

# A CODE OF PRACTICE

Removing Sex Bias from

RECRUITMENT

and

# SELECTION

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Equality Commission

FOR NORTHERN IRELAND

## **IMPORTANT NOTICE**

**PLEASE NOTE** that the functions of the Equal Opportunities Commission for Northern Ireland, which is referred to in this Code, were taken over by the Equality Commission for Northern Ireland in October 1999.

**PLEASE ALSO NOTE** Employers who use this code should ensure that they take account of legislative developments since this Code was published in 1995. The Equality Commission can provide information and advice on changes to sex discrimination law. Employers should also refer to Codes of Practice and other guidance material produced by the Equality Commission which relate to the legislation on fair employment and treatment, race, disability, sexual orientation and age.

## **FOREWORD**

The Equal Opportunities Commission for Northern Ireland is empowered, under Article 56 (A) of the **Sex Discrimination (Northern Ireland) Order 1976**, to issue codes of practice containing such practical guidance as the Commission thinks fit for the elimination of discrimination in the field of employment and/or the promotion of equality of opportunity in that field between men and women.

In furtherance of this remit, the Commission is pleased to publish this Code of Practice on Removing Sex Bias from Recruitment and Selection. This Code has been approved by the Department of Economic Development and takes effect from 1 May 1995.

This Code will be the first in a series. The document aims to identify good practice and provide employers with guidance on the provision of equality of opportunity and the avoidance of unlawful discrimination on grounds of sex or marital status in recruitment and selection for employment and for promotion in employment.

The recommendations and guidance on good practice apply equally to full-time employees, part-time employees and trainees.

**MARCH 1995**

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## INTRODUCTION

The Equal Opportunities Commission for Northern Ireland is a statutory body established under the **Sex Discrimination (NI) Order 1976** whose remit it is to work towards the elimination of discrimination, to promote equality of opportunity between men and women generally and to keep under review the working of the Order and the **Equal Pay Act (Northern Ireland) 1970** as amended.

In order to carry out these responsibilities, the Commission utilises a number of strategies including the provision of advice and assistance to employees, employers, trade unions and others with respect to their rights and obligations under the law.

The provision of equality of opportunity in the workplace is a legal issue and employers should take steps to implement the equality legislation, both domestic and European, and to ensure that their policies, procedures and practices are lawful. It is essential to recognise that traditional assumptions about what is appropriate for women and men at work continue to result in segregation of the types of jobs women and men perform. The effect of such assumptions could be discriminatory. A conscious effort and practical steps are required to counter the influence of stereotyped views of male and female employment and ensure that they are not permitted to influence or cloud the recruitment and selection process.

This Code aims to provide practical information and guidance to those involved in recruitment, selection and promotion. It is intended to be applicable in both the public and private sector and employers are encouraged to follow its recommendations.

It may be necessary for employers to adapt this Code in a way appropriate to the size and structure of their organisations. Small businesses, for example, will require much simpler procedures than organisations with complex structures and it may not always be reasonable for them to carry out all the Code's detailed recommendations. In adapting the Code's recommendations, small firms should, however, ensure that their practices comply with the **Sex Discrimination (NI) Order 1976**.

The Code is underpinned by a recognition of the importance for employers and employees alike of equality of opportunity in the workplace. For employers, non-discriminatory practices and positive action measures will help to widen the pool from which the most appropriate person can be appointed, promoted or trained. This makes good business sense as well as ensuring compliance with equality legislation. For employees, the operation of fair, consistent and non-discriminatory recruitment and selection procedures will offer equality of opportunity to all and the chance to maximise their talents at work. It is important to note that organisations which demonstrate their commitment to equality of opportunity through their recruitment and selection procedures can recruit and retain the best skilled and experienced staff, enhance their reputation and image with customers and staff, and increase productivity, profitability and market share.

All employers should develop an equal opportunities policy statement and implement an appropriate equal opportunities programme within their organisation. A member of senior management should be given overall responsibility for the implementation and monitoring of the policy. The equal opportunities programme should include, among other things, a positive action strategy where necessary, a comprehensive monitoring system, the setting of targets and timetables for change and a commitment to review all policies and procedures on a regular basis, including those on recruitment and selection, to eliminate any discriminatory practices. Guidance on how to implement an equal opportunities programme is set out in the Commission's publication **Making Changes for Women at Work – How to Implement an Equal Opportunities Programme**.

This Code provides a guide to practice in the area of recruitment, selection and promotion and employers are urged to take account of it when engaging in any internal or external selection process. The Code will also be relevant to non-employer groups, such as employment agencies, trade unions and consultants.

## STATUS AND CONTENT

Under Article 56A(1) of the **Sex Discrimination (NI) Order 1976**, as amended by the **Sex Discrimination (NI) Order 1988**, the Equal Opportunities Commission for Northern Ireland has the authority to issue Codes of Practice containing practical guidance for the purpose of ensuring the elimination of discrimination and/or the promotion of equality of opportunity in the field of employment between men and women.

This Code aims to provide such guidance by outlining the steps which employers should take for the purpose of preventing acts which may be rendered unlawful by the **Sex Discrimination (NI) Order 1976** and/or European equality law from occurring.

The Code is structured so that each section contains recommendations followed by explanatory text. For ease of reference, the recommendations have also been extracted to form a separate leaflet.

A failure on the part of any person to observe any provision of this Code shall not of itself render that person liable to any proceedings. However, in any proceedings under the **Sex Discrimination (NI) Order 1976** before an Industrial Tribunal, the Code shall be admissible in evidence and a Tribunal shall take into account any provision of the Code which appears to be relevant to any question arising in proceedings before it (Article 56A(9)). In addition, the Commission will measure employers' practices in recruitment, selection and promotion against the standards set out in this Code.

It must be pointed out that this Code cannot address or anticipate all situations which may arise during the recruitment and selection process, for example with respect to any specific recruitment criteria which various industry-based regulatory organisations with jurisdiction in Northern Ireland may have established.

The Code does not attempt to set out or explain all the detailed provisions in the legislation and it should not be treated as a complete statement of the law. It is the employer's responsibility to ensure compliance with the **Sex Discrimination (NI) Order 1976** and/or European equality law and the reader is encouraged to contact the Commission for further information on queries which this Code does not address.

**Further information on any of the issues covered in this Code can also be obtained from:**

**Information and Advice Department  
Equality Commission for Northern Ireland  
Equality House  
7-9 Shaftesbury Square  
BELFAST BT2 7DP  
Tel: 028 90 500 600 Fax: 028 90 331 544  
Email: [info@equalityni.org](mailto:info@equalityni.org) Textphone: 028 90 500 589**

## DISCRIMINATION IN EMPLOYMENT

**The Sex Discrimination (NI) Order 1976** sets out the areas where discrimination is prohibited in the field of employment (Article 8).

