

# EQUAL OPPORTUNITIES IN EMPLOYMENT

This document is subject to the policy statement included in the Employee Handbook

This document is subject to the standard policy statements

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1.0	Agreed		New Policy	Full Council

1. Equal Opportunities in Employment

2. Discrimination

Religion & Belief

Race

Disability

Age

Gender  
Reassignment

Marriage & Civil  
Partnership

Sex

Sexual Orientation

Pregnancy &  
Maternity

## ROLES AND RESPONSIBILITIES

The policy applies to all council employees (regardless of location or job role activity) along with individuals working on behalf of the council, providing a service to the general public or to council departments.

**The Chief Executive** is responsible for providing leadership in the implementation of this policy and for ensuring that service planning and performance management systems incorporate specific equality objectives in terms of service delivery and employment.

**Elected Members** are required to show 'due regard' as part of the decision making process and must ensure that they lead by example, treating others with dignity and respect and ensuring that the policy is fairly and consistently applied to their area of work.

**Directors and Heads of Service** are responsible for implementing the policy in their service areas, along with allocating specific resources to ensure the delivery of equality objectives in relation to service provision and employment. Additionally, they are responsible for ensuring that employees are adequately informed, trained and supported to ensure that their duties are carried out in accordance with this policy.

**Corporate Equalities Group (CEG)** are responsible for ensuring that the Council demonstrates fairness in its delivery of services and its employment practices. It will work to develop a culture in which all individuals are treated with dignity and respect, and offensive and discriminatory behaviour and harassment are not tolerated.

**All Managers** are responsible for implementing equality in service provision and employment and for providing support for employees to work together to achieve equality. Managers will be responsible for ensuring their staff act in accordance with the provisions of this policy, providing all necessary support and direction for their staff.

**HR Direct** are responsible for the collation and monitoring of equality data. HR Direct are also to ensure that employment policies, procedures and processes are inclusive, fair and adhere to the Equality Act 2010. Responsible for publishing the data collated in line with the Equality Duty for Public Sector Organisations

**All Employees, to include, Apprentices / Trainees / Agency / Casual / Relief/ Supply / Volunteers / Contractors / Suppliers** are responsible for ensuring that they play their part in implementing this policy. They will also be responsible for improving their awareness of the barriers to equality in service provision and employment, for working towards the elimination of these barriers and for performing their duties in accordance with this policy. This expectation will be communicated to all new staff via the induction process and the Respect booklet.

Everyone has a responsibility for the implementation of this policy in one form or another and those that choose not to follow this policy will not only be in breach of the policy itself, but may also be acting illegally. Additionally, if anyone witnesses a discriminatory incident at work, they have a duty of care to others to challenge such behaviour and practice.

All employees have access to a copy of the Respect Booklet.

# 1. Equal Opportunities in Employment

## Introduction

Fairness at work and tackling discrimination helps to attract, motivate and retain staff and enhances an organisation's reputation as an employer. Eliminating discrimination helps everyone to have an equal opportunity to work and to develop their skills. Our policies aim to make sure we are acting according to the law, improve the working life of all employees and ensure we provide fair and equal treatment for service users.

## Legal Framework

The Equality Act 2010 harmonised and replaced previous equalities legislation (such as the Race Relations Act 1976 and the Disability Discrimination Act 1995) and covers the same groups that were protected by previous equality legislation and are now called 'Protected Characteristics.' The Act extends some protections to characteristics that were not previously covered, and also strengthens particular aspects of equality law.

Protected Characteristics include the following:

- Age
- Disability
- Gender Reassignment
- Pregnancy and Maternity
- Race
- Religion or Belief
- Sex
- Sexual Orientation
- Marriage or civil partnership

As a council we aim to ensure that no employee or job applicant experiences discrimination or receives less favourable treatment on the basis of their protected characteristic(s) as defined in the Equality Act. We are also committed to promoting equality of opportunity in the provision of our services and we expect the same commitment from any agencies who work on our behalf.

As such, this policy provides advice and guidance concerning the council's duty to adhere to legislative requirements in the area of equality and help to make things clearer by highlighting good practice. Specifically, this document aims to provide you with information about:

- rights to fair treatment as an employee of the council
- guidance on dealing fairly with others, including colleagues, customers and service users
- the specific roles and responsibilities regarding implementing this policy
- advice on what to do if you feel you are being treated unfairly

### **Equality Act 2010 – General Duties**

Local authorities and other public bodies in England and Wales are bound by the General Duty and are required to have due regard to the need to:

1. Eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act.
2. Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
3. Foster good relations between people who share a protected characteristic and those who do not.

