



## **BNSSG Positive Action FAQs**

Colleagues may find the following frequently asked questions and suggested responses useful if they receive queries regarding the use of positive action.

### **What are the protected characteristic groups?**

Under the Equality Act 2010 the protected characteristic groups are listed below. They are linked to definitions:

[age](#), [disability](#), [gender reassignment](#), [marriage and civil partnership](#), [pregnancy and maternity](#), [race](#), [religion or belief](#), [sex](#) and [sexual orientation](#).

### **Why is positive action used instead of treating everyone the same?**

Health and care employers are under a statutory obligation under the Equality Act 2010 as well as responsibilities under the Public Sector Equality Duty to take visible action to address barriers for under-represented groups. Taking an equitable approach rather than treating everyone equally which, statistics reveal, do not result in equal outcomes. We therefore offer positive action initiatives targeted to specific disadvantaged groups to level the playing field.

### **How does positive action fit with the strategic goals of BNSSG Healthier Together?**

Disadvantaged and under-represented groups face additional barriers, and Bristol, North Somerset and South Gloucestershire health and care employers are taking a conscious and proactive approach by choosing to use positive action to ensure all staff and applicants are supported and have opportunities to grow and thrive.

One of the visions of the Healthier Together Integrated Care System is;

“We’ll make it simple for health and care staff to work better together for the benefit of the people we care for – nurturing talent, removing barriers”

One of the key priorities under the Healthier Together People Programme is;

“Looking after our people, equality, diversity and inclusivity, supporting and retaining though staff health and wellbeing, building a more inclusive workforce through more inclusive recruitment and progression”.

The use of positive action is directly linked to our key priorities of creating a more inclusive workforce and removing barriers.

**I would like to promote or develop positive action opportunities, but I'm worried about the potential backlash and accusations of positive discrimination. Do you have a standard response that staff can use?**

Yes. Please use the following text to respond to accusations of positive discrimination.

Healthier Together (or insert your organisation name) is committed to using positive action to improve opportunities and experiences of under-represented groups that share a protected characteristic and have faced past or present discrimination.

Health and care employers are under statutory obligation under the Equality Act 2010 as well as regulatory responsibilities under the Public Sector Equality Duty to take visible action to address barriers for under-represented groups.

Positive action is a form of encouragement and development to facilitate people that share a protected characteristic to apply for or take advantage of opportunities. Providing additional support to an under-represented group does not take away support already available to all staff and applicants.

You may also like to see the [NHS Workforce Equality and Inclusion](#) web page for further details.

**How is positive action different from positive discrimination?**

Positive action is a form of encouragement and development to facilitate people that share a protected characteristic to apply for or take advantage of opportunities.

Positive discrimination involves preferential treatment to benefit members of a disadvantaged or under-represented group who share a protected characteristic, in order to address inequality.

Positive discrimination favours someone by treating them in a positive way. This includes the use of quotas for recruitment or progression and preferential treatment, which is generally unlawful.

**I feel that I am disadvantaged from a positive action initiative that is only available to people with protected characteristics.**

Offering additional support to protected characteristic groups that face disadvantage does not take away from existing support available to all staff and applicants.

A range of support and opportunities are available to all staff and applicants. Please see our website for details (insert your organisation's web link).

### **Will the use of positive action mean that some people will receive preferential treatment in recruitment or progression?**

Preferential treatment of any group is generally unlawful under the Equality Act 2010. Positive action measures support disadvantaged groups with fixed term development opportunities to access opportunities or gain skills and experience to level the playing field.

The Equality Act does permit some circumstances where preferential treatment is allowed, for example where a protected characteristic is an occupational requirement or reasonable adjustments for a person with a disability. An example of this is the [Disability Confident Employer Scheme where once accredited, employers can offer a guaranteed interview where applicants disclose a disability and meet the essential criteria for the role.](#)

### **Not all people that have a protected characteristic are marginalised, so why should they all receive additional support?**

To meet our statutory obligations to address barriers for under-represented groups, support is offered for some groups that share a protected characteristic.

Staff in the same protected characteristic group will have different experiences but data indicates that there are many common factors affecting each group. The most effective way of reaching marginalised individuals is by offering support to a group that they share a protected characteristic with.

Priority groups for positive action have been selected based on data and analysis where there is evidence of higher levels of disadvantage or representation.

### **Is it discriminatory to exclude people from activities based on race?**

No. Positive action is lawful under the Equality Act 2010 section 158 and section 159. Race is a protected characteristic and offering closed group activities for black, Asian, and minority ethnic staff offers safe spaces to share their experience and to use the opportunity as a support network.

### **As a member of staff, can I sit in closed group positive action activities to ensure the content being delivered is appropriate?**

No. Closed positive action activities are intended as safe spaces for those that share a protected characteristic to share their experience and to use the opportunity as a

support network. If you have any questions about the activity or content being delivered, please speak to the member of staff leading the initiative.

**Could the under-representation of BAME staff be a result of the background of the staff or that they don't have the skills or experience, rather than because of institutional racism?**

-suggested response to staff query

A deficit model means that we place the blame for the disadvantage and under-representation on the staff or applicant by justifying it on their lack of effort or their deficit, rather than considering institutional barriers.

Research and evidence show that institutional racism, structural barriers and preconceived negative assumptions about BAME applicants and staff leads to unfair treatment, bias in recruitment processes and in progression, and negative impact on workforce diversity overall.

Read the NHS [Tackling racism and other types of discrimination](#)

Watch the King's Fund video - [What's it like being a member of staff from an ethnic minority background in the NHS?](#)

Watch NHS England's video - [Experiences of Racism | Anti racism strategy](#)

**How should I respond to a statement such as 'Positive action activities further brings divide and it's actually the problem not the solution'?**

Healthier Together ICS and partner employers are committed to using positive action measures to improve the opportunities and experience of under-represented groups.

Positive action is sometimes confused with positive discrimination which is generally unlawful. It is important that we help and support staff and applicants to understand the basis for the use of positive action.

Positive action initiatives result in wider benefits for all and aligns to the Integrated Care System's strategic priorities of working towards a diverse workforce.

**Where should I direct someone that wants to make a complaint about a positive action initiative?**

If you feel confident to do so, please provide some information about positive action to the complainant using content from this FAQ document and advise that Healthier Together ICS and partner health and care employers welcome all feedback.

-Signpost to your organisation's complaints procedure.

**Who can I contact if I have more questions?**

If you require specific advice about positive action, please e-mail the BNSSG EDI Workforce Project Manager [noor.nixon@nhs.net](mailto:noor.nixon@nhs.net)