

# EQUALITY & DIVERSITY AND DIGNITY AT WORK

## i. SCOPE

This policy covers ensuring equality; embracing and valuing diversity; and preventing unlawful discrimination against and bullying and harassment of and by: Directors, employees, self-employed artists, volunteers and anyone else engaged to work, whether by direct contract with the organisation or otherwise.

The policy covers discrimination, bullying and harassment in the workplace, in our service delivery environments, and in any work-related setting outside the workplace, e.g. business trips and work-related social events.

## ii. OUR COMMITMENT

Upland strives to be an advocate of equality and diversity for all of our stakeholders and will work hard to ensure all sections of the community are included. All stakeholders have a right to equal treatment and Upland will not tolerate unfair or unlawful discrimination on the grounds of any “protected characteristic”, except for those situations as permitted in under current legislation.

The characteristics, which are considered “protected” under the Equality Act 2010, are as follows:

- Age
- Disability
- Gender reassignment (although Upland will widen this definition to all transgender people)
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

The organisation is committed to creating recruitment processes; a work environment and service delivery which is free of harassment and bullying, where everyone is treated with dignity and respect.

Upland will analyse the demographic profile of its members and will make efforts to:

- Reach under-represented or hard to reach groups such as disabled people, ethnic minority people, older people, people of faith etc.
- Remove barriers to participation for example for those on low income or with parenting or caring responsibilities

## iii. TYPES OF DISCRIMINATION

There are various types of discriminatory conduct that Upland seeks to avoid in its policy, practice and in the behaviour of its Directors, staff, self-employed artists and volunteers.

**Direct discrimination** is where one person is treated less favourably than another because of a protected characteristic. For example, if a transsexual woman was denied entry to a women's art group because she was born male.

In limited circumstances, employers can directly discriminate against an individual for a reason related to any of the protected characteristics where there is an occupational requirement. The occupational requirement must be crucial to the post and a proportionate means of achieving a legitimate aim.

**Indirect discrimination** involves acts, policies or decisions which do not expressly treat any members, volunteers or supporters less favourably than others because of protected characteristics but have the effect of doing so in practice; and cannot be justified as a proportionate means of achieving a legitimate aim. For example if all Directors decisions are arrived at in email communication which may discriminate against people with literacy issues or learning disabilities.

**Bullying** is offensive, intimidating, malicious or insulting behaviour, and/or an abuse or misuse of power that is meant to undermine, humiliate or injure the person on the receiving end.

**Harassment** is unwanted conduct related to relevant protected characteristics, which are sex, gender reassignment, race (which includes colour, nationality and ethnic or national origins), disability, sexual orientation, religion or belief and age, that:

- has the purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person; or
- is reasonably considered by that person to have the effect of violating their dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for them, even if this effect was not intended by the person responsible for the conduct.

#### **Points to note about Harassment:**

Conduct may be harassment whether or not the person behaving in that way intends to offend.

- Harassment may also occur where a person engages in unwanted conduct towards another because they perceive that the recipient has a protected characteristic (for example, a perception that they are gay or disabled)
- There may also be circumstances in which an individual is subjected to unwanted conduct from a third party, such as a client or customer.
- A single incident can be harassment if it is sufficiently serious.
- All bullying and harassment is misconduct and is a disciplinary offence which will be dealt with under the organisation's disciplinary policy. Bullying or harassment will often be gross misconduct, which can lead to dismissal without notice.
- Bullying or harassment will constitute unlawful discrimination where it relates to one of the protected characteristics.
- Serious bullying or harassment may amount to other civil or criminal offences, eg a civil offence under the Protection from Harassment Act 1997 and criminal offences of assault.

**Associative discrimination** is where an individual is directly discriminated against or harassed for association with another individual who has a protected characteristic (although it does not cover harassment because of marriage and civil partnership, and (according to guidance from the Government and ACAS) pregnancy and maternity).

**Perceptive discrimination** is where an individual is directly discriminated against or harassed based on a perception that they have a particular protected characteristic when they do not, in fact, have that protected characteristic (other than marriage and civil partnership, and pregnancy and maternity).

