
Equality and Diversity

Policy and Additional Guidance

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Policy

1. INTRODUCTION

Aim

- 1 The Council is committed to promoting equal opportunities in employment. Employees and job applicants will receive equal treatment regardless of age, disability, gender reassignment, marital or civil partnership status, pregnancy or maternity, race, colour, nationality, ethnic or national origin, religion or belief, sex or sexual orientation.
- 1.2 The Council aims to provide employees with a working environment free from harassment, bullying and/or victimisation and ensure all employees are treated, and likewise treat others, with dignity and respect.
- 1.3 This policy sets out the Council's approach to equal opportunities and the avoidance of discrimination at work. It applies to all aspects of employment with the Council, including recruitment, pay and conditions, training, appraisals, promotion, conduct at work, disciplinary and grievance procedures, and termination of employment.

Scope

- 1.4 This policy applies to all Council employees and would be an expectation of a standard of behaviour of all other persons indirectly employed by the Council i.e. agency staff, consultants and contractors
- 1.5 This policy does not form part of any employee's contract of employment and may be amended at any time, in consultation with the Employee Side and the recognised Trade Unions. Notwithstanding this point, any dispute arising from the application of this policy, procedure and guidance will be raised with and dealt with in consultation with the ES and resolved at the Council's Employee Joint Committee or escalated to formal dispute resolution procedures with the Local Government Association as appropriate.
- 1.6 Employees should read the Guidance on Equality and Diversity which accompanies this policy.

2. WHO IS RESPONSIBLE FOR THE POLICY?

Managers

- 2.1 All Managers must set an appropriate standard of behaviour, lead by example and ensure that those they manage adhere to the policy and promote the Council's aims and objectives with regards to equal opportunities.
- 2.2 Managers are responsible for ensuring employees are aware of their rights and responsibilities so that any unacceptable behaviour is robustly challenged and tackled. Managers are responsible for treating employees fairly and taking prompt action where they are aware of unacceptable behaviour.

Employees

- 2.3 Employees are responsible for treating both their colleagues and management with dignity and respect at all times and for cooperating with the implementation of this procedure, particularly if they are an alleged person responsible for unsatisfactory behaviour.

Employees must not unlawfully discriminate against or harass other people, including current and former employees, job applicants, customers, suppliers and visitors.

3. UNACCEPTABLE BEHAVIOUR

- 3.1 The following forms of discrimination are prohibited under this policy and are unlawful:

- Direct Discrimination: treating someone less favourably because of a Protected Characteristic. For example, rejecting a job applicant because of their religious views or because they might be gay.
- Indirect Discrimination: a provision, criterion or practice that applies to everyone but adversely affects people with a particular Protected Characteristic more than others, and is not justified.
- Harassment: this includes sexual harassment and other unwanted conduct related to a Protected Characteristic, which has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.
- Victimisation: retaliation against someone who has complained or has supported someone else's complaint about discrimination or harassment.
- Disability Discrimination: this includes direct and indirect discrimination, any unjustified less favourable treatment because of the effects of a disability, and failure to make reasonable adjustments to alleviate disadvantages caused by a disability.

Note: Associative discrimination is limited to direct discrimination and harassment. There is no requirement to make reasonable adjustments for those associated with disabled people.

However, those caring for people with a disability can make a request for flexible working. Managers are advised to treat such requests in accordance with the ACAS Code of Practice 5– Handling in a reasonable manner requests to work flexibly <http://www.acas.org.uk/media/pdf/f/e/Code-of-Practice-on-handling-in-a-reasonable-manner-requests-to-work-flexibly.pdf>.

- 3.2 Any form of bullying will not be tolerated by the Council.

4. TRADE UNION MEMBERSHIP

- An employee has the right to choose to join a Trade Union or not and must not be discriminated against for exercising their right.
- It is unlawful to subject a worker to detrimental treatment or dismissal on grounds related to their Trade Union membership or activities.

5. POTENTIAL DISCIPLINARY ACTION

The Council will not tolerate any form of harassment, bullying or victimisation and will consequently investigate robustly any complaint that is made. Where an investigation arising from a grievance relating to dignity at work indicates that the potential perpetrator has breached the Council's Code of Conduct or Statement of Policy on Discipline the matter will then trigger the Discipline Procedure.

6. RAISING A COMPLAINT

6.1 If an employee is being harassed, bullied or victimised, they are advised to keep a record of any instances of discrimination harassment, bullying and/or victimisation, the action(s) that were involved and if there were any witnesses.

6.2 The employee should first consider whether they feel able to raise the problem informally with the person responsible. It should be explained clearly to them that their behaviour is not welcome or makes the employee feel uncomfortable.

If this is too difficult, embarrassing or perceived to elicit further discriminatory behaviour, the employee should can speak to their manager who can provide confidential advice and assistance in resolving the issue. The employee's wishes will be taken into account when deciding to progress formally or informally.

The Council's Employee Assistance Programme (EAP) provides completely confidential independent advice and, where appropriate, counselling. Employees are advised to consider the use of this service in order to assist in how to resolve the issue at an early stage.

6.3 If informal steps are inappropriate or are unsuccessful, the employee can make a formal complaint under the Grievance Procedure.

7. PROTECTION AND SUPPORT FOR THOSE INVOLVED

Employees who make formal complaints under the Grievance Procedure and those who participate in good faith in any investigation into matters concerning grievances or matters of dignity at work must not suffer any form of retaliation or victimisation as a result. Anyone found to have retaliated against or victimised someone in this way will be dealt with under the Disciplinary Procedure. If an employee believes they have suffered such treatment, they should inform their manager or Human Resources.

8. CONFIDENTIALITY AND RECORD KEEPING

8.1 Confidentiality is an important part of this policy and of the Grievance Procedure. Details of any investigation and the names of the person making the complaint and the accused must only be disclosed on a 'need to know' basis. Breaches of confidentiality may give rise to disciplinary action under the Disciplinary Procedure.

8.2 Information about a complaint by or about an employee may be placed on the complainant's personnel file, along with a record of the outcome and of any notes or other documents compiled during the process.

9. GENERATING A POSITIVE DIGNITY AT WORK CULTURE

9.1 The Council is committed to creating a working environment where there are no incidents of discrimination, harassment, bullying or victimisation.

Learning, Development and Education

- 9.2 All new employees are briefed at induction about the Council's robust policy towards discrimination harassment, bullying and victimisation – and it is stressed that all complaints of discrimination, harassment, bullying and/or victimisation are treated very seriously. In addition, the Council provides workshops for employees and Managers on discrimination, harassment, bullying and victimisation in the workplace.

Removal of Offensive Materials

- 9.3 The Council will actively discourage the display of materials likely to cause offence to various parties in line with its anti- discriminatory policies and, where necessary, inspect work areas and remove materials such as images and posters that have the potential to offend.

Management Behaviours

- 9.4 The Council recognises the sensitive nature of complaints of discrimination, harassment, bullying and victimisation, and that individuals may either feel embarrassed or afraid to make a complaint. Managers are therefore required to set a positive example and to investigate and resolve any such complaints that arise as soon as possible.

10. FURTHER ADVICE

Members of Human Resources are experienced in dealing with discrimination complaints and are available to advise managers.

Additional Guidance

11. INTRODUCTION

Aim

- 11.1 The Council is committed to ensuring that it has in place an Equality and Diversity Policy and that this is robustly implemented. This guidance is designed to complement that policy.
- 11.2 Any complaints in relation to discrimination made by permanent employees can be dealt with under the Council's Grievance Procedure and the Council's Grievance Policy and Guidance on Grievances are also relevant.
- 11.3 Where action is taken against a direct employee of the Council, this will be under the Council's Discipline Procedure. The Council's Discipline Policy and Guidance on Discipline are also relevant.

Scope

- 11.4 This policy does not form part of any employee's contract of employment and may be amended at any time, in consultation with the Employee Side and the recognised Trade Unions. Notwithstanding this point, any dispute arising from the application of this policy, procedure and guidance will be raised with and dealt with in consultation with the Employee Side and resolved at the Council's Employee Joint Committee or escalated to formal dispute resolution procedures with the Local Government Association as appropriate.

12. UNACCEPTABLE BEHAVIOUR

- 12.1 The characteristics afforded protection under the Equality Act 2010 are age, disability, gender reassignment, marital or civil partnership status, pregnancy or maternity, race, colour, nationality, ethnic or national origin, religion or belief, sex or sexual orientation.

Direct Discrimination

- 12.2 Direct discrimination occurs where "because of" a protected characteristic, A treats B less favourably than A treats or would treat others.
- 12.3 A person can be treated less favourably because of their *association* with someone who has a Protected Characteristic (except in respect of marriage and civil partnership).

For example: An employee has been offered promotion. However, after the employee tells the employer that their mother, who lives with the person at home, has cancer, the promotion is withdrawn. In reaching this decision, the employer feels that the commitment of looking after the person's mother and moving to a higher grade role will be too much for them. This is potentially discrimination against the employee because of their association with a disabled person.

- 12.4 A person can be treated less favourably because they are wrongly *perceived* to have a Protected Characteristic (other than marriage or civil partnership).

For example: An employee is 45, but looks much younger. Many people assume the person is in his mid-twenties. He is not allowed to represent his organisation at a key conference because his manager thinks he is too young. The person has been discriminated against because of his perceived age.

- 12.5 It is not direct discrimination, however, to treat a *disabled* person more favourably than a person who is not disabled; or to afford women special treatment in connection with *pregnancy or childbirth*.

Indirect Discrimination

- 12.6 Indirect discrimination is concerned with acts, decisions or policies (broadly speaking) which are not intended to treat anyone less favourably, but which in practice have the effect of disadvantaging a group of people with a particular Protected Characteristic. Where such a policy disadvantages an individual with that characteristic, it will amount to indirect discrimination unless it can be objectively justified by the Council (which means that the Council can show that its actions were a proportionate means of achieving a legitimate aim).

- 12.7 The concept of a provision, criterion or practice (PCP) is broader than that of "requirement or condition", covering such things as recruitment criteria (whether compulsory or merely desirable), provisions in the employment contract, employment policies, informal practices and even one-off decisions.

For example: Putting a requirement in an advertisement for a job for candidates needing a minimum of 10 years' experience may be discriminatory to young candidates who are capable of doing the job, however who would be unable to meet the criteria of demonstrating 10 years' experience due to their age.

Harassment

- 12.8 Harassment is unwanted physical, verbal or non-verbal conduct, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading or offensive environment for them. It may involve conduct of a sexual nature, or it may be related to age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race, colour, nationality, ethnic or national origin, religion or belief, sex or sexual orientation. It may be a single act or continue over a period of time. It also includes treating someone less favourably because they have submitted or refused to submit to such behaviour in the past.

Victimisation

- 12.9 Victimisation is unfavourable treatment against an employee because they may have in good faith made a complaint of discrimination or made a complaint about bullying or harassment or supported another employee in such a complaint.

Disability Discrimination

- 12.10 Under the Equality Act 2010, direct disability discrimination, indirect disability discrimination, discrimination arising from disability, disability harassment and victimisation are prohibited in the workplace.

12.11 It is unlawful to:

- Discriminate *directly* by treating a job applicant or employee less favourably than others *because of* disability. However, positive discrimination in favour of a disabled job applicant or employee (treating them more favourably than a non-disabled applicant or employee) is allowed.
- Discriminate by treating a job applicant or employee *unfavourably* because of *something arising in consequence of disability* without objective justification.

For Example: An employee is dismissed because she has had three months' sick leave. The employer is aware that the worker has multiple sclerosis and most of her sick leave is disability-related. The decision to dismiss is not because of the employee's disability itself (so not direct discrimination). However, the employee has been treated unfavourably because of something arising in consequence of her disability (in other words, the need to take a period of disability-related sick leave).

- Discriminate *indirectly* by applying a provision, criterion or practice (PCP) that disadvantages job applicants or employees with a shared disability without objective justification (see Indirect Discrimination above).
- Fail to comply with its duty to make *reasonable adjustments* where a disabled job applicant or employee is placed at a substantial disadvantage ([link to be added to 'Managing Sickness Effectively' Policy](#))

NB: The duty to make reasonable adjustments will arise where a disabled person is placed at a *substantial disadvantage* by a provision, criterion or practice, a physical feature of the premises or where there is a failure to provide an auxiliary aid.

The duty will only arise where the Council knows or ought reasonably to know that the individual in question is disabled and likely to be placed at a substantial disadvantage because of their disability.

Whether a particular adjustment is reasonable to make in the circumstances depends on whether the adjustment would make an improvement to offset the disabled person's disadvantage, the cost of the adjustment in the light of the employer's financial resources, and the disruption that the adjustment would have had on the Council's activities. Cost is rarely a reason on its own that would justify a refusal to provide an adjustment.

- Subject a job applicant or employee to *harassment related to disability* (see Harassment above).
- Victimise a job applicant or employee because they have made or intend to make a disability discrimination complaint under the Equality Act 2010, or because they have done or intend to do other things in connection with the Act (see victimisation).
- Ask job applicants *pre-employment health questions* other than for a prescribed reason.

NB: Where an application for work is made, the applicant must not be asked about their health before work is offered to them. If, at the time the applicant applies the Council is not in a position to offer work, the applicant cannot be asked about their health before they are included in a pool of applicants from which the Council later

intends to select a person to whom to offer work. This applies whether the Council asks the question of the applicant or of some other person, such as the applicant's former employer by way of a reference request.

Questions are, however, allowed, to establish whether the applicant can undergo an assessment / testing, or where the Council needs to establish whether it needs to make reasonable adjustments in relation to an assessment / testing. Further, they are permitted in establishing whether an applicant can carry out a function intrinsic to the vacancy, to monitor diversity in the workplace, or taking 'positive action'.

Bullying

- 12.12 Bullying involves undermining the confidence and self-esteem of an employee through offensive, intimidating, malicious, insulting and /or belittling behaviour. It can involve an abuse or misuse of power and usually continues over a period of time. It can be physical, verbal or non-verbal. Legitimate constructive criticism of an employee's performance or behaviour, or reasonable instructions given to employees in the course of their employment, will not amount to bullying on their own.

DATE OF IMPLEMENTATION

With effect from: 1st April 2016