout their employment in the post, not just at appointment). Therefore, Hesley Group has a duty to ensure this is the case. These regulations do not apply to Hesley Group employees not working in direct care or therapeutic services, however it would be contrary to health and safety at work regulations if a person was appointed to undertake duties they are not physically or mentally fit to perform, even with reasonable adjustments. To this end all applicants are subject to occupational health clearance prior to commencing work with Hesley Group.

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Employees can't be chosen for redundancy just because they are disabled. The selection process for redundancy must be fair and balanced for all employees.

Hesley Group cannot force you to retire if you become disabled.

Staff Knowledge and Understanding

All staff receive training in how to provide person-centred care and support at induction and throughout their career with Hesley Group. Staff are expected to deliver a service to agreed standards, which are set out in the Hesley Group Code of Conduct for Employees, [Per 4.9.1](#).

Further information is available in respect of all the information above. Please see Policy [Corp 9.1](#) for links.