**Failure to make reasonable adjustments** is where a physical feature or a provision, criterion or practice puts a disabled person at a substantial disadvantage compared with someone who does not have that protected characteristic and the employer has failed to make reasonable adjustments to enable the disabled person to overcome the disadvantage.

**Causing/aiding discrimination:** it is unlawful to instruct, cause, induce or knowingly help someone discriminate against another.

#### iv. VICTIMISATION

Victimisation is subjecting a person to a detriment because they have, in good faith, complained (whether formally or otherwise) that someone has been bullying or harassing them or someone else, or supported someone to make a complaint or given evidence in relation to a complaint. This would include denying someone training opportunities, a promotion or isolating them because they have made a complaint or giving them a heavier or more difficult workload.

Provided that you act in good faith, i.e. you genuinely believe that what you are saying is true, you have a right not to be victimised for making a complaint or doing anything in relation to a complaint of bullying or harassment and the organisation will take appropriate action to deal with any alleged victimisation, which may include disciplinary action against anyone found to have victimised you.

However, an employee is not protected from victimisation if they acted maliciously or made or supported an untrue complaint. Making a complaint that you know to be untrue, or giving evidence that you know to be untrue, may lead to disciplinary action being taken against you.

#### v. WHAT SHOULD I DO IF I THINK I AM BEING DISCRIMINATED AGAINST, BULLIED OR HARASSED?

You may be able to sort out matters informally. The person may not know that their behaviour is unwelcome or upsetting. An informal discussion may help them to understand the effects of their behaviour and agree to change it. You may feel able to approach the person yourself, or with the help of a manager, trade union representative or another employee. Alternatively, an initial approach could be made on your behalf by one of these people. You should tell the person what behaviour you find offensive and unwelcome, and say that you would like it to stop immediately. You may want to add that, if the behaviour continues, you intend to make a formal complaint to your manager. You should keep a note of the date and what was said and done. This will be useful evidence if the unacceptable behaviour continues and you wish to make a formal complaint.

If an informal approach does not resolve matters, or you think the situation is too serious to be dealt with informally, you can make a formal complaint by using the organisation's Grievance and Complaints Procedure. The organisation will ensure that you can bring your complaint in the first instance to someone of your own gender, if you so choose. If the situation involves a criminal offence being committed against you, the Organisation will support you (if desired) to report this to the police.

## **vi. WHAT CAN I DO TO HELP STOP BULLYING AND HARASSMENT?**

We all have a responsibility to help create and maintain a work environment free of bullying and harassment. You can help to do this by:

- being aware of how your own behaviour may affect others and changing it, if necessary - you can still cause offence even if you are "only joking";
- treating your colleagues with dignity and respect;
- taking a stand if you think inappropriate jokes or comments are being made;
- making it clear to others when you find their behaviour unacceptable, unless it should be obvious in advance that this would be the case;
- intervening, if possible, to stop harassment or bullying and giving support to recipients;
- making it clear that you find harassment and bullying unacceptable;
- reporting harassment or bullying to your manager and supporting the organisation in the investigation of complaints; and
- if a complaint of harassment or bullying is made, not prejudging or victimising the complainant or alleged harasser.

Directors and staff members have a particular responsibility to:

- set a good example by their own behaviour;
- ensure that there is a supportive working environment;
- make sure that staff know what standards of behaviour are expected of them;
- intervene to stop bullying or harassment; and
- report promptly to human resources any complaint of bullying or harassment, or any incident of bullying or harassment witnessed by them.

## **vii. WHAT HAPPENS IF I AM ACCUSED OF DISCRIMINATION, BULLYING OR HARASSMENT?**

If someone approaches you informally about your behaviour, remember that different people find different things acceptable and everyone has the right to decide what behaviour is acceptable to them and to have their feelings respected by others.

If a formal complaint is made about your behaviour, this will be fully investigated and the organisation may bring disciplinary proceedings, if appropriate. The organisation will follow its disciplinary procedure and you will have the rights set out in that procedure.

# WHISTLE BLOWING POLICY

## I. INTRODUCTION

It is important to the organisation that any fraud, misconduct or wrongdoing by Directors, staff, self-employed artists or volunteers of the organisation is reported and properly dealt with. The organisation therefore encourages all individuals to raise any concerns that they may have about the conduct of others in the business or the way in which the business is run. This policy sets out the way in which individuals may raise any concerns that they have and how those concerns will be dealt with.

