Establishing an Appropriate Staff Gender Mix in Establishments

Date of Update: 21/03/12

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PSI Amendments should be read before and in conjunction with PSO

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ESTABLISHING AN APPROPRIATE STAFF GENDER MIX IN ESTABLISHMENTS

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CHAPTER ONE: INTRODUCTION

1.1 Overview

1.1.1 This Order clarifies the action Governors can take to address a shortfall in the number of staff of a particular gender in the unified grades. It includes the steps to follow when applying for a genuine occupational qualification. This Order can be applied equally should there be a shortage of male or female unified grades in a prison.

1.1.2 The resourcing position in some women’s prisons has resulted in a shortfall in the number of women unified grades available to undertake tasks which are gender specific, in other words, tasks that have to be carried out by women staff. This could either be in regard to ensuring that privacy and decency considerations of women prisoners, visitors and staff are met, or where the provision of certain personal welfare or counselling services, due to their sensitivity, require that they can only be delivered by women staff. Although recent difficulties have been most evident in women’s prisons, and among women unified grades, it is entirely possible that similar difficulties may arise in respect of male staff working with male prisoners.

1.2 Purpose of Order

1.2.1 This Order provides advice to Governors on:

- determining the unified grade gender mix to meet legal and operational requirements in respect of visitors, staff and prisoners;
- addressing a shortfall among unified staff of a particular gender.

1.3 Scope

1.3.1 This Order provides a framework for increasing the number of, for instance, women unified staff of a particular gender through the use of:

- genuine occupational qualifications (GOQ’s);
- part-time working and job sharing;
- positive action measures.

1.3.2 More detailed, background guidance on GOQ’s is contained in Annex A.

1.4 Output

1.4.1 To determine the appropriate gender mix of staff in their establishment, Governors must follow the steps outlined in this guidance.

1.5 Impact and Resource Assessment
1.5.1 This guidance clarifies existing procedures and policy and does not introduce additional requirements.

1.6 Mandatory action

1.6.1 This guidance includes mandatory action for governors in regard to the procedures to be followed when applying for a GOQ. Mandatory actions are specified in Chapter 2.

1.7 Contact point

1.7.1 For advice on GOQ’s, flexible working, and positive action measures please refer to the contact points given in Chapter 2. For general enquiries about this PSO, please contact: Graham Howard, HR Strategy Group ☏020 7217 2806.

**NOTE FOR ESTABLISHMENT LIAISON OFFICERS**

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Gareth Hadley
Director of Personnel
CHAPTER 2. PROCEDURES

2.1 Determining the number of unified grades of a particular gender to meet legal and operational requirements

2.1.1 Whenever staff mix is being reviewed in order to establish whether there is a shortfall in one or other gender, Governors must distinguish between tasks where there is a requirement that they be undertaken by staff of a particular grade, from those where this is only preferable. This assessment must cover all normal routines, unplanned activity such as escorts and emergencies, and the grades required to undertake these tasks. Consideration must be given to the extent these tasks can be undertaken by OSG’s, rather than officers, and the level of supervision that is required. OSG’s must, however, only be deployed in accordance with the agreement set out in PSI 42/97. Any proposal to use OSG’s not identified in the agreement must be referred to Pay and IR Group.

2.1.2 The following tasks have been identified as among those where there is a requirement to deploy unified staff of a specific gender to ensure that the privacy and decency considerations of prisoners, visitors and staff are met:

- strip searching;
- rub down and pat down searching of women and of men (including visitors)*;
- supervision of showering, bathing and changing (note: it should not be necessary for these duties, when associated with gym activity, to be undertaken by a Physical Education Instructor);
- mandatory and voluntary drug testing;
- some hospital escorts, where the privacy and decency of prisoners preclude the presence of opposite sex staff (e.g. intimate examinations, pregnancy checks);
- healthcare centres (prisoners may request a same sex member of staff, particularly if treatment is of a sensitive nature).

* Note: i) staff other than unified grades might be authorised to undertake pat and rub down searching of prisoners (please refer to para 17.20 of the Security Manual) ii) only female members of staff may search women prisoners iii) pat or rub down searches of prisoners with a genuine religious or cultural objection to being searched by members of the opposite sex must be carried out by members of the prisoner’s own sex.

2.1.3 Not all of the above tasks need be undertaken exclusively by staff of the same gender. The extent to which male and female staff combinations can be used, for instance in staffing hospital escorts and health care centres, will be dependent on individual and local circumstances.