- ◆ **With respect to applicants for employment it is unlawful to discriminate on grounds of sex or marital status:**
  - *in the arrangements made for determining who will be offered a job*
  - *in the terms on which a job is offered*
  - *by refusing or deliberately omitting to offer a person a job*
  
- ◆ **With respect to employees it is unlawful to discriminate on grounds of sex or marital status:**
  - *in access to opportunities for promotion, transfer or training*
  - *in any other benefit, facilities or services provided*
  - *in dismissals or any other detriment to which an employee may be subjected*

**The law applies to ALL employers in Northern Ireland unless an exception to, or an exemption under, the legislation applies (see section on Exceptions and Special Employment Cases – Page 40).**

**The Equal Pay Act (NI) 1970, as amended by the Equal Pay (Amendment) Regulations (Northern Ireland) 1984** requires employers to give equal treatment in respect of pay and other terms of their contracts of employment to female employees where they are doing;

- *the same or broadly similar work to a male colleague or*
- *a job which has been rated as equivalent to that of a male colleague under a job evaluation scheme (as described in s.1(6) of the Act) or*
- *work of equal value to that of a male colleague even though it is completely different work but the demands made on the female employee (under such headings as effort, skill and knowledge, decision-making, responsibility and training) are equal*

**The law on equal pay applies to ALL employers in Northern Ireland. It also applies to a male employee seeking to compare with a female colleague.**

In addition to rights under domestic law, individuals may have rights under European equality law. Article 141 (formerly Article 119) of the Treaty of Rome which enshrines the principle of “equal pay for equal work”, provides a free-standing right to equal pay which maybe relied upon by individuals before the national courts of the Member States. The Equality Directives\*, most notably the Equal Pay Directive 75/117/EEC and the Equal Treatment Directive 76/207/EEC, may also provide additional remedies to those contained in domestic law and may, in certain circumstances, be relied upon in the national courts by individuals employed by public sector employers. There are a number of important issues still awaiting clarification by the European Court of Justice, particularly in the areas of pregnancy/maternity and pensions. Further information on the current position under EC law maybe obtained from the Commission.

#### Note\*

- *Council Directive 75/117/EEC of 10 February 1975 on the approximation of laws of the Member States relating to the application of equal pay for men and women, O.J.L.45/19, 19 February 1975*
- *Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions, O.J.L.39/40, 14 February 1976*
- *Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, O.J.L.6/24, 10 January 1979*
- *Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment in occupational social security schemes, O.J.L.225/40, 12 August 1986*
- *Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood, O.J.L.359/56, 19 December 1986*

#### Note

*The **Fair Employment and Treatment (NI) Order 1998** and the **Fair Employment in Northern Ireland Code of Practice (1989)** set out employers' obligations in relation to religious and political discrimination.*

*The **Disability Discrimination Act 1995** sets out employers' obligations to disabled people.*

*The **Race Relations (NI) Order 1997** and the **Code of Practice for the elimination of racial discrimination and the promotion of equality of opportunity in employment** sets out employers' obligations in relation to people of different racial groups.*



## **UNLAWFUL DISCRIMINATION**

**The Sex Discrimination (NI) Order 1976** renders five types of behaviour unlawful in employment\*. These are found in Articles 3, 5 and 6 of the Order. Although the Order is written using the female pronoun it applies equally to discrimination against men (Article 4).

### **Direct Sex Discrimination Article 3 (1)(a))**

Treating a woman, on the grounds of her sex, less favourably than a man is, or would be, treated in similar circumstances eg refusing to employ a woman as a lorry driver because it is considered to be a “man’s job”.

### **Indirect Sex Discrimination (Article 3(1)(b))**

Applying a condition or requirement which, although it is applied equally to both sexes, is such that a considerably smaller proportion of women than men can comply with it and which the person applying it cannot show to be justifiable eg an upper age limit of 28 may discriminate against women because many of them seek to return to the labour market following a period out for childbearing and childrearing purposes.

### **Direct Marriage Discrimination (Article 5(1)(a))**

Treating a married person, on the grounds that he or she is married, less favourably than a single person of the same sex is, or would be, treated in similar circumstances eg refusing to employ a woman because she is married and it is assumed that family commitments will take priority over work commitments.

### **Indirect Marriage Discrimination (Article 5(1)(b))**

Applying a condition or requirement which has the effect of discriminating against married people because considerably fewer married than single people of the same sex can comply with it and which the person applying it cannot show to be justifiable eg imposing a mobility requirement could discriminate against married applicants with children.

### **Victimisation (Article 6)**

Treating one person less favourably than another because that person has, for example, asserted their rights under the sex discrimination or equal pay legislation, or has helped another person to do so, or has given information to the Equal Opportunities Commission for Northern Ireland, or because it is suspected that the person might do any of these things eg refusing to promote a person who has previously made a complaint.

## **Intention**

It is unnecessary to prove a discriminatory intention or motive in order to establish that unlawful discrimination has occurred. This is now clear following the decision of the House of Lords in **James -v- Eastleigh Borough Council [1990] IRLR 288**, where the Court held that the appropriate test for determining whether direct discrimination has occurred is to ask “would the complainant have received the same treatment from the defendant but for his or her sex?”

## **Justification**

The European Court of Justice (ECJ) has given guidance on what is required of an employer in order to “justify” the application of a requirement, condition, policy or practice which is discriminatory in effect. In the case of **Bilka Kaufhaus GmbH -v- Weber Von Hartz [1989] IRLR 317 ECJ**, the ECJ held that in order to justify an indirectly discriminatory pay practice it must be shown that “the means chosen for achieving the employer’s objective serve a real need on the part of the undertaking, are appropriate with a view to achieving the objective in question and are necessary to that end”. This test was endorsed by the House of Lords in the case of **R -v- The Secretary of State for Employment ex-parte Equal Opportunities Commission and Another [1994] IRLR 176**.

## **Note\***

*Details of Exceptions and Special Employment Cases are given at the end of this Code – Page 40*

## **SOME DEFINITIONS**

This Code seeks to provide guidance on removing sex bias from the recruitment and selection process. It is not intended to be a compendium on all aspects of recruitment and selection techniques. However, some basic definitions may be useful and are given below.

The recruitment and selection process should be consistent, with each candidate being objectively assessed against the justifiable requirements of the job.

### **The Job Description**

This is a clear, written statement of the purpose, scope, duties and responsibilities of the job. It should describe accurately what the job-holder is required to do. (See Section 2 of this Code).

### **The Personnel Specification**

The personnel specification is based on the job description and sets out the personal attributes, qualifications, skills and knowledge required for effective job performance. It is used, together with the job description, to facilitate shortlisting, interviewing and the selection of the successful candidate (See Section 3 of this Code).

### **Advertisements**

Article 2(2) of the **Sex Discrimination (NI) Order 1976** states that an advertisement includes:

*every form of advertisement, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way ....*

It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of Part III of the Order – discrimination in the employment field.

An employer is liable for discriminatory advertisements which he or she has caused to be published as well as for those the employer publishes himself or herself.

Under Article 39(4) of the Order a publisher is not liable for a discriminatory advertisement if it can be proved that the advertiser had stated that publication was lawful and it was reasonable to rely on that statement. (See Section 4 of this Code).

## **Shortlisting**

This is the process of assessing and selecting candidates for further consideration by comparing the information on the application forms to the personnel specification. (See Section 6 of this Code).

## **Selection Testing**

This is the process of assessing candidates using tests which may be either ability or aptitude tests. Ability tests are designed to measure the current level of skill or to estimate future performance level. Aptitude tests are designed to measure potential for future performance.

Employers are making increasing use of selection tests for the purposes of rejecting unsuitable applicants in the initial stages of the recruitment process as well as assessing the suitability of candidates who have succeeded in progressing to a later stage.

Some tests, for example, personality assessments, are administered on an individual basis while others take place on a group setting in assessment centres. Assessment centre procedures usually comprise a combination of assessment methods such as written exercises and group discussions and require the use of both subjective and objective scoring methods. ( See Section 7 of this Code).

## **Employment Agencies**

An employment agency is defined in the **Sex Discrimination (NI) Order 1976** as an organisation which provides services for the purpose of finding employment for workers or supplying employers with workers (Article 2(1)).

Article 18 renders it unlawful for employment agencies to discriminate against a person in the terms on which it offers to provide its services, by refusing or deliberately omitting to provide them, or in the way it provides them. (See Section 13 of this Code).