## II. BACKGROUND

The law provides protection for Directors, staff members, self-employed artists or volunteers who raise legitimate concerns about specified matters. These are called 'qualifying disclosures'. A qualifying disclosure is one made in good faith by an employee who has a reasonable belief that:

- a criminal offence
- a miscarriage of justice
- an act creating risk to health and safety
- an act causing damage to the environment
- a breach of any other legal obligation or
- a concealment of any of the above

is being, has been, or is likely to be, committed. It is not necessary for the Director, staff member, self-employed artist or volunteer to have proof that such an act is being, has been, or is likely to be, committed - a reasonable belief is sufficient. The Director, staff member, self-employed artist or volunteer has no responsibility for investigating the matter - it is the organisation's responsibility to ensure that an investigation takes place.

A Director, staff member, self-employed artist or volunteer who makes such a protected disclosure has the right not to be dismissed, or subjected to victimisation, because they have made the disclosure.

The organisation encourages Directors, staff members, self-employed artists or volunteers to raise their concerns under this procedure in the first instance. If a Director, staff member, self-employed artist or volunteer is not sure whether to raise a concern, they should discuss the issue with the Executive Managing Director (or another Director) of the organisation.

## III. PRINCIPLES

Everyone should be aware of the importance of preventing and eliminating wrongdoing at work. Directors, staff members, self-employed artists or volunteers should be watchful for illegal or unethical conduct and report anything of that nature that they become aware of.

Any matter raised under this procedure will be investigated thoroughly, promptly and confidentially, and the outcome of the investigation reported back to the Director, staff member, self-employed artist or volunteer who raised the issue.

No Director, staff member, self-employed artist or volunteer will be victimised for raising a matter under this procedure. This means that the continued employment and opportunities for future promotion or training of the Director, staff member, self-employed artist or volunteer will not be prejudiced because they have raised a legitimate concern.

Victimisation of a Director, staff member, self-employed artist or volunteer for raising a qualified disclosure will be a disciplinary offence.

If misconduct is discovered because of any investigation under this procedure the organisation's conduct and capability procedure will be used, in addition to any appropriate external measures.

Maliciously making a false allegation is a disciplinary offence.

An instruction to cover up wrongdoing is itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a Director; Directors staff member, self-employed artist or volunteers should not agree to remain silent. They should report the matter to the Chair of the Upland Board or other Board Director.

#### **IV. PROCEDURE**

This procedure is for disclosures about matters other than a breach of an employee's own contract of employment. If an employee is concerned that their own contract has been, or is likely to be, broken, they should use the organisation's grievance procedure.

In the first instance, and unless the Director, staff member, self-employed artist or volunteer reasonably believes their line manager to be involved in the wrongdoing, or if for any other reason the Director, staff member, self-employed artists or volunteer does not wish to approach their line manager, any concerns should be raised with the direct line manager. If they believe the line manager to be involved, or for any reason does not wish to approach the line manager, then the Director, staff member, self-employed artist or volunteer should proceed straight to stage 3.

(2) The line manager will arrange an investigation of the matter (either by investigating the matter themselves or immediately passing the issue to someone in a more senior position). The investigation may involve the Director, staff member, self-employed artist or volunteer and other individuals involved giving a written statement. Any investigation will be carried out in accordance with the principles set out above. The Director, staff member, self-employed artist or volunteer's statement will be taken into account, and they will be asked to comment on any additional evidence obtained. The line manager (or the person who carried out the investigation) will then report to the Directors, who will take any necessary action, including reporting the matter to any appropriate government department or regulatory agency. If disciplinary action is required, the line manager (or the person who carried out the investigation) will report the matter to the manager and start the disciplinary procedure. On conclusion of any investigation, the Director, staff member, self-employed artist or volunteer will be told the outcome of the investigation and what the trustees has done, or proposes to do, about it. If no action is to be taken, the reason for this will be explained.