2.1.4 To maintain decency whilst prisoners are in their cells, consideration should be given to appropriate screening, so that unified staff of both genders can carry out regular patrolling. If Governors are concerned about security implications, they should consult Security Group for advice.
2.1.5 Profiling of unified grades should take account of the following:

- **night duty requirements**: how cover can be provided without staff, who may not wish to frequently work nights, being detailed to this task more often than their colleagues simply because of their gender;

- **supervisory requirements**: the number (and grade) of supervisory staff that are required to ensure that privacy and decency considerations of prisoners, visitors and staff are met. This should include the appropriate level of supervision considered necessary to ensure that gender specific tasks are carried out correctly.

2.1.6 These assessments must be conducted at establishment level, so as to enable due account to be taken of the unique needs, circumstances and design of individual prisons. It is important to note that an establishment’s staffing profile/deployment arrangements should be regularly reviewed to take account of natural fluctuations in staff mix.

2.1.7 Where there is a shortfall of unified grade staff of a particular gender in an establishment, particularly amongst prison officers, Governors can give consideration to increasing their numbers through the use of:

- Genuine Occupational Qualifications (GOQ’s)
- Part-time working and job sharing
- Increasing the number of applicants with the inclusion of ‘positive action statements’.

2.1.8 As the scope for applying a GOQ is governed by legislation, a decision to invoke a GOQ has to be defensible in law. For the Prison Service, the only grounds on which we are likely to be able to claim a GOQ are to meet privacy and decency requirements and the provision of personal welfare or education services (more detailed, background information on GOQ’s is contained in annex A).

2.2 Genuine Occupational Qualifications (GOQ’s):

2.2.1 The overarching principle for the Prison Service is that all posts are open to both men and women. The direction given in the Recruitment Order (Para 3.15.1) is that in the majority of instances, careful rostering of staff should ensure that there is someone of the same sex available to carry out these duties under normal conditions. Single sex adverts can therefore only be justified where it can be proved conclusively that there are insufficient staff of the same sex to carry out those duties to meet privacy and
decency and personal welfare and counselling requirements. If these duties constitute only a small percentage of any person's time, a GOQ would be difficult to justify.

2.3 Applying for a GOQ

2.3.1 GOQ's need to be identified at the beginning of the recruitment, transfer or promotion process, before the vacancy is advertised, using the processes outlined above.

2.3.2 Once the number of, for instance, women unified grades required at an establishment has been decided, the difference between this sum and the current complement of women officers in each grade is the figure which forms the maximum number of posts which can be advertised as a genuine occupational qualification (GOQ). These posts can then be filled through external recruitment or internal transfer (level and on promotion) and form the basis of the business case which is presented to Personnel Management Group. Where establishments wish to recruit women staff above this number, a genuine occupational qualification cannot be applied, although Governors may wish to use positive action measures outlined in this instruction.

2.3.3 A requirement to have unified staff of the same gender as the prisoner to deliver personal welfare and counselling will require a separate assessment. This must demonstrate that these services, due to their sensitivity, require that they can only be delivered by same-sex staff, and that they constitute a significant proportion of the duties of a particular post.

2.3.4 Any GOQ must satisfy the following conditions:

- it can be shown that some or all the duties of a particular post have to be undertaken by someone of a particular gender, and it would be unreasonable to require existing staff of the appropriate gender to undertake those duties (e.g. changing working conditions from day to regular night shift);

- it can be shown that these duties must be carried out to meet the requirements of the post;

- no assumption is made that because a GOQ exists for one job it also exists for a similar job in a similar location (the nature or extent of the relevant duties may be different or there may be other officers who could undertake those duties);

- it is essential, not just preferable, for the relevant duties to be carried out by someone of a specific sex;

- it is not intended to maintain a balance or quota of male and female officers (which is unlawful);

- the nature of any personal services promoting welfare, counselling or education services can be shown to be directly related to the sex of the person providing them, and no stereotyped assumptions are made about a specific sex being able to perform these services more effectively.
2.3.5 A GOQ must be reassessed on each occasion a post becomes vacant to ensure that it can still be validly claimed. Circumstances may have changed rendering the GOQ inapplicable.

2.3.6 Once a GOQ has been established and the advertisement for the post is drawn up, a simple statement must be added specifying which GOQ is being used:

E.g. “Section 7(2)(*) of the Sex Discrimination Act 1975 applies to this post

or “The above post is exempt under section 7(2)(*) of the Sex Discrimination Act 1975”.