## **1. TRAINING**

### **1.1 It is recommended that all those involved in assessing candidates should be trained in non-discriminatory recruitment and selection techniques, including the content of this Code.**

The aim of an objective recruitment and selection process is to appoint the best person in terms of the criteria established for a particular job. In order to achieve this it is important that all those involved in assessing candidates should be trained in non-discriminatory recruitment and selection methods and techniques, including the content of this Code.

The desired result of the training should be that all those involved in assessment, whether shortlisting, testing or interviewing, should be able to effectively apply selection procedures which are objective, structured, standardised and job-related and which take account of the principle of equality of opportunity for women and men.

## **2. JOB DESCRIPTIONS AND REQUIREMENTS**

### **2.1 It is recommended that the job description accurately reflects the specific duties of the job.**

The preparation or review of a job description and personnel specification is the first step in the recruitment process. As such it provides the first opportunity to ensure that the procedures adhere to the principle of equality of opportunity. It also provides an opportunity to consider whether or not the job could be done on a more flexible basis such as job-share, part-time or flexible working hours.

If care is taken to prepare an accurate and objective job description not only is it more likely that a suitable applicant will be appointed but also the costs associated with staff turnover and further recruitment drives may be reduced. On the other hand, a failure to reflect properly the nature of the job in the job description may mean that the most suitable candidate is not selected or may result in suitable people not even making application.

### **2.2 It is recommended that a vacant or new post is analysed before the job description is drawn up to determine what duties it involves and the proportion of time associated with each task.**

It should be recognised that sex bias can and often does occur at this stage. Many jobs are implicitly – and sometimes explicitly – considered to be “men’s jobs” or “women’s jobs” before applicants are even considered. Identifying a particular job with the person or persons who held it before can be problematic (and potentially unlawful) if, consciously or unconsciously, a successor is selected who has the same characteristics as a previous incumbent. For example, if a job to be filled has always been held by men in the organisation it is possible that it will be perceived by some as a “man’s job”. Jobs which are defined on the basis of the way they were carried out in the past may not reflect the reality of changes brought about by, for example, the impact of new technology. If such an approach is allowed to influence selection it may lead not only to unlawful discriminatory behaviour but also to a failure to appoint the best person to the post – who may be a woman!

### **2.3 It is recommended that job descriptions should not contain unnecessary and unjustifiable conditions or requirements.**

It is essential to avoid the inclusion of conditions or requirements which cannot be justified and which, while they maybe applicable to male and female, married and single candidates, may nevertheless be such that a considerably smaller proportion of one sex or married rather than single people of the same sex can comply with them. This could amount to unlawful indirect discrimination on grounds of sex or marital status. This might occur, for example, if conditions of age, mobility or length of service are set, and will depend on the facts of individual circumstances.

Applying an upper age limit criterion for recruits to a job may discriminate against women because many of them seek to return to the labour market following a

period out for childbearing and childrearing purposes, or while caring for an elderly or sick relative.

A requirement that candidates must be willing to move if selected for a post could also result in unlawful discrimination. Indirect discrimination may arise, particularly against married applicants with children, if the condition could not be justified. If, on the other hand, the condition can be justified as necessary for the job then assumptions must not be made about female candidates with domestic responsibilities being less mobile.

**2.4 It is recommended that wording should not be used which implies that the post may be most suitable for women or for men.**

Acceptable unisex job titles should be used where possible and those which have a distinctly feminine or masculine form should be avoided. Female and male pronouns should also be used in order to convey that the job can be done by women or men. Alternatively, neutral terms such as "jobholder" may be used.

The terms of a collective agreement may require an employer to consult with the recognised trade union(s) before changes are made to the duties of a post. This will be facilitated if a process for ongoing consultation on equal opportunities issues between management and trade union(s) and/or employee representatives has been established. Ultimately the obligation to ensure that no unlawful discrimination takes place rests with the employer. However, Articles 40 and 41 of the **Sex Discrimination (NI) Order 1976** provide for sanctions to be brought against any person who instructs or brings pressure to bear on another to do an act of unlawful discrimination. Also, Article 15 prohibits sex discrimination by a trade union in relation to the treatment of its members and individuals may have a right of action against a trade union which negotiates a discriminatory collective agreement.

### **3. PERSONNEL SPECIFICATIONS**

#### **3.1 It is recommended that objective standards are set in the personnel specification for the essential and desirable criteria needed for the effective performance of the job.**

The content of a personnel specification derives from the duties and tasks contained in the job description. If the latter is inaccurate or out of date it is unlikely that the personnel specification will remedy the situation in terms of the final outcome – the appointment. However, even if the job description has been objectively reviewed the potential for bias in a personnel specification still exists.

When developing a personnel specification it is critical to ensure that objectivity is maintained. A number of headings should be systematically considered and requirements may be listed as essential or desirable. The use of essential requirements means that a candidate who does not have these criteria will be rejected. The desirable requirements indicate additional criteria which will help to distinguish between candidates who have the essential requirements. The requirements may include criteria such as disposition or personality if these are relevant and important to the job: these are discussed below.

It may be necessary to “weight” the criteria. Some may be more important than others to the successful performance of the job. Weighting of criteria means attaching greater importance and higher possible scores to those factors which most critically affect successful job performance.

#### **3.2 It is recommended that only factors which are relevant to the job should be considered; factors which were relevant in the past may no longer be so.**

Many recruiters utilise a standard five or seven point plan\* when developing a personnel specification. Whilst these may help to bring about consistency of process, great care should be taken to ensure that the criteria are, in fact, relevant to the job in question. For example, many personnel specification forms include a “physical” criterion. In practice, however, a person’s physical make-up may be irrelevant to many jobs yet the selector may feel obliged to score for this factor. Also, where jobs do require a degree of physical ability, it is tempting to set standards which are perhaps higher than those which the actual job will require. Doing so, however, can result in male candidates unjustifiably obtaining a higher rating than female candidates. This, of course, may amount to unlawful indirect discrimination.

Another factor which can lead to difficulties is “disposition” for again there is room for stereotyped attitudes and assumptions to creep into the process. Unfortunately it is still common for recruiters to attribute certain characteristics to men and to women. For example, if a job requires an individual with effective management skills it is more likely that this will be associated with male candidates. On the other hand, a job which demands compassion and a caring disposition is more likely to be associated with females. The fact is, however, that there are many women with strong leadership abilities and many



compassionate men and it is inappropriate to “select out” members of either sex on the basis of erroneous assumptions for, as with physical ability, this too can amount to unlawful discrimination. If factors such as personality or disposition are being assessed, stereotyped assumptions should not be made about the abilities of women or men.

Personnel specifications commonly contain a period of continuous service or experience requirement. Such a condition may operate to the detriment of women who have taken time away from paid work to care for children or other dependants and so it is important to ensure that any length of service criterion can be justified. Also, employers should recognise relevant experience gained prior to breaks in employment as well as the often substantial skills and abilities many women gain through voluntary and community work, domestic caring responsibilities, or through managing a home. For example, this type of experience may be relevant to the assessment of skills such as planning and organising or decision making.

Factors which relate to the personal circumstances of candidates such as marital status, children etc should not be used.

### **3.3 It is recommended that all standards set should be justifiable in terms of the duties to be carried out.**

The development and completion of personnel specifications should be approached with the vacant post and the job description in mind. All factors used must be job-related and non-discriminatory and the imposition of ANY conditions or requirements must be carefully examined to ensure that they are relevant and justifiable.