(3) If the Director, staff member, self-employed artist or volunteer is concerned that their line manager is involved in the wrongdoing, has failed to make a proper investigation or has failed to report the outcome of the investigations to the trustees, they should inform the Executive Managing Director who will arrange for another appropriate person to review the investigation carried out, make any necessary enquiries and make their own report to the trustees as in stage 2 above. If for any other reason the Director, staff member, self-employed artist or volunteer does not wish to approach their line manager they should also in the first instance contact the Chair of the Upland Board. Any approach to the Chair of the Upland Board will be treated with the strictest confidence and the Director, staff member, self-employed artist or volunteer's identity will not be disclosed without their prior consent.

Note, if the concern is regarding the Chair of the Upland Board, then another Director should be contacted.

(4) If on conclusion of stages 1, 2 and 3 the Director, staff member, self-employed artist or volunteer reasonably believes that the appropriate action has not been taken, they should report the matter to the proper authority. The legislation sets out a number of bodies to which qualifying disclosures may be made. These include:

- HM Revenue & Customs;
- the Financial Services Authority;
- the Office of Fair Trading;
- the Health and Safety Executive;
- the Scottish Environmental Protection Agency.

# TRANSGENDER POLICY

## I. SCOPE

This section applies to Directors, staff and volunteers.

## II. OUR COMMITMENT

The organisation is committed to ensuring that transgender people are treated with respect and that it does not discriminate unlawfully. This commitment is an important aspect of its overall commitment to providing equal opportunities in employment and volunteering.

This policy is intended to assist the organisation to put this commitment into practice and to help the organisation, transgender people and other employees to deal with any practical issues that may arise. Compliance with this policy should also ensure that employees do not commit unlawful acts of discrimination.

Striving to ensure that the work environment is free of harassment and bullying and that everyone is treated with dignity and respect is an important aspect of ensuring equal opportunities in employment. The organisation has a separate Equality, Diversity and Dignity at Work policy that deals with these issues.

## III. TRANSGENDER AND TRANSITIONING

Transgender people are those who adopt a different gender to that assigned at birth because they do not feel that their gender identity matches that assigned to them. Transitioning is the process of changing to the new gender identity. This may involve surgical treatment but some transgender people will not undergo surgery for personal reasons, such as age, health or finance; or because they are comfortable with their body. For transsexual people (those who wish to transition fully to the opposite gender, feeling that they should have been born the opposite sex) the process of transitioning will normally involve a period of at least one year when the transgender person must live and work in the gender to which they are transitioning (the "real life test"), and which may involve other medical interventions such as hormone treatment or hair removal. If the person decides to undergo surgery, this will follow the real-life test.

## IV. THE LAW

The Gender Recognition Act 2004 allows transgender people who have transitioned to apply for a gender recognition certificate. When a full gender recognition certificate has been issued, the person is considered in the eyes of the law to be of the acquired gender. There is no obligation on an individual to apply for a gender recognition certificate and there may be good personal reasons why someone has not applied for one. There are special laws protecting the privacy of someone who has a gender recognition certificate: a person may commit a criminal offence if they disclose information about the gender history of someone with a gender recognition certificate without that person's consent. Upland would consider a breach of a transgender person's confidentiality around gender history as an act of Gross Misconduct, irrespective of whether that person had a gender recognition certificate or not.

The Equality Act 2010 makes it unlawful to treat someone less favourably than other people in relation to employment or vocational training on grounds that they propose to, starts or has completed a process to

change their gender. It is no longer necessary for the individual to be under medical supervision to be protected, so it is sufficient if they decide to live as a member of the opposite sex but does not undergo any medical procedures. The protection applies whether or not the individual has a gender recognition certificate. Harassment or bullying on the grounds that a person is proposing to transition, is transitioning or has transitioned is unlawful discrimination.

There are some limited exceptions where it is lawful to prevent someone doing a job on the grounds that they are transitioning, for example where not being a transgender person is an occupational requirement for the job, and the employer can demonstrate that it is a proportionate means of achieving a legitimate aim. The exceptions do not apply to someone with a gender recognition certificate.

It is unlawful to victimise someone because they have supported a complaint or raised a grievance under the Equality Act 2010, or because he or she is suspected of doing so.