2.3.7 The Equal Opportunities Commission has the power to take proceedings to an Employment Tribunal against any party involved in publishing or causing to be published, an advertisement that is potentially in breach of the Sex Discrimination Act 1975. However, publishers and their agents may be protected from such a challenge if they have received a statement from the advertiser, given prior to publication, which gives a reasonable indication of why the job in question is restricted by gender.

2.3.8 In order to adhere to EOC recommendations, a statement must be written setting out the reasons why the job in question is restricted by gender.

NB: A written statement will not prevent a challenge to a GOQ from either the EOC or an individual, but it may be helpful at a Tribunal hearing.

2.3.9 Any such statement must include:

- Reference to the particular GOQ being claimed, the job title and gender restriction.
- The duties of the job that fall under the GOQ, and reasons why a person of one sex is needed to do the job.
- If there are already staff of the gender and grade in question, an explanation of why these cannot cover for the relevant job duties. Details of shifts or teamwork should also be included. If only one person does the job, this should also be stated.

2.3.10 Whenever a GOQ is used, a record of decisions taken must be kept to ensure that it can be defended if challenged.

2.3.11 All cases where a GOQ is being considered must be referred to Personnel Management Group ☎ 020 7217 2868.

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1 * (b) Privacy and Decency
    (e) Personal Welfare and Counselling
2.3.12 **ADVICE POINT**: for general advice on GOQ’s, or for seeking authorisation to apply a GOQ, contact Personnel Management Group ☏ 020 7217 2868

2.4 **Part-time working and job sharing**

2.4.1 Current policy on this is contained in Chapter 8 of PSO 8010.

2.4.2 More flexible working arrangements can help staff balance work and domestic responsibilities better, and enable the Service to attract and retain staff who are unable, or prefer not to work full-time (staff who need to take on care responsibilities for children or elderly dependants, for example). A growing number of workers are women, and many organisations now see the business advantages of offering more flexible working arrangements so they do not unnecessarily limit the pool of potential workers from which new staff can be drawn.

2.4.3 Chapter 8 of PSO 8010 covers all kind of employment other than full-time working, including job sharing and permanent part-time appointments, and embraces requests for part-time working from current full-time members of staff.

2.4.4 Set out in Chapter 8 of PSO 8010 are the main terms and conditions applicable to part-time staff. These aim to be as accommodating as possible, subject to organisational needs, with hours and patterns of attendance arranged to suit individual considerations.

2.4.5 Governors and Area Managers **must** make sure though that:

- *excessive demands are not required from other members of staff*
- *effective management arrangements are in place*
- *the work is of a quality appropriate to the grade*

and that part-time staff are:

- integrated into the organisation with clear lines of accountability

2.4.6 Various patterns of part-time working are possible - depending on locally agreed patterns of attendance. These may include fewer hours on a daily basis, full-time hours for some weeks of the year, or working part of each week. It is also possible for Prison Officers to work regular weekends, where this is in the interests of both parties.

2.4.7 Job sharers can work part days, part weeks or alternate weeks. In consultation with their line management agreement should be reached on the way in which the job is to be shared, taking into account the needs of the establishment and the job sharers’ external commitments. However, there is no expectation or obligation on them to cover the absence of their partner job sharer.
2.4.8 Part-time staff should have the same fair and open opportunities as full-time personnel for career development, promotion and training.

2.4.9 Further information on flexible working practices is contained in PSO 8010 “Equal Opportunities for Staff”

2.4.10 **ADVICE POINT**: for further advice, please contact Personnel Management Group, Diversity and Equality Team ☎ 020 7217 6375

2.5 **Positive action measures**

2.5.1 The use of positive action measures is clarified in the Prison Service Recruitment Order 8100. This states that:

“steps should be taken to encourage applications from groups which are under represented” (3.2.1)

2.5.2 Positive action is not the same as positive discrimination - discrimination in favour of women is unlawful in exactly the same way as discrimination against them. Positive action means taking steps to help them compete on an equal basis for opportunities. It is not guaranteeing them success as this constitutes positive discrimination.

2.5.3 Positive action is allowed for in the Sex Discrimination Act 1975. It enables employers to redress the under-representation of women in the workforce or in parts of the workforce.