#### **Note\***

*The Seven Point Plan devised by Professor Alec Rodger describes the following factors:-*

- *Physical make-up, attainments, general intelligence, specialised aptitudes, interests, disposition and circumstances.*

*The Five Point Plan devised by T Munro Frazer described the following factors:-*

- *Impact on other people, qualifications, brains and abilities, motivation and adjustment.*

*Source: “Recruitment and Selection” Philip R Plumbley (1985 Institute of Personnel and Development).*

## **4. ATTRACTING APPLICANTS**

### **ADVERTISING**

#### **4.1 It is recommended that advertisements should make it clear that women and men can apply.**

All advertisements should make it clear that posts are open to women and men and should demonstrate this in the text and in any illustrations, for example, by the use of female and male pronouns. Job titles which have a distinctly feminine or masculine form should be avoided. If there is an acceptable unisex term it should be used. If there is no such term the advertisement should explicitly state that the post is open to female and male applicants alike. Pictures should show a balance of women and men in a variety of roles.

Sex discrimination in advertising can arise in a direct way eg: “Smart young man wanted for city centre store” and also indirectly through the imposition of a condition or requirement which cannot be justified but may have the effect of excluding members of a particular sex. For example, an advertisement for a “General maintenance worker – minimum height 5ft 10in” would discriminate indirectly against female applicants, a considerably smaller proportion of whom could satisfy the height requirement.

#### **4.2 It is recommended that internal and external advertising practices are regularly reviewed.**

Advertising, both internal and external, is an integral part of the recruitment process and it is important to reach the widest possible pool of potential applicants when recruiting for vacancies, for example, through advertisements in the press or in the offices of the Training and Employment Agency. Word of mouth recruitment is discouraged because it increases the risk of replicating existing imbalances in the workforce. Not only will advertising further equality of opportunity for women and men, it will also help to ensure that the employer has access to the most suitable candidates from whom to choose. Advertising practices should, therefore, be regularly reviewed to ensure that they are achieving this end.

Employers should be concerned not only with the content and presentation of advertisements which appear in newspapers and journals, they should also review promotional and other materials which are distributed to external sources such as schools and colleges. Presentations to schools by an organisation’s personnel should emphasise the employer’s commitment to equality of opportunity and equal attention should be paid to girls and boys in single-sex and co-educational establishments unless the employer is taking positive action steps (See Section 4.4. of this Code).

It is important, too, to examine the impact of internal advertising, whether for promotion posts or for transfers, to ensure it complies with both the spirit and letter of the law. (See Section 10.2 of this Code).

**4.3 It is recommended that phrases like “single applicants only” or “unsuitable for persons with family commitments” should not be used.**

Advertisements which appear to favour single as opposed to married applicants should also be avoided whether the preference is expressed in a direct way – “Are you single and seeking adventure? Are you free to work nights? Join our sales force” or indirectly – “Administrative Officer required – maximum age 28 years” since the imposition of such an upper age limit could adversely impact upon female applicants who were out of the paid labour force due to childbirth and childrearing.

**4.4 It is recommended that positive action advertising should be considered in appropriate situations.**

Employers should consider, where appropriate, taking advantage of the positive action provisions of the sex discrimination legislation which permit advertising to encourage applications from members of an under-represented sex for specific jobs in certain circumstances. (See Sections 4.5 and 4.6 of this Code).

**Positive action encouragement**

Efforts to achieve equality of opportunity for women and men may include, where appropriate, the development of positive action measures.\* This is facilitated by Articles 48 and 49 of the **Sex Discrimination (NI) Order 1976**, which allows employers to encourage persons of a particular sex to apply for jobs if few or no people of that sex have done that type of work in the previous twelve months.

**4.5 It is recommended that employers consider using positive action encouragement when no members of one sex or only comparatively small numbers of that sex were employed in particular jobs at any time within the past twelve months.**

Positive action encouragement can take a number of forms, including positive action advertising. Positive action encouragement should not be used to redress an overall imbalance of women and men in the organisation. It should only be used for jobs where one sex has been under-represented at any time within the previous twelve months. Under-representation can be within Northern Ireland as a whole or within a particular area. Positive action encouragement can be used for new jobs within an organisation but only if a comparatively small number of the under-represented sex has been doing that job within Northern Ireland at any time within the previous twelve months.

In circumstances where positive action advertising is lawful, advertisements may be placed in publications which attract predominantly female or male readers.

*Examples of special encouragement in advertisements could include:*

- ◆ *“This company, recognising that it has no female electricians, will welcome applications from women for this post”;*
- ◆ *“At present none of our secretarial staff are men; therefore, applications from men as well as women are welcome”;*
- ◆ *“Women can be technicians too! At present this Company has few women in this area and applications from suitably qualified women are particularly welcome”.*

Another form of positive action encouragement is single-sex training which may also be offered in circumstances where that sex is under-represented in particular work or has been in the past twelve months. Also, positive action training may be provided to people in special need because they have been engaged in discharging domestic or family responsibilities to the exclusion of full-time employment for a period of time. The purpose of positive action training is to provide members of the under-represented group with the skills and abilities to enable them to compete for vacancies on an equal basis. Examples of positive action training include management skills courses for women and engineering training courses for women.

Examples of positive action outreach measures could include visits to girls' schools and work shadowing for females in order to encourage girls to consider non-traditional work.

#### **4.6 It is recommended that all applicants should be treated equally in selection for a post and no advertisement should imply otherwise.**

The provision for positive action encouragement does not allow an employer to treat an application from a woman more favourably than one from a man. The exception to the principle of equal treatment only applies to special training provisions and encouragement to apply for a job and not at the point of selection for that job. Nothing in an advertisement should lead people to believe that there will be more favourable treatment for one sex or the other in selection for the post. The aim is to increase the pool of applicants from the under-represented group and counteract the effects of past under-representation.

#### **Exceptions**

In some situations an employer may advertise for a person of a particular sex without contravening the **Sex Discrimination (NI) Order 1976**.

These provisions are limited and great care must be taken before attempting to restrict a job in this way.

Further guidance on the exceptions to the legislation is found on Pages 40-41 of this Code.

## Note\*

*The Fair Employment and Treatment (Northern Ireland) Order 1998 and the Fair Employment in Northern Ireland Code of Practice and the Race Relations (Northern Ireland) Order 1997 and associated Code of Practice for the elimination of racial discrimination and the promotion of equality of opportunity in employment set out employers' obligations in relation to religious and political discrimination and racial discrimination and affirmative/positive action provisions.*

## TEMPORARY RECRUITMENT

### **4.7 It is recommended that longer term temporary vacancies should be advertised in accordance with the general guidelines contained in this Code.**

There are many occasions when it is necessary for employers to replace permanent staff on a temporary basis, for example to cover maternity leave, a career break or a long term illness. These vacancies should be filled in accordance with the principle of equality of opportunity and in a manner consistent with the general guidelines on recruitment and selection contained in this Code.

Temporary vacancies may provide opportunities for secondments or acting up, which could be part of a positive action strategy. It is important that the principle of equality of opportunity is adhered to when providing this type of career development.

Where trade union agreements cover temporary replacement of staff, these should also adhere to the principle of equality of opportunity and be free of sex bias.

### **4.8 It is recommended that names of reserve candidates should not be retained for longer than one year.**

Temporary vacancies may be filled by reserve candidates from normal recruitment advertisements for the same jobs but names of reserve candidates should not be retained for longer than one year.

Permanent posts should not be filled as a result of competitions for temporary posts as many potential applicants may not have applied for the original advertisement.

### **4.9 It is recommended that employment agencies should be advised that all suitably qualified candidates will be considered.**

In situations where an employee's absence is likely to be short-term employers may elect to use the service of an employment agency which provides temporary staff. It should be made clear, however, that all suitably qualified candidates will be considered irrespective of sex or marital status.