An employee who discriminates against another employee on the grounds that he or she is proposing to transition, is transitioning or has transitioned may be held liable for unlawful discrimination and be required to pay compensation as well as, or instead of, the organisation.

## V. RECRUITMENT

A job (or volunteer) applicant's gender identity status is irrelevant to the recruitment process, except in the rare circumstances where an occupational requirement applies to the job. If the organisation is relying on an occupational requirement, it will need to make this clear in the recruitment material. The organisation will not ask questions about gender identity status and job applicants are not required to volunteer information about it, unless an occupational requirement makes this relevant. A job applicant with a gender recognition certificate is never required to disclose their gender history.

If during the recruitment process information is disclosed about a job applicant's gender history, for example because certain documents are in a previous name, the organisation will keep the applicant's gender history confidential and will not take this into account in the selection process, unless an occupational requirement makes this relevant. In accordance with its equal opportunities policy, the organisation will assess candidates for employment objectively against the requirements that are necessary for the effective performance of the job.

If PVG / Disclosure is required as part of the recruitment process, applicants must disclose any previous names and/or gender to the Disclosure Scotland. Transgender applicants may make use of the special application procedure established by Disclosure Scotland so that their previous name is not disclosed to the organisation.

## VI. EMPLOYMENT

It will not normally be necessary for the organisation to be made aware of the gender history of a Director, employee or volunteer who has transitioned. If it becomes aware of information relating to an Director, employee or volunteer's gender history, it will keep this information confidential. It will not disclose information about an employee's gender history to a third party without the Director, employee or volunteer's consent. Any records that the organisation needs to keep that relate to an person's previous gender, for example relevant qualifications in a previous name, will be kept confidential, with only specified staff having access to them. When the organisation no longer needs to keep those records, it will destroy them.

The organisation will not take account of a Director, employee or volunteer's gender identity status or history in making employment decisions except where necessary and permitted by law. The gender history of a Director, employee or volunteer with a gender recognition certificate will never be relevant to employment decisions. A person with a gender recognition certificate will be treated in accordance with their acquired gender for all employment benefits including pensions and insurance.

A Director, employee or volunteer who has transitioned but does not have a gender recognition certificate may be required to disclose their gender history for insurance or pension purposes. This information will be passed only to those people who require it for these purposes and will be kept confidential.

The organisation will make it clear in information about insurance whether the insurance providers require disclosure of gender history. A transgender Director, employee or volunteer has an obligation to disclose necessary information to the insurance company if the organisation is not aware of the employee's gender history. If the organisation is aware of the employee's gender history, the organisation can supply the information to the insurance company with the employee's consent. The organisation will make it clear in information about the occupational pension what information is required and any implications that transitioning has on the occupational pension.

## VII. DIGNITY AT WORK

The organisation has a separate Equality, Diversity and Dignity at Work policy concerning issues of bullying and harassment on any ground, and how complaints of this type will be dealt with. Disciplinary action will be taken against Directors, employees or volunteers who bully or harass anyone else within the Organisation.

## VIII. DEALING WITH THE TRANSITION

The organisation will be supportive of any Director, employee or volunteer who expresses an intention to transition and will work with them to try to ensure as smooth a transition at work as possible. The organisation will appoint, in consultation with the person who is transitioning, a manager to be their principal point of contact. That manager will agree with the Director, employee or volunteer an action plan for managing the transition at work. Matters to be addressed may include the following:

The Director, employee or volunteer's role: Consideration will be given to whether the Director, employee or volunteer wishes to stay in the same job and location or, if possible, to move post and/or location. In the rare cases where an occupational requirement applies to the post, a change of job may be required.

Time off: The Director, employee or volunteer may require time off for medical or other treatment. Time off for these purposes will be treated no less favourably than time off for illness or other medical appointments.

Change of social gender: Consideration will be given to:

- when the Director, employee or volunteer expects to change name and to start presenting at work in the new gender;
- how work colleagues and clients are to be informed of the change;
- whether the Director, employee or volunteer wishes to inform colleagues and clients of the change or have someone from the organisation do this;
- what information or training is to be given to managers and work colleagues;

- the point at which the employee will start to use any single-sex facilities, such as toilets, in their new gender.

