

## **DRAFT Equal Opportunity Policy May 2017**

### **1. Introduction**

The Equal Opportunity Policy is an important document for all staff and Elected Members (Councillors) as it forms the overarching principles that guide how we approach everything we do as a Council.

The Council believes that it is in the Council's interests and in the interests of all who work for the Council that we ensure that the human resources, talents and skills available throughout the community are considered when employment opportunities arise. Every possible step will be taken to ensure that individuals are treated equally and fairly and that decisions in recruitment and selection, training, promotion and career management are based solely on objective and job related criteria.

### **2. Scope**

The Equal Opportunity Policy applies to all aspects of employment and vocational training including work experience within the remit of the Council.

It applies to all aspects of:

- Recruitment, selection and appointment of staff
- Training and development of staff including appraisal
- Disciplinary and grievance procedures and their application
- Sickness absence and performance management
- Promotion including temporary or permanent and secondment opportunities
- Selection for redundancy and all other forms of dismissal
- Dignity at Work

All members of staff are bound by this policy. Managers are required to ensure that they abide by the standards set out in this policy at all times and that all staff are made aware of their responsibilities under the policy.

### **3. The Equality Act 2010**

The Equality Act of 2010 establishes the Public Sector Equality Duty (PSED) which is comprised of a General Equality Duty and Specific Duties.

The General Equality Duty has three aims: it requires public bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not

For further details of these Duties refer to the Managers Guide to the Equality Act 2010 – available on the ORB.

Elected Members (Councillors) are explicitly covered in the Equality Act 2010- see APPENDIX TWO.

### **4. The Protected Characteristics**

The Equality Act establishes protection against discrimination, harassment and victimisation because of:

- Age (1)
- Disability (2)
- Gender Re-assignment (3)
- Marriage and Civil Partnership
- Pregnancy and Maternity
- Race – includes colour, nationality, ethnic or national origins
- Religion or belief – includes lack of belief
- Sex
- Sexual Orientation
- Equal Pay (in relation to Sex only)

(1) only applies to those aged 18 or over in relation to the provision of goods, facilities & services. There are permitted exceptions relating to age and employment, including different scales of the National Minimum Wage and differential pay for apprentices. There are also additional health and safety requirements for young workers; those under 18 may not work more than 8 hours a day or 40 hours a week.

(2) see APPENDIX ONE for definition of disability

(3) before, during and after transition. This wording is the terminology used in the Equality Act; transgender (or trans) is now the accepted terminology. The Council understands there are many different identities which fall under the trans umbrella, including identities outside of the gender binary.

This protection will not apply where a Genuine Occupational Requirement (GOR) applies or where some other justification applies. These cases will be very rare and specialist advice must be sought in every such instance from HR.

In addition, staff will be protected from discrimination and any unfair treatment based on Trade Union membership or activity.

Sensitive personal data will be processed in line with the Data Protection Act 1998. Sensitive personal data is defined in the Data Protection Act 1998 as information pertaining to:

- Racial or ethnic origin
- Political opinions
- Religious beliefs or beliefs of a similar nature
- Membership of a trade union
- Physical or mental health or condition
- Sexual life
- Commission or alleged commission of an offence
- Proceedings for any offence or alleged offence, or sentence of court

## **5. Our Commitment**

As a Council we recognise and accept that intentionally or unintentionally, some individuals, groups or communities can and do experience discrimination, social exclusion or unequal treatment. However it is our commitment that we will do everything we can to prevent this from happening. Where we do find inequality, we will take steps to challenge it in all its forms.

We will show our commitment to equality by:

- Promoting equality in all that we do
- Challenging discrimination, inequality and social exclusion
- Providing responsive and accessible services to all who want or need them wherever possible
- Considering the needs of the public first and operate a fair and accountable local government
- Giving everyone a fair and equal chance of obtaining employment, promotion, development and training opportunities with the council while aiming for a workforce that reflects the make-up of the local population
- Ensuring that contractors and other organisations that are providing a service to or on behalf of the Council are required to meet, and are complying with The Equality Act and with the equality policies of the Council as set out in our terms of contracts or agreements with suppliers
- Acting promptly on any complaints of harassment, discrimination or bullying
- Monitoring, reviewing and assessing our policies and procedures for their impact on equality on an ongoing basis
- Consult with and seek out the views of citizens, service users and potential users and partner agencies on the quality and relevance of the services that we provide
- By being an exemplary employer and employer of choice, create an organisation that values all staff and is fair, supportive and free from discrimination, harassment or bullying
- Regularly consulting our staff and listening to what they say

## **6. Leadership**

The Council's leadership takes full responsibility for this Equal Opportunity Policy. It is the responsibility of the Council's Executive and Senior Management Team to ensure that we are meeting our legal obligations under the Equality Act 2010.

The Leader of the Council and the Chief Executive are fully committed to the implementation of this policy. The Head of Business Transformation is responsible for all procedures relating to recruitment, selection, career development, discipline and grievance, and for ensuring that these are carried out in accordance with the Equal Opportunity Policy.

Managers are responsible for fostering a culture in which compliance with this policy is regarded as integral to their area of work. Managers are expected to actively promote the principles of equality and take account of the need to ensure equality of access and opportunity in the planning and delivery of their services. In managing staff, managers are expected to identify appropriate development for themselves and their staff to meet the needs of their respective areas in relation to equality.

Staff are expected to behave in a respectful and fair manner to everyone that works for the Council, visits the Council or receives a service from the Council. All breaches of this policy will be taken very seriously and the Council will deal with individuals through the staff disciplinary procedures.

Staff are made aware of Council policies and the standards that are expected of them through induction, regular reviews and training.

## **7. Consultation**

This Policy and any subsequent revisions will be subject to standard consultation processes with the aim of reaching agreement on the content of the Policy and commitment to abide by the Policy between :-

- Corporate Management Team
- Staff and their representatives
- The Council Executive

## **8. Policy Approval**

This Policy was approved and ratified on 21<sup>st</sup> September 2015 by Full Council and is fully in effect from 21<sup>st</sup> September 2015.

We will review this policy at least every two years or sooner to comply with changes to the law or policy and practice.

## APPENDIX ONE

### Disability Policy (Employment and Training including Work Experience)

#### 1. Introduction

The Disability Discrimination Act of 1995 (as amended in 2005) has now been rescinded and all provisions can now be found in the Equality Act 2010.

The Office for Disabilities Guidance on the Equality Act 2010 on matters to be taken into account in determining questions relating to the definition of disability states

**“The Equality Act 2010 states that a person has a disability for the purposes of the Act if he or she has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.”**

The Office for Disabilities Guidance on the Equality Act 2010 states that a disability can arise from a wide range of impairments which can be:

- sensory impairments, such as those affecting sight or hearing;
- impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME)/chronic fatigue syndrome (CFS), fibromyalgia, depression and epilepsy;
- progressive, such as motor neurone disease, muscular dystrophy, forms of dementia and lupus (SLE);
- organ specific, including respiratory conditions, such as asthma, and cardiovascular diseases, including thrombosis, stroke and heart disease;
- developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia;
- learning difficulties;
- mental health conditions and mental illnesses, such as depression, schizophrenia, eating disorders, bipolar affective disorders, obsessive compulsive disorders, as well as personality disorders and some self-harming behaviour;
- produced by injury to the body or brain.

This is not an exhaustive list and the definition of disability covers a wide range of physical and mental impairments whether they are from birth or have been acquired during a person's lifetime.

The protection against discrimination because of a disability is from the date of a diagnosis regardless of whether any symptoms are having an effect on the person's ability to carry out “Day to day activities” as defined in the Equality Act and the associated Guidance.

See Guidance on “Day to day activities” in paragraphs **7. to 9.**

**This policy applies to all staff working for the Council, including those employed on a temporary or part-time basis, or on work experience.**

## **2. Equality of Treatment – Statement**

The Council will take all reasonable steps to ensure that treatment of disabled people enables equality with non disabled people. We will provide fair and equal access to employment, training and development (including work experience) for disabled people by taking account of their disabilities and making reasonable adjustments.

This may mean treating disabled people differently and more favourably in order to create an equal opportunity for that person compared to a non disabled person.

## **3. Responsibilities**

**It is the responsibility of the Human Resources Department to:**

- Advise and support line managers in a consistent and timely way, in cases where further action by the line manager may be required.
- Provide specialist advice and training to managers/supervisors to assist them to manage the Council's disability policy.
- Provide line managers with advice on the application of the disability provisions of the Equality Act and any other relevant legislation.

## **4. Discrimination arising from Disability**

The Equality Act says that treatment of a disabled person amounts to discrimination where

- an employer treats the disabled person unfavourably;
- this treatment is because of something arising in consequence of the disabled person's disability; and
- the employer cannot show that this treatment is a proportionate means of achieving a legitimate aim (formerly described as "justifiable")
- unless the employer does not know, and could not reasonably be expected to know, that the person has the disability.
- Failure to make reasonable adjustments for disabled persons
- Enquiries about disability and health before the offer of a job is made

## **5. Types of Disability Discrimination**

### **• Direct Discrimination**

Direct discrimination occurs when a person treats another less favourably than they treat or would treat others because of a protected characteristic. Direct discrimination is generally unlawful. However, it may be lawful in relation to the protected characteristic of disability, where a disabled person is treated more favourably than a non-disabled person.

The Act only protects disabled people from discrimination. This means that it is not discrimination to treat a disabled person more favourably than a non-disabled person.

- **Indirect Discrimination**

Indirect discrimination may occur when an employer applies an apparently neutral provision, criterion or practice which puts workers sharing a protected characteristic at a particular disadvantage. In relation to disability, this would not be about disabled people as a whole but people with a particular disability – for example, with an equivalent level of sight impairment.

## **6. Reasonable Adjustments**

The Employment Statutory Code of Practice Equality Act gives examples of the type of adjustments which an employer may have to make:-

- Making adjustments to premises
- Providing information in accessible formats
- Allocating some of the disabled person's duties to another worker
- Transferring the disabled worker to fill an existing vacancy
- Altering the disabled worker's hours of work or training
- Assigning the disabled worker to a different place of work or training or arranging home working
- Allowing the disabled worker to be absent during working or training hours for rehabilitation, assessment or treatment
- Giving, or arranging for, training or mentoring (whether for the disabled person or any other worker)
- Acquiring or modifying equipment
- Modifying procedures for testing or assessment
- Providing a reader or interpreter
- Providing supervision or other support
- Allowing a disabled worker to take a period of disability leave
- Participating in supported employment schemes, such as Workstep
- Employing a support worker to assist a disabled worker
- Modifying disciplinary or grievance procedures for a disabled worker
- Adjusting redundancy selection criteria for a disabled worker
- Modifying performance-related pay arrangements for a disabled worker

The Act lists a number of factors which will have a bearing on whether it will be reasonable for an employer to have to make a particular adjustment.

- the effectiveness of the adjustment in preventing the disadvantage
- the practicality of the step
- the financial and other costs of the adjustment and the extent of any disruption caused
- the extent of the employer's financial or other resources
- the availability to the employer of financial or other assistance to help make an adjustment.

Guidance on the Equality Act 2010 has been issued by the Office for Disability Issues and can be accessed through this link

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85010/disability-definition.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85010/disability-definition.pdf)

## **7. Meaning of ‘normal day-to-day activities’**

The Equality Act does not define what is to be regarded as a ‘normal day-to-day activity’. It is not possible to provide an exhaustive list of day-to-day activities, although guidance on this matter is given here and illustrative examples of when it would, and would not, be reasonable to regard an impairment as having a substantial adverse effect on the ability to carry out normal day-to-day activities are shown in the Appendix.

In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities.

The term ‘normal day-to-day activities’ is not intended to include activities which are normal only for a particular person, or a small group of people. In deciding whether an activity is a normal day-to-day activity, account should be taken of how far it is normal for a large number of people, and carried out by people on a daily or frequent and fairly regular basis. In this context, ‘normal’ should be given its ordinary, everyday meaning.

A normal day-to-day activity is not necessarily one that is carried out by a majority of people. For example, it is possible that some activities might be carried out only, or more predominantly, by people of a particular gender, such as applying make-up or using hair curling equipment, and cannot therefore be said to be normal for most people. They would nevertheless be considered to be normal day-to-day activities.

## **8. Work-related and other specialised activities**

Normal day-to-day activities do not include work of any particular form because no particular form of work is ‘normal’ for most people. In any individual case, the activities carried out might be highly specialised. For example, carrying out delicate work with specialised tools may be a normal working activity for a watch repairer, whereas it would not be normal for a person who is employed as a semi-skilled worker. The Act only covers effects which go beyond the normal differences in skill or ability.

The same is true of other specialised activities such as playing a musical instrument to a high standard of achievement; taking part in a particular game or hobby where very specific skills or level of ability are required; or playing a particular sport to a high level of ability, such as would be required for a professional footballer or athlete.

However, many types of work or specialised hobby, sport or pastime may still involve normal day-to-day activities. For example; sitting down, standing up, walking, running, verbal interaction, writing, making a cup of tea, using everyday objects such as a keyboard, and lifting, moving or carrying everyday objects such as chairs. The effects experienced by a person as a result of environmental conditions, either in the workplace or in another location where a specialised activity is being carried out, should not be discounted simply because there may be a work-related or other specialised activity involved. It is important to consider whether there may also be an adverse effect on the ability to carry out a normal day-to-day activity.



## **9. Indirect effects**

An impairment may not directly prevent someone from carrying out one or more normal day-to-day activities, but it may still have a substantial adverse long-term effect on how he or she carries out those activities. For example:

- pain or fatigue: where an impairment causes pain or fatigue in performing normal day-to-day activities the person may have the ability to do something but suffer pain in doing so; or the impairment might make the activity more than usually fatiguing so that the person might not be able to repeat the task over a sustained period of time.
- medical advice: where a person has been advised by a medical practitioner or other health professional, as part of a treatment plan, to change, limit or refrain from a normal day-to-day activity on account of an impairment or only do it in a certain way or under certain conditions.

## **APPENDIX TWO**

### **Extract from the Equality 2010; Part 5 Work; 58. Local authority members**

#### **Official business of members**

- (1) A local authority must not discriminate against a member of the authority in relation to the member's carrying out of official business—
- (a) in the way the authority affords the member access, or by not affording the member access, to opportunities for training or for receiving any other facility;
  - (b) by subjecting the member to any other detriment.
- (2) A local authority must not, in relation to a member's carrying out of official business, harass the member.
- (3) A local authority must not victimise a member of the authority in relation to the member's carrying out of official business—
- (a) in the way the authority affords the member access, or by not affording the member access, to opportunities for training or for receiving any other facility;
  - (b) by subjecting the member to any other detriment.
- (4) A member of a local authority is not subjected to a detriment for the purposes of subsection (1)(b) or (3)(b) only because the member is—
- (a) not appointed or elected to an office of the authority,
  - (b) not appointed or elected to, or to an office of, a committee or subcommittee of the authority, or
  - (c) not appointed or nominated in exercise of an appointment power of the authority.
- (5) In subsection (4)(c), an appointment power of a local authority is a power of the authority, or of a group of bodies including the authority, to make—
- (a) appointments to a body;
  - (b) nominations for appointment to a body.
- (6) A duty to make reasonable adjustments applies to a local authority.

## **APPENDIX THREE**

**All Council Policies support this Equal Opportunity Policy but the main ones are listed below with relevant Codes of Practice and Guidance**

1. The Equality Act 2010 – Equality and Human Rights Commission Guidance and Codes of Practice – for details see <http://www.equalityhumanrights.com/advice-and-guidance/>
2. Policies and procedures covering Recruitment Selection and Employment
3. Harassment and Bullying Policy
4. Members Code of Conduct
5. Dignity at Work Policy
6. Procurement, Tendering and Contractor Policies/ Strategy
7. Equality Strategy
8. Dignity at Work (under development)

## **APPENDIX FOUR**

### **Relevant legislation – please note that this is not an exhaustive list**

1. The Equality Act 2010
2. Work and Families Act 2006
3. Human Rights Act 1998
4. Civil Partnerships Act 2004
5. Rehabilitation of Offenders Act 1974
6. The Gender Recognition Act 2004
7. The Marriage (Same Sex Couples Act) 2013
8. Agency Worker Regulations 2010
9. The Working Time Regulations 1998