The three parts of the duty are essentially the aims of the Act. Having due regard for advancing those aims involves:

- removing or minimising disadvantages experienced by people due to their protected characteristics.
- taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- encouraging people with protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

### **Equality Act 2010 - Specific Duties**

In order to meet the General Duty, Specific Duties have been developed in Wales to outline the requirements placed on public bodies. These are set out in the Statutory Duties (Wales) Regulations 2011. The Specific Duties in Wales identify key activities that the council must evidence are being undertaken and how they are being undertaken in relation to service delivery, policy-making and employment.

## **The Specific Duties in Wales covers the following:**

- Objectives
- Strategic Equality Plans
- Pay differences
- Staff Training
- Procurement

## **How the Specific Duties will be met through:**

- Engagement
- Equality Information
- Employment Information
- Annual Reporting
- Review
- Publishing
- Accessibility
- Assessing Impact

In order to conform to the second public sector equality duty Denbighshire County Council has implemented a number of measures during the employment process. These measures will monitor equality and assess the impact of policies and services etc on those with protected characteristics. The main forms of monitoring that must be used, which can be found on the intranet are:

- Equality impact assessment form
- Equal opportunities monitoring form
- Employee equal opportunities information form

Equality impact assessments (EqIAs) offer an opportunity for the council to think carefully about the impact of its work on local people and its employees. EqIAs can lead to actions aimed at preventing discrimination or harassment, or promoting equality and fairness for all. EqIAs form templates and guidance notes for completion are available for download from the intranet.

Equal opportunities monitoring forms must be sent out with every job application pack in order to capture data regarding both successful and unsuccessful applicants.

The makeup of the workforce must also be monitored at regular intervals in order to ensure that it reflects the demographics of the local community. Such monitoring is carried out through the analysis of both the equal opportunities monitoring form (used during

the recruitment stage) and the Employee Equal Opportunities Information form (sent out to all current employees). This data is then collated to produce an annual Equality Report and equal pay audit. Additional data will be produced on a more frequent basis in order to continuously review the composition of the workforce.

### **Positive Action**

If the equality report identifies inequalities within the workforce then this may be tackled using the 'positive action' legislation from the Equality Act 2010.

This legislation states that a person may take positive action if they reasonably think that persons who share a protected characteristic:

- suffer a disadvantage connected to the characteristic, and/or
- have needs that are different from the needs of persons who do not share it and/or
- have disproportionately low levels of participation in an activity

'Positive action' is defined as any action which is a proportionate means of achieving the aim of:

- enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage
- meeting the needs of those who share a protected characteristic that are different from the needs of persons who do not share it, or
- enabling or encouraging persons who share the protected characteristic to participate in that activity

An example of when an employer might decide to take positive action is if they find that the makeup of their workforce is different from the makeup of their local population, so they decide to encourage people who share particular under-represented protected characteristics to apply for vacancies.

This is not the same as 'positive discrimination' or 'affirmative action' which equality law does not allow.

### **Harassment at work**

The council believes that no employee should be harassed by other employee(s) and should be protected (as far as possible) from harassment by customers.

Harassment can take many forms, including physical assault, constant criticism, being humiliated and being excluded.



The legislation which covers this includes the Criminal Justice and Public Order Act 1995 which:

- makes it a criminal offence to intentionally cause someone harassment, alarm or distress
- states that harassment would usually mean the use of threatening, abusive or insulting words or disorderly behaviour

The Protection from Harassment Act 1997 also applies which:

- makes it an offence to knowingly harass and/or knowingly cause others to fear violence
- states that if you harass someone on at least two occasions you can be found guilty of harassment under this Act

### **Welsh Language Scheme**

The Welsh Language Act 1993 requires public bodies in Wales to conduct their public business in such a way as to treat the Welsh and English languages “on a basis of equality”. The Council’s statutory Welsh Language Scheme, revisited in 2009, sets out how the council will implement this principle of equality in the delivery of its services and employment. This document can be found on the Council’s internet/intranet website.