Records: Consideration will be given to changes to records and systems that may be needed. After an employee has transitioned, records relating to the transition will be destroyed. The organisation will create a new personnel record to ensure confidentiality.

# **LONE WORKERS**

## **I. SCOPE**

This section applies to Directors, employees, self-employed artists and volunteers.

## **II. INTRODUCTION**

Upland recognises that it has a responsibility to ensure the safe working of its staff in line with the Management of Health and Safety at Work Regulations 1999 (updated 2002).

Many of the roles in Upland will involve working alone and travelling alone often to unfamiliar places as part of their jobs.

Directors, employees, self-employed artists and volunteers also have an obligation to adhere to the policy, and use their own common sense and initiative in addition to it.

## **III. AIMS OF THE POLICY**

Any Directors employees self-employed artist and volunteer working alone is aware of the dangers they might face and is equipped it deal with them.

Adequate support is given to employees doing lone work.

To provide an emergency procedure to be used if employees do not return following a period of lone working.

## **IV. APPLICATION OF THE POLICY**

Upland shall have an emergency procedure for dealing with times when a Director, employee, self-employed artist or volunteer has been working alone, or making a visit somewhere and has not confirmed that they have left the visit.

This should consist of:

- Trying to contact the Director, employee, self-employed artist or volunteer, in case they have just gone home and forgotten.
- Trying to contact the person the Director, employee, self-employed artist or volunteer was visiting.
- Contacting the Chair of the Upland Board and the police when contact cannot be made.

## **V. TRAINING**

Any Director, employee, self-employed artist and volunteer whose work involves outside visits or working alone in a public place will receive training so that they understand the nature of potential danger and agreed procedure for dealing with it.

Training will be ongoing and relevant to the type of work undertaken by the Director, employee, self-employed artist or volunteer.

### **Procedure for outside visits including travelling in vehicles**

Directors, employees, self-employed artists and volunteers making home or outside visits, or having member of the public accessing working environments on a one to one basis, should consider whether there are any risks to the visit and, where necessary, make provisions to reduce the risk. This can be done by:

- Taking another Director, employee, self-employed artist or volunteer known to them with them.
- Carrying a personal attack alarm.
- Carrying a mobile phone.
- Ensuring where possible that meetings not taking place within any of our office bases should be held in a public place.

Where a meeting will be held on a one to one basis or in someone's home / private studio space, further advice and permission should be sought from your line manager prior to doing this.

When arranging meetings with groups/individuals, Directors, employees, self-employed artists and volunteers are expected to:

- Put full details of the meeting i.e. contact name, address and phone numbers into the notes section of an appointment in their diary, or ensure that the relevant member of Upland staff is aware of these details in advance
- Send a text to the Projects Director to say the meeting is over and you're on their way home. Directors, employees, self-employed artists and volunteers should ensure that the Projects Director knows to expect a text from them

## **VI. PROCEDURE FOR WORKING ALONE IN AN OFFICE**

- Internal doors should be kept shut and where possible locked unless visitors are expected.
- When using toilet facilities, external doors should be locked.
- Access to telephones and, where appropriate, panic buttons must be maintained at all times.
- Escape routes should be kept clear in case of emergency.
- When meeting with someone, Directors, employees, self-employed artists and volunteers should ensure that they are between the visitor and the escape routes.
- A friend/colleague should always know that you are there and can initiate emergency procedures when necessary.
- Directors, employees, self-employed artists and volunteers should not be afraid to ask visitors for ID.
- Directors, employees, self-employed artists and volunteers have the right to refuse entry to anyone that does not have an appointment or that they feel uncomfortable with.

## **VII. LONE WORKING WITH UNDER-18S**

Directors, employees, self-employed artists and volunteers should never work alone with under-18s or give them lifts in cars under any circumstances.

When working with under-18s employees should follow the Safeguarding Policy.

## **VIII. PROBLEMS CAUSED BY LONE WORKING**

Any problems experienced whilst working alone should be reported to the Project's Director as soon as possible and for extreme cases where police are involved should be reported to the Board of Directors, as soon as is reasonably possible.

All Directors, employees, self-employed artists and volunteers are entitled to any support they require when working alone, including counselling.