2.5.4 If, for example, women are under-represented at the location and/or in the grade which is being recruited, relative to the labour pool from which the establishment/HQ Group or Unit usually recruits, the following form of words should be used in advertisements:

"**Women are currently under-represented in the [relevant grade] at [location] and applications from them will be particularly welcomed. All applications will be considered and appointments will be made on merit**".

2.5.5 This is more effective in attracting applicants than simply stating the organisation’s equal opportunities policy.

2.5.6 The inclusion of such a sentence would therefore be of great assistance to many establishments or areas seeking to recruit, for example, women officers.

2.5.7 Where the advertisement is placed is also significant. Using papers, magazines and journals typically read by target groups increases the probability of success. As can encouraging specific articles or features on the prison service in these publications. Radio advertisements or interviews, job fairs and displaying posters in locations where potential recruits gather can similarly increase interest in joining the Prison Service.
2.5.8 Such campaigns generate awareness amongst groups of people who previously held the view that the Prison Service was not an organisation that welcomed people like them or wanted them as members of their staff.

2.5.9 While the above approach is still in its early stages, expressions of interest and requests for applications forms have exceeded expectations. It has demonstrated that interest can be generated from groups under-represented in the Prison Service, from diverse backgrounds and locations – even from areas outside those targeted.

2.5.10 There is evidence therefore that ‘high-profile’ campaigns can result in perceptions of the Prison Service as a good organisation to work for, thereby encouraging applications. The Outreach Team will be able to give advice on ways in which to attract the attention of under-represented groups.

2.5.11 **ADVICE POINT**: for further advice, please contact Personnel Management Group, Diversity and Equality Team ☎️020 7217 6375
LEGAL FRAMEWORK: GENUINE OCCUPATIONAL QUALIFICATIONS

The Sex Discrimination Act 1975

The Sex Discrimination Act 1975 (SDA) sets out the basic principle that men and women should not receive less favourable treatment in relation to their employment, on the ground of their sex or marital status. Section 7(2)(b) of the SDA states that a job may be restricted to one sex where the essential nature of the job, or of particular duties attached to the job, calls for a member of one sex.

In certain circumstances, it is therefore lawful to discriminate in recruitment, training, promotion or transfer in a job for which the sex of a worker is a genuine occupational qualification.

GOQ’s are always open to legal challenge. The burden of proof lies with the Governor/Head of Group, to establish the validity of a GOQ by providing evidence to substantiate a claim. Advice must be sought from Personnel Management Group before advertising a single sex post (Recruitment Order: Para 3.15.2.). However, only an Employment Tribunal or a higher court can give an authoritative ruling as to whether or not a GOQ is valid. The tendency is to interpret Section 7 of the SDA 1975 narrowly, since it is a derogation from the principle of equal treatment.

The Equal Opportunities Commission guidance (EOC) is that privacy and decency conditions exist if:

a) the job is likely to involve physical contact with a person of the opposite sex who might reasonably object to the job holder being of the other sex (Section 7(2)(b)(i)).

To fall within this category of GOQ there must be more than mere physical proximity within the narrow confines of the working area: “physical contact” means actual touching.

b) the job holder is likely to work in circumstances where persons of the opposite sex are in a state of undress or using sanitary facilities and they might reasonably object to the job holder being of the opposite sex (Section 7(2)(b)(ii)).

With regard to the holding of a gender restricted competition on the basis of personal welfare and counselling needs, the EOC advise that:

“A GOQ may be claimed where the holder of the job provides individuals with personal services promoting their welfare or education,

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2 (a) Physiology  
(b) Privacy and Decency  
(c) Single-Sex Accommodation  
(d) Single-sex Establishments  
(e) Personal Welfare and Counselling  
(g) Jobs Outside The UK  
(h) Married Couples

3 Equal Opportunities Commission: Guidance Notes for Employers – Your Questions Answered on GOQ’s.
or similar personal services, which can most effectively be provided by a specific member of staff. To support this claim the employer will have to show that the nature of the services is directly related to the sex of the person providing them. An employer cannot rely on stereotyped assumptions about a specific sex nor can an employer rely on customers’ preferences”.

Examples cited by the EOC include a male welfare worker providing advice and support to men with personal problems such as drug abuse, or a female counsellor providing support for women who had suffered abuse.

1 (a) Physiology
   (b) Privacy and Decency
   (c) Single-Sex Accommodation
   (d) Single-sex Establishments
   (e) Personal Welfare and Counselling
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1 Equal Opportunities Commission: Guidance Notes for Employers – Your Questions Answered on GOQ’s.