## **2. Discrimination**

### **Complaining about discrimination**

If an employee believes they are being discriminated against at work for any reason, they should speak first of all to their manager or supervisor. If they believe this is not a viable option, they are encouraged to contact their Trade Union Representative or HR Direct. Employees who believe that they have suffered any form of discrimination, harassment or victimisation are entitled to raise the matter through the grievance procedures. Service users are entitled to raise their concerns through the corporate complaints procedure.

The Council is opposed to all forms of discrimination and will treat any breaches of this seriously. Breaches of this policy will be investigated and may be regarded as gross misconduct under the council's Disciplinary Policy.

Significant breaches of this can also be raised through the Whistle Blowing Policy. All complaints of discrimination will be dealt with seriously, promptly and confidentially and the council will aim to ensure that no employee is victimised as a result exercising their right to raise a complaint or for supporting someone who has raised a complaint under this policy.

### **Direct discrimination**

Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (see perception discrimination below), or because they associate with someone who has a protected characteristic (see discrimination by association below). For example, rejecting an application from a woman applying for a traditional male job, where the assumption is the woman would not fit into the exclusively male team because she is not a man or an employer refuses to give a worker access to facilities because of a protected characteristic.

### **Discrimination by association**

This is direct discrimination against someone because they associate with another person who possesses a protected characteristic. For example, a manager gives the father of a disabled child a bad report because they disapprove of the man's requests to attend his child's hospital appointments.

## **Discrimination arising from a disability**

Discrimination from a disability occurs when a disabled worker is treated **unfavourably** because of something connected to their disability where the employer cannot show that what they are doing is **objectively justified**. This only applies if the employer is aware or could reasonably have been expected to know that the worker is a disabled person.

For example, an employer imposes a 'no beards' rule as part of a dress code and tells staff they will be disciplined if they do not shave. An employee is a disabled person who has a skin condition that makes shaving very painful. They have been treated unfavourably (threatened with disciplinary action) because of something arising from their disability (their inability to shave). Unless the employer can objectively justify the requirement, this may well be discrimination arising from disability if they knew, or could reasonably be expected to know, that the employee had this condition. It may also be a failure to make a reasonable adjustment.

## **Perception discrimination**

This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic. For example, an employer incorrectly thinks one of their workers is gay. They tell them they must change their clothes in a dusty stock room rather than in the communal changing area. This is likely to be discrimination because of sexual orientation based on the employer's perception, even though the worker is not gay (if the worker is gay, it would almost certainly be direct discrimination).

## **Indirect discrimination**

Indirect discrimination can occur when an employer has a condition, rule, policy or even a practice that applies to everyone but particularly disadvantages people who share protected characteristics. Indirect discrimination can be justified if the employer can show that they acted reasonably in managing the business, i.e., that it is 'a proportionate means of achieving 'a legitimate aim\*', and that there is an Occupational Requirement to do so.

For example, an employer decides to apply a 'no hats or other headgear' rule to staff. If this rule is applied in exactly the same way to every member of staff, Sikhs, Jews, Muslims and Rastafarians who may cover their heads as part of their religion will not be able to meet the requirements of the dress code and may face disciplinary action as a result. Unless the employer can **objectively justify** using the rule, this will be indirect discrimination.

\*A legitimate aim might be any lawful decision made in running the business or organisation, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful. Being proportionate really means being fair and reasonable, including showing that 'less discriminatory' alternatives have been looked at prior to any decision made.

## **Harassment**

Harassment is 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'.

Harassment applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership. Employees will now be able to complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. For example, a transsexual woman is subjected to offensive 'banter' at work, relating to her gender reassignment. This creates a hostile and offensive atmosphere for her and is likely to be harassment.

## **Third party harassment**

The Equality Act makes employers potentially liable for harassment of their employees by people (third parties) who are not employees of their company, such as customers or clients. Employers will only be liable when harassment has occurred on at least two previous occasions, and that the employer is aware that it has taken place and have not taken reasonable steps to prevent it from happening again. For example, an employer is aware that a female bar worker has been sexually harassed on two separate occasions by two different customers. Once the employer has been told or has found out about the first two occasions, they will be liable for a third act of harassment towards the same bar worker, if they fail to take reasonably practicable steps to prevent further harassment. This will be the case even if the third act of harassment is committed by an unconnected customer.