## **EMERGENCY RECRUITMENT**

### **4.10 It is recommended that emergency vacancies should be filled by way of contact with the widest pool of applicants.**

It is acknowledged that occasions may arise when an employer must provide emergency cover. If a post MUST be filled without notice then every effort should be made to reach the widest possible pool of candidates. Informal methods of recruitment should not be used – it is not acceptable simply to call a friend or relative. Contact should be made with the local Training and Employment Agency office or other organisation which provides temporary employees, making it clear, of course, that all suitably qualified persons will be considered. If an employer can demonstrate, based on past experience, that this type of arrangement is unsatisfactory then consideration may be given to maintaining a list of individuals who are available on an emergency basis.

Where trade union agreements cover emergency replacement of staff, these should adhere to the principle of equality of opportunity and be free of sex bias.

### **4.11 It is recommended that emergency reserve lists are only drawn up in limited circumstances and only in accordance with the recruitment and practices set out in this Code.**

Recruitment of individuals for an emergency list should be carried out in a way that ensures the provision of equality of opportunity. The post(s) should be advertised following the advice in Section 4 of this Code and potential applicants advised that, if successful, their names will become part of an emergency list for particular posts. Recruitment and selection should then take place as for any other staff.

### **4.12 It is recommended that emergency lists should be discarded following a reasonable period, generally no more than one year.**

No emergency list should be retained indefinitely as an employer's circumstances change, successful applicants find other positions and the jobs themselves may no longer exist. A period of up to one year should be sufficient provided the vacancies have been properly advertised initially. Once this time has expired the process should be repeated if the employer anticipates that the need for emergency cover may arise again.

## **5. APPLICATION FORMS**

### **5.1 It is recommended that application forms should be used for all recruitment.**

It is important that application forms are used for all recruitment to ensure that objective, structured and standardised information is provided by applicants and that irrelevant information is not forwarded. Employers are discouraged from recruiting on the basis of speculative applications or unsolicited letters.

### **5.2 It is recommended that only questions which are relevant and job-related should be included.**

The purpose of the application form is to provide sufficient information to administer the selection process and to select those candidates who will be shortlisted for a vacant post. An application form should not, therefore, include questions which are irrelevant for the purpose of selection. As with all aspects of the recruitment and selection process, application forms should be reviewed and amended to rid them of potentially discriminatory questions.

From the point of view of a potential candidate an application form which asks for irrelevant personal details can arouse suspicion that the information will form part of the selection process, while a recruiter, faced with a form which includes such detail, may indeed find it more difficult to select in a non-discriminatory manner. Information of a personal nature which is required for monitoring purposes should be collected on a separate monitoring sheet, or on a tear-off section of the application form. Confidentiality should be maintained and no-one involved in assessment should see the monitoring information. Information needed for purposes of the superannuation scheme or for other administrative reasons should be collected once an appointment has been made. Care also must be taken with questions relating to a candidate's health. (See Section 11 of this Code).

If driving is part of the duties of a post consider whether access to, rather than ownership of, a vehicle will suffice since the condition of the ownership may impact adversely on female applicants.

*As a rule of thumb ask the following questions:*

- ◆ *Is the information needed in order to assess the application in a non-discriminatory way?*
- ◆ *Do any of the questions amount to the imposition of conditions or requirements which cannot be justified?*
- ◆ *Might any of the questions constitute evidence of unlawful discrimination?*

**5.3 It is recommended that questions should not be asked about an applicant's marital status.**

Many application forms still ask for an applicant's marital status and/or maiden name. However, this information is personal to the applicant and should form no part of the selection decision. Remember, the law states there is to be no direct or indirect discrimination on grounds of marital status and, while there may be no intention to let information about marital status influence a decision, nevertheless this may happen unconsciously. Unconscious or not, unintentional or not, this may result in unlawful discriminatory behaviour. On the other hand, if the information is not available then it cannot influence the decision.

If title is required for the purposes of addressing the applicant, then applicants may be asked on the application form how they wish to be addressed, as long as assumptions regarding marital status do not interfere with the process of selection.

**5.4 It is recommended that questions should not be asked about an applicant's spouse/partner or children, or other personal circumstances.**

Some employers still ask questions such as "How many children do you have?" "What are their ages?" "Spouse's occupation?". This should not be done. As with marital status, details about an individual's family composition are intrusive and, more importantly, potentially unlawful.

**5.5 It is recommended that an applicant's age should not be considered unless there is a justifiable reason for doing so.**

Questions about an applicant's age/date of birth are still found on most application forms. The imposition of age criteria, whether expressed or not, can lead to unlawful indirect sex discrimination. If applicants are asked for this information then care must be taken to ensure that it is not used to the detriment of certain categories of people – for example, women over 25 because of a wish to maintain a youthful and perhaps lower paid workforce or because it is assumed that older women will be married. If age/date of birth is required for purposes such as calculating retirement date, then this information could be collected either on the monitoring form, or after the offer of employment has been made. (See Section 12 of this Code).

**5.6 It is recommended that employers should consider realistically whether any length of service requirement is necessary for the post.**

Employers should not make automatic assumptions about the value to be attributed to length of service in paid employment since, for many jobs, three or four years' experience may be as valuable as twenty years'. Many women take time out to stay at home with dependants and consideration should be given to such breaks in service.



**5.7 It is recommended that applicants should be encouraged to indicate skills, expertise and abilities gained through voluntary work or in the home.**

Many women acquire skills and expertise through their involvement in activities undertaken on a voluntary basis and application forms should clearly provide applicants with the opportunity to outline this experience.

At the same time, however, it is important not to allow irrelevant information to taint the selection process. This can arise when a selector, faced with an application form which tells him or her that the applicant plays a certain sport or belongs to a particular club or organisation, infers certain attributes to that applicant which have nothing to do with her or his ability to do the job in question.

**5.8 Documentation should be retained for twelve months.**

All application forms and related documents should be retained for twelve months in order to be in a position to deal with any subsequent complaints about the implementation of the selection procedures. This is in line with the recommendation in the **Fair Employment in Northern Ireland Code of Practice (1989)**.

## **6 SHORTLISTING**

### **6.1 It is recommended that shortlisting should be carried out systematically and in a consistent fashion.**

It is the job-related facts contained in the application form which should be assessed against the job-specific standards which make up the shortlisting criteria.

### **6.2 It is recommended that the personnel specification should be used to develop shortlisting criteria.**

It is important that the personnel specification is used as the basis for shortlisting candidates for further consideration. This should help ensure that candidates are assessed against the personal attributes, qualifications, skills and knowledge which are necessary for effective performance of the job.

### **6.3 It is recommended that all criteria should be strictly job-related and rigorously applied.**

The development of criteria which are strictly job-related will help to minimise the danger of assumptions and stereotypes being allowed to influence the process. This can occur even if the personnel specification has been drawn up in a non-discriminatory manner, for it is at the shortlisting stage that the recruitment panel is first introduced to the candidates through their application forms.

### **6.4 It is recommended that more than one person should be involved in shortlisting candidates.**

Consistency of approach is important to ensure that all candidates are considered on an equal basis and this is likely to be enhanced where more than one person is involved.

### **6.5 It is recommended that assumptions or stereotypes about applicants should not be allowed to influence the process**

Generalisations such as “A woman wouldn’t be interested in this job” or “I can’t see a man staying in this type of work” have no place in the shortlisting process and constitute unlawful discriminatory behaviour.

### **6.6 It is recommended that a standardised method of recording shortlisting decisions should be developed and the documentation should be retained for twelve months.**

A standardised method of recording the shortlisting panel’s decision should be developed and, as with all other stages of the selection process, it is helpful to retain documentation for twelve months.

## **7 SELECTION TESTING**

### **7.1 It is recommended that tests should assess actual or inherent ability to do the tasks relevant to the job and they should be validated for sex bias.**

Within the field of selection testing there is the potential for unlawful discrimination to arise. Employers should take care that any selection testing used by them is non-discriminatory. It is, therefore, important to ensure as far as possible that the content and administration of the tests and the scoring mechanisms which are used are free from any unjustifiable or unlawful bias and that the tests are designed solely to assess an individual's actual or inherent ability to do or train for a job.

It is also recommended that employers who wish to design and conduct their own assessment tests take professional advice which includes guidance on avoiding sex bias.

### **7.2 It is recommended that the continuing relevance of any tests used should be regularly reviewed.**

A regular review of tests should be conducted to determine their continuing relevance in selection for particular posts. For example, is a test relevant if it aims to assess capacity to lift weights yet in practice most lifting is done by mechanical means?

### **7.3 It is recommended that, if external consultants are being used, only those who are experienced in testing should be used.**

Employers who engage the services of external consultants to carry out testing should use only organisations experienced in the field and should always enquire whether the proposed tests have been assessed and validated for sex bias in similar occupational groups as employers remain responsible for the outcome of tests. Tests should be validated for sex bias in the context of individual organisations as soon as is practical, given the numbers of applications.

### **7.4 It is recommended that the outcome of selection testing on women and men should be monitored.**

In order to monitor the impact of selection testing, the Commission recommends that employers monitor the test results by the sex of applicants who undergo selection tests for full-time and part-time appointments. (See Section 12 of this Code).

#### **Note**

*For further reference see “**Avoiding Sex Bias in Selection Testing**” Equal Opportunities Commission, Manchester and the **IPD Code on Psychological Testing: Institute of Personnel and Development**. Addresses are given on page 43.*

## **8 REFERENCES**

### **8.1 It is recommended that, where references are sought, structured guidance, including the job description, should be provided for referees on the job for which the candidate is applying.**

It remains common practice in Northern Ireland to ask applicants to furnish the names of individuals who are willing to act as referees. Usually this request is included in the application form for employment. The extent to which use is made of references varies, with some employers considering them for all shortlisted candidates and others only for a successful candidate following interview but prior to an offer of employment being made. A few employers reject the use of references altogether, making the point that it is generally only those referees who can be expected to give a good report on a candidate who will be asked to do so.

If references are to be taken up the request should be structured and referees should be provided with a copy of the job description. They should be asked to comment only on a candidate's ability to carry out the particular tasks of the post for which she or he is competing. Generally this means limiting references to past employers unless there is good reason to believe that some other person is competent to comment. Former employers may also be able to provide general information on a candidate's competency, standard of work and past attendance but again they should be asked to restrict their comments to those issues which are relevant to the job.

### **8.2 It is recommended that specific questions should be asked about abilities and skill levels.**

Candidates who are applying for their first job or women returners, or the long-term unemployed, maybe unable to provide the name of a recent employer. In such cases, if references are desired from schools or other referees, it is advisable to frame questions for the referee which will elicit comments on, for example, the individual's organisational ability, inter-personal skills or other issues relevant to the job in question.

### **8.3 It is recommended that comments of a personal nature should not be asked about candidates.**

There is some question about the value of so-called character references, or testimonials, which are written declarations about character and abilities. These may contain information about a candidate which is irrelevant for the purposes of selection.

Care should be taken in the interpretation of references as referees may be influenced by factors which are not job-related, such as a previous complaint of sex discrimination or sexual harassment.

## **9. INTERVIEWS**

### **9.1 It is recommended that all interviews should be conducted in a fair and consistent manner and that they should be structured and systematic.**

It is incumbent upon employers to make sure that interviews are conducted in a fair and consistent manner and that there is no unlawful discrimination either in process or in outcome.

In order to help ensure this, those charged with responsibility for conducting interviews should be trained in non-discriminatory selection methods and techniques including the content of this Code. (See Section 1 of this Code).

All the relevant, job-related evidence should be examined and conclusions should be based on facts, and judgement of the responses, rather than on hunches or on stereotyped assumptions. This does not demand, however, a rigid or very formal approach. An interview is a two-way process and can be conducted in such a way that candidates feel at ease and leave the interview confident that their ability, experience, qualifications and performance have been tested and will be assessed fairly and in a non-discriminatory manner.

### **9.2 It is recommended that interview panels should have female and male members; if this is not possible from within, the organisation should consider bringing in a suitable outsider.**

Interview panels should, where possible, consist of both female and male members. Given the current structure of the Northern Ireland labour force it may not always be possible to have an appropriately qualified female employee on a panel, particularly for senior posts. Over time and with proper targeting and timetabling within the context of a comprehensive equal opportunities programme this problem should be overcome. In the meantime a growing number of employers are asking a suitably qualified outsider to sit on a panel so that both sexes are represented.

### **9.3 It is recommended that the areas to be covered during the interview should be determined beforehand.**

An interview panel should prepare beforehand. The panel should be clear what the job is about and what abilities, qualifications etc are needed in order to carry out the duties effectively. This should already be apparent from the job description, personnel specification and shortlisting criteria and agreement should be reached on the areas to be covered by the interview process.

### **9.4 It is recommended that a standardised scoring system should be devised and used throughout.**

A method for scoring each candidate should be agreed and then used consistently by each panel member for each candidate. It may be desirable to

weight some of the criteria by attaching a higher maximum score to a factor which represents a particularly important aspect of the job.

**9.5 It is recommended that all interview questions should be objective and relevant to the requirements of the job.**

A list of areas to be tested through interview questions should be developed followed by the interview questions all of which should be objective and relevant to the job. If they are not they can undermine a candidate's confidence that she or he will be treated fairly. Interviews may need to probe candidates further for job-related information and this can be achieved by asking objective supplementary questions in order to establish clearly the relevant facts.

**9.6 It is recommended that questions should not be asked about a candidate's marital status, children or other personal circumstances and stereotyped assumptions based on this type of information should not be made.**

The aim of the interview, and indeed the whole selection process, is to appoint the best person in terms of the criteria established for a particular job. To help ensure that this outcome is attained interviewers should avoid making assumptions about the capabilities of women and men to do certain types of work and they should not allow any personal prejudices and beliefs about the respective roles of women and men in society to form any part of the selection process.

Selectors who probe for information which is irrelevant – such as marital status or number and ages of children – may find it difficult to refrain from allowing that information to influence their decision and the presence of such questions in a selection interview can constitute evidence of unlawful discrimination. Naturally employers need to know that the person they select will be able to meet the demands of the post by attending regularly for work, for example, but this should be determined in an objective way such as requesting information on past attendance records from previous employers. (See Section 8 of this Code).

Employers may need to ascertain availability to work unsocial hours. If this is the case, relevant information should be obtained objectively and consistently by asking the same job-related question of every candidate. When interpreting the response, including any information volunteered by the candidate about personal circumstances, care should be taken that stereotyped assumptions about family commitments do not lead to further unnecessary questions or biased decisions.

**9.7 It is recommended that if any candidates are being placed on a reserve list, names should not be retained for longer than one year.**

This should ensure that future vacancies will be advertised again within a reasonable timescale, as it is important to reach the widest possible pool of applicants.

**9.8 It is recommended that every stage of the process should be documented and that the documentation should be retained for twelve months.**

All relevant documentation should be retained for twelve months in order to be in a position to deal with any subsequent complaints about the implementation of the selection procedures. This is in line with the recommendation in the **Fair Employment in Northern Ireland Code of Practice (1989)**.

## **10 PROMOTION**

### **10.1 It is recommended that all promotion opportunities should be advertised and should be conducted in a fair and consistent manner with procedures being reviewed regularly.**

Selection for promotion should be conducted in much the same way as external recruitment, ie based on the development of objective job-related criteria. A job description and personnel specification should be prepared or existing ones reviewed; internal vacancy notifications should conform to good practice; shortlisting, testing and interviews should be conducted as outlined in earlier sections of this Code. There are, however, some additional issues to consider with respect to promotion.

### **10.2 It is recommended that care should be taken in the use of internal trawls, especially if there is an existing imbalance in the workforce.**

Employers should satisfy themselves that an internal trawl will not result in unlawful indirect discrimination. This is especially the case where there is an existing imbalance in the workforce. Promotion by way of an internal trawl is likely to aggravate the imbalance still further if its effect is to exclude members of the under-represented group from an equal chance of promotion.

### **10.3 It is recommended that employers should guard against the operation of any informal mechanisms for promotion.**

As with external recruitment, informal criteria for promotion can operate against the principle of equality of opportunity and may be unlawful. The operation of an "old boys' network", for example, is likely to perpetuate sex discrimination within an organisation and, at the same time, may fail to ensure that the most suitable employees are promoted.

### **10.4 It is recommended that employees on maternity leave or career breaks should be notified of promotion opportunities.**

A system should be established, such as a "Stay in Touch Scheme", to ensure that employees who are on maternity leave or taking a career break are notified of promotion opportunities within the organisation. Such a scheme would also assist employees to keep up to date on organisational changes, training courses etc.

### **10.5 It is recommended that managers should be trained on the avoidance of sex bias in any promotion assessment.**

Managers who must assess potential for advancement should be trained to do so in a non-discriminatory way and without allowing traditional stereotypes or assumptions to influence their assessment. For example, a manager may believe that a married woman would not be interested in a higher graded job because she has children and domestic responsibilities. That belief can impact



upon the efforts the manager will make to encourage and assist the woman to obtain the skills she would need for a more senior post.

Organisations which use annual reports or appraisals to assess an individual's suitability for promotion should ensure that such assessments are carried out in a fair and unbiased way. Line managers and reporting officers should be trained and care should be taken that stereotyped assumptions do not influence the assessment of an individual.

**10.6 It is recommended that any age, mobility or other conditions or requirements for promotion should be justifiable without regard to sex or marital status.**

Any conditions or requirements which are imposed for promotion posts, such as a maximum age for entry to management posts or a mobility requirement, should be examined to ensure that they can be justified and do not constitute unlawful indirect sex discrimination.

**10.7 It is recommended that the monitoring system should be used to identify problem areas and positive action training courses should be considered.**

It should also be noted that where monitoring shows a lack of women in senior management, employers should consider developing positive action initiatives which will help to redress the imbalance. (See Sections 4 and 12 of this Code).

## **11 MEDICALS**

### **11.1 It is recommended that neutral questions should be asked of all applicants.**

Most employers require candidates to provide a declaration of medical fitness while reserving the right to require an individual to submit to a medical examination.

While it is reasonable to expect that a potential employee has the physical and mental capacity to carry out the tasks associated with the post, care should be taken to ensure that questions relating to a candidate's health are not overly intrusive and do not result in unlawful discrimination against female applicants. Confidentiality should be maintained at all times. (See Section 5 of this Code).

### **11.2 It is recommended that questions should not be asked about pregnancy or pregnancy-related conditions.**

Health questionnaires should not include questions about pregnancy or pregnancy-related conditions. The Commission considers that there is a 'protected period' under European equality law\* for pregnant women which begins with the date of conception and ends with the expiry of the statutory maternity leave (paid and unpaid) to which the woman is entitled under national law. During this period the employment rights of the individual are protected and she is entitled to special protection from dismissal if the dismissal is related to her pregnancy. In addition, the Commission considers, following decisions of the European Court of Justice, that it is unlawful to refuse to appoint a woman because she is pregnant and that such discrimination cannot be justified by any financial detriment which would be suffered by the employer during the woman's maternity leave.

### **11.3 It is recommended that women should not be asked about their gynaecological conditions.**

Questions which relate to a woman's menstrual cycle should be avoided. A decision not to appoint a female candidate which was based upon her declaration that she suffered from pre- or post-menstrual tension, for example, may be unlawful. It is recommended, therefore, that questions about a candidate's capacity to carry out the duties of a job are framed in a neutral rather than a gender-specific manner. Thus, rather than ask "Have you missed work because of your monthly period?", it is more appropriate to ask of all candidates "Do you have any condition which would make it difficult for you to fulfil the duties of the post?" and "Have you been absent from work for any medical reason within the past six months? If so, please give details of the reasons and days missed.

#### **Note\***

*Dekker -v- Stichting Vormingscentrum Voor Jonge Volwassen (VJV-Centrum) plus [1991] IRLR 27*

*Handels-og Kontorfunktionaerernes Forbund I Danmark (action for Hertz) -v- Dansk Arbejdsgiverforening (acting for Aldi Marked K/S) [1991] IRLR 31*

*Webb -v- Emo Air Cargo (UK) Ltd [1994] IRLR 482*

## **12 MONITORING**

### **12.1 It is recommended that a monitoring system should be developed to assess the effect of recruitment and promotion decisions.**

The purpose of a monitoring system is to assess the extent to which equality of opportunity is being achieved. The system should be capable not only of monitoring the statistical composition of the organisation on a continuing basis, it should also be capable of monitoring the effect of recruitment and promotion decisions.

### **12.2 It is recommended that applications for all full-time and part-time appointments should be monitored on the basis of sex, marital status and family status.**

It is important for an employer to know how many women and men apply for entry to the organisation and to what jobs and departments and at what grades. If there are differences in the numbers of female and male applicants, other than differences which can be explained by the numbers of women and men in the potential pool, then the reasons for this must be examined.

Collecting information on marital status will allow further analysis to identify whether or not discrimination may be occurring on the basis of marital status.

In light of the provisions of the Equal Treatment Directive (see the section on Discrimination in Employment) the Commission recommends that the family status of applicants and candidates shortlisted and appointed is monitored to assist in identifying any practices within the recruitment and selection process which may be operating to the detriment of applicants on grounds of their caring responsibilities.

### **12.3 It is recommended that success rates should be monitored at the shortlisting and appointment stages.**

Even if an employer is satisfied that she/he is attracting sufficient numbers of applications from both women and men it is necessary to examine the relative success rates of each group at both the shortlisting stage and in terms of appointments. Discrepancies which cannot be explained in terms of candidates failing to meet established job criteria could point to problems within the selection process, problems which could lead to complaints of unlawful discrimination.

### **12.4 It is recommended that employers consider using monitoring information to develop appropriate positive action initiatives.**

It may be that women and men perceive the organisation as unlikely to provide equality of opportunity and thus they do not bother to apply for certain jobs which may have traditionally been undertaken by the other sex. Action, perhaps in the form of positive action advertising, may need to be taken in order to encourage applications from both sexes.



## **13 EMPLOYMENT AGENCIES**

### **13.1 It is recommended that employment agencies should not be directed to discriminate on grounds of sex or marital status unless a lawful exception applies.**

An employer who uses an agency should not direct it to discriminate unlawfully, for example, by stating that workers of only one sex should be provided. Employment agencies have a responsibility not to accept such instructions and should avoid becoming involved in discriminatory action by an employer.

If an employer is relying upon an exception contained in the **Sex Discrimination (NI) Order 1976** to restrict a job to a man or a woman it is for the employer to assure the agency that the exemption being claimed is lawful. No liability rests upon an employment agency which receives such an assurance and acts upon it if it is subsequently shown that the exemption claimed was not, in fact, lawful and it was reasonable for the agency to rely on the statement.

Any employer who knowingly or recklessly makes a false or misleading statement to an agency when claiming an exemption is liable to a maximum fine of £5,000 (at the time of writing).

### **13.2 It is recommended that employment agencies should follow the recommendations laid down in this Code when recruiting from the labour market.**

Employment agencies should follow the recommendations laid down in this Code when recruiting from the labour market. If employment agencies are carrying out the monitoring function for an employer, this should be done by someone who is not directly involved in the selection process.

Employment agencies should always keep in mind that they act on behalf of employers and that it is the employer who will be held legally responsible for any selection decisions whether taken directly by the organisation or on its behalf.

### **13.3 It is recommended that employment agency registers should be operated in a manner consistent with the principle of equality of opportunity.**

Considerable care should be taken with the use of employment agency registers to ensure that they are operated in a manner consistent with the principle of equality of opportunity. The existence and purpose of the register should be made widely known and it should be reviewed and updated regularly. Vacancies should be advertised and people should not be selected solely from the register. The composition of the register should be monitored as advised in Section 12 of this Code.

**13.4 It is recommended that if executive search or headhunting is being used as the method of recruitment, vacancies should also be widely advertised.**

Executive search or headhunting is the practice of identifying a senior person with very specific qualifications and experience in the hope that they can be persuaded to leave their present employer and take up employment with the agency's client. There are difficulties with this method of recruitment as the vacancies have not been advertised. This is especially the case where there is an existing imbalance in the workforce. Executive search is likely to aggravate the imbalance still further if its effect is to exclude the under-represented group from competing. The Commission recommends that the vacancy is widely advertised and that those who are identified by executive search are subject to the same subsequent selection process as those who respond to the advertisement.

## EXCEPTIONS AND SPECIAL EMPLOYMENT CASES

### Exceptions

#### General

The **Sex Discrimination (NI) Order 1976** does not apply to:

- *Employment outside Northern Ireland*
- *Ministers of religion, in certain circumstances*

#### Genuine Occupational Qualifications

The **Sex Discrimination (NI) Order 1976** as amended by the 1988 Order permits employers in very limited circumstances to advertise for and recruit a person of a particular sex. These provisions are contained in Articles 10(1) – 10(4) of the Order and allow an employer to confine a job to a man, or a woman, where being a man, or a woman, is a genuine occupational qualification for that job. However, in practice there are few situations where an employer may derogate from the principle of equality of treatment and claim such an exemption. This is in line with the European Court of Justice decision in **Johnston -v- the Chief Constable of the Royal Ulster Constabulary ([1986] IRLR 263)** which stated that any derogation from the principle of equal treatment must be interpreted strictly.\*

**The legislative provisions as set out in the 1976 Order are outlined below:**

- *The job requires a man (or a woman) for reasons of physiology or authenticity. This does not include physical strength or stamina*
- *The job requires a man (or a woman) for reasons of decency or privacy*
- *The job involves living or working in a private household where there could be reasonable objection to someone of the other sex having the degree of physical or social contact with the person living in the home, or the knowledge of intimate details of such a person's life, which the job is likely to entail*
- *Because of the nature or location of the establishment the job-holder has to live in premises which are normally occupied by men (or women) and which do not have private sleeping or sanitary facilities which a woman (or a man) could use. Employers must show that it is not reasonable to expect alternative facilities to be provided for a woman (or a man).*
- *The job is in a prison, or some other single-sex establishment (or single-sex part of an establishment) for persons requiring special care, supervision or attention, and it is reasonable because of the essential character of the establishment for the job to be confined to a man (or a woman)*



- *The job-holder provides individuals with personal services promoting their welfare or education or similar personal services and in the particular case those services can be most effectively provided by a man (or a woman)*
- *The job is likely to involve duties outside the United Kingdom in a country whose laws and customs are such that those duties could not be done effectively by a woman (or a man)*
- *The job is one of two to be held by a married couple*
- *A person's sex is a genuine occupational qualification in a job where only some of the duties qualify for the exemption, BUT NOT IF there are already enough employees of the appropriate sex who could reasonably be allocated to those duties without undue inconvenience.*

### **Special Employment Cases**

The **Sex Discrimination (NI) Order 1976** contains special provisions concerning height, uniform and equipment etc in the police and prison service.

### **Re Exceptions and Special Employment Cases**

Employers are cautioned that this is a complex part of the sex discrimination legislation and that reliance on any particular section may contravene European equality law. The Equal Opportunities Commission for Northern Ireland should be contacted for specific advice on whether an exception may apply in a particular situation, in advance of taking action.

### **Note\***

*Definitions of unlawful discrimination are given in the section on Unlawful Discrimination.*

## USEFUL CONTACTS

Contact List	Advice Given
<p><b>Equality Commission for Northern Ireland</b>            Equality House            7-9 Shaftesbury Square            BELFAST BT2 7DP</p> <p>Tel: 028 90 500 600</p> <p><b>Website: <a href="http://www.equalityni.org">www.equalityni.org</a></b></p>	<p>For information and advice about sex and marital discrimination and the promotion of positive action and equality of opportunity for men and women. For information and advice about discrimination on grounds of religion or political opinion and the promotion of affirmative action and equality of opportunity for both communities. For information and advice about race and disability.</p>
<p><b>Labour Relations Agency</b>            2-8 Gordon Street            Belfast BT1 2LG</p> <p>Tel: 028 90 321 442</p> <p><b>Website: <a href="http://www.lra.org.uk">www.lra.org.uk</a></b></p>	<p>For information and advice about general employment rights, procedures and practices and advice on industrial relations.</p>
<p><b>Disability Action</b>            Portside Business Park            189 Airport Road            Belfast BT3 9ED</p> <p>Tel: 028 90 297 880</p> <p><b>Website: <a href="http://disabilityaction.org">disabilityaction.org</a></b></p>	<p>For information and advice about discrimination and the promotion of equality of opportunity for people who have a disability.</p>
<p><b>Chartered Institute of Personnel and Development</b>            Northern Ireland Branch            Suite G5, Unit 3            Weavers Court Business Park            Belfast BT12 2GH</p> <p>Tel: 028 90 224 005</p>	<p>For information about professional human resource policies, practices and procedures.</p>

## **FURTHER REFERENCES**

### **Fair And Efficient Selection**

Equal Opportunities Commission  
Arndale House  
Arndale Centre  
Manchester M4 3EQ

[www.eoc.org.uk](http://www.eoc.org.uk)

### **Avoiding Sex Bias in Selection Testing**

Equal Opportunities Commission  
Arndale House  
Arndale Centre  
Manchester M4 3EQ

### **The CIPD Recruitment Code**

Chartered Institute of Personnel & Development  
Northern Ireland Branch  
Suite G5, Unit 3  
Weavers Court Business Park  
Belfast BT12 5GH

### **The Fair Employment in Northern Ireland Code of Practice**

Equality Commission for Northern Ireland [www.equalityni.org](http://www.equalityni.org)  
7-9 Shaftesbury Square  
Belfast BT2 7DP

### **Code of Practice for employers for the elimination of racial discrimination and the promotion of equality of opportunity in employment**

Equality Commission for Northern Ireland  
7-9 Shaftesbury Square  
Belfast BT2 7DP