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Equality and Diversity Workshop

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- The Equality Bill
- RCM Equality and Diversity Strategy
- Scenario group work

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Background to the Equality Bill

The Equality Bill will replace the 116 different pieces of equality legislation in force, including 35 acts, 52 statutory instruments, 13 codes of practice and 16 European Commission directives.

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

It will apply to England, Wales and Scotland all at the same time.

Not just legislative house-keeping

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Summary of the Bill

- Brings together existing discrimination laws into a single Act and ensures common definition of discrimination
- Harmonises protection from discrimination, for example, by introducing a single public sector equality duty
- Amends disability discrimination law in response to recent case law to ensure better protection for disabled people and carers.

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Summary of the Bill (cont)

- Makes pay secrecy clauses in individuals' contracts of employment unenforceable an introduces a power to provide for mandatory gender pay gap reporting in the private sector after 2013

- Provides for the power for specific duties to be placed on public authorities to set out how equality should be taken into consideration when procuring goods and services from the private and voluntary sectors

- Enables Employment Tribunals to make recommendations that employers amend their policies/practices to prevent discrimination from happening again

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Better protection for disabled people

- Following *Malcolm v Lewisham Borough Council* "disability-related discrimination" has to be construed very narrowly. Very difficult for cases to succeed

- Bill introduces a new concept of "discrimination arising from disability" which does not require a comparison with another person. Reverses the effect of *Malcolm*

- Concept of indirect discrimination applied to disability for the first time

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Perception and Associated Discrimination

- Direct discrimination and harassment defined broadly enough to enable claims from people who associate with someone who has a protected characteristic or because they are wrongly perceived to have a protected characteristic.

- Enshrines in law the *Coleman v Attridge* case where the ECJ ruled that the mother of a disabled child should be entitled to bring a claim for disability discrimination.

- *English v Thomas Sanderson*

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Better protection for those undergoing gender re-assignment

For the first time protection from indirect discrimination will be extended to people undergoing gender re-assignment

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Better protection for women

- For every pound a man still earns, a woman still earns just 87 per cent. Pay equality often remains hidden in the private sector.
- Under the Bill, pay secrecy clauses will be enforceable.
- Power to introduce Regulations requiring private sector organisations with more than 250 employees to publish gender pay gap information.

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Better Protection for Women?

The Bill could go further:

- There is no provision for mandatory pay audits.
- Have to find an actual comparator in equal pay claims whereas other discrimination strands provide for hypothetical comparators
- No provision for collective redress which would be of great assistance in equal pay litigation as low-paid , vulnerable women often are worried about pursuing claims.
- Private sector organisations will not have to publish gender pay gap information until 2013.

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Single Public Sector Equality Duty

- Public authorities are currently under statutory duties to prevent unlawful discrimination and promote equality of opportunity on the grounds of race, disability and gender.

- New duty requires public authorities to have due regard for the need to eliminate unlawful discrimination and harassment, to advance equality of opportunity, and to foster good relations between different groups. Applies to all protected characteristics.

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Positive Action

Employers choosing between two equally-qualified candidates for a job or promotion would be able to select the successful candidate on the grounds that they are from an under-represented or disadvantaged group.

- Gender and racial group only
- Voluntary

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Enforcement

- The Bill enables Employment Tribunals to make recommendations that employers amend their policies or practices where there has been a finding of discrimination against them.
- Will help ensure lessons are learnt and the same thing does not happen again.
- However, there is no sanction if recommendations not implemented and therefore the decision may lack teeth.

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Trade Union Equality Representatives

The Bill is silent on extending statutory rights to Trade Union Equality Representatives

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RCM Equality and Diversity Strategy

- Not a public body
- An exemplar organisation/employer
- Union Learning Representative Project

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- Data collection
- Equality Impact Assessments
- Web content
- Training
- BME Midwives and the RCM

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“ *A mother is facing action under race discrimination laws after objecting to ethnic minority hospital staff being present at the birth of her child.*

The woman was about to undergo a caesarean section when she made her demand.”

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Rosie Purves v. Southampton University Hospitals NHS Trust

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Scenario

As the RCM Steward you are contacted by Sarah, a RCM Member, who wants to make a complaint about the Labour Ward Manager. Sarah had been working the previous day on Labour Ward. She had been caring for a woman when she was asked to take over the care of Mrs T who was refusing to be cared for by Tanya, a black midwife.

Sarah believes that the Labour Ward Manager should not have complied with Mrs T's request and that by doing so had acted unlawfully and that by requiring Sarah to take over Mrs T's care the Trust had made Sarah complicit in the unlawful act.

1) What advice would you give Sarah?

2) What are Sarah's obligations under The NMC Code?