## **Victimisation**

Victimisation occurs when an employee is treated badly because they have made or supported a complaint or raised a grievance under the Equality Act; or because they are suspected of doing so. An employee is not protected if they have maliciously made or supported an untrue complaint. For example, a worker helps a colleague with a sexual harassment claim against another worker and because of this, their manager marks them down at their annual performance review, commenting that they are 'not very loyal'. This would almost certainly be victimisation.

## **A Genuine Occupational Requirement (GOR)**

In very limited circumstances it will be lawful for an employer to treat people differently if it is a genuine occupational requirement that the job holder must be of a particular protected characteristic. When deciding if this applies, it is necessary to consider the nature of the work and the context in which it is carried out.

# Protected Characteristics

The below characteristics include various examples but these are not exhaustive. Please refer to the Equality and Human Rights Commission for more specific information on each of the characteristics.

The EHRC can be accessed via the following:

Internet website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Telephone: 0808 800 0082

Text phone: 0808 800 0084

## **Sex and Sexual Orientation - Lesbian, Gay, Bisexual, Transgender (LGBT) Equality**

The policy aims to provide people with equal access to employment opportunities, goods and services regardless of their sex or sexual orientation.

The main legislation which applies is the Equality Act 2010 and the Civil Partnership Act 2004 which:

- states that you cannot treat someone less favourably because of his/her sex or sexual orientation.
- covers direct and indirect discrimination. An example of direct discrimination would be not employing a man for a job traditionally done by women (e.g. a secretary) or not appointing the best candidate for the job because they are gay or lesbian, bisexual or transsexual. An example of indirect discrimination could be requiring applicants to be at least 6 feet tall (which would exclude significantly more women than men).
- also covers victimisation and harassment.

The other Act, which applies is the Equal Pay Act 1970. This states that men and women doing the same work (or equivalent work) should have the same conditions of employment, including pay (unless the difference can be justified).

## **Disability Equality**

The main legislation which applies is the Equality Act 2010 which:

- states that you cannot treat a person less favourably because of their disability if reasonable adjustments could be made which would enable them to do the job, or, have access to goods or services.
- covers direct and indirect discrimination. 'Direct' could be refusing to interview someone with hearing loss. 'Indirect' could be refusing to rearrange furniture to give access to a wheelchair user.
- applies to recruitment, training, development, terms and conditions of employment, physical changes to the premises or equipment, transfers and covers job applicants and current employees who are disabled or become disabled.
- states that procedures, policy or practices which, although applicable to all workers, must not disproportionately disadvantage those who share a particular disability, unless these can be justified.
- protects your rights if you have an association with a disabled person, e.g. a carer or parent.
- covers victimisation and harassment.

In terms of recruitment, an employer is only permitted to make limited queries about a candidate's health or disability in order to:

- help decide if you can carry out a task that is an essential part of the work
- help find out if you can take part in an interview
- help decide if the interviewers need to make reasonable adjustments in a selection process
- help monitoring

The council has also been awarded the "Positive about Disability Symbol – Two Ticks Guaranteed Interview Scheme" which is run by Job Centre Plus. The accreditation is awarded to employers who can demonstrate that they meet five commitments relating to the employment of disabled people.

The five commitments are as follows:

1. Interview all disabled applicants who meet the minimum criteria for the job
2. Ensure a mechanism is in place to discuss, at any time, but at least once a year, with disabled employees what can be done to ensure that they can develop and use their full abilities
3. Make every effort to ensure that when employees become disabled, they stay in employment
4. Take action to ensure that all employees develop the appropriate level of disability awareness needed to make these commitments work

5. Conduct an annual review on what has been achieved and plan ways to improve on them

As part of the Two Ticks Scheme, we guarantee an interview for disabled people who meet the essential criteria for a job.

Employees may also be eligible for an Access to Work Grant which can help pay for practical support to carry out their job. Further information and advice can be obtained from Occupational Health.

### **Race Equality**

The council should promote racial equality in employment and ensure that the services they provide take account of the race (which covers colour, nationality, ethnic origins, culture and national origins) of those seeking them.

The main legislation which applies is the Equality Act 2010 which:

- states that you cannot treat a person less favourably because of their race.
- covers direct and indirect discrimination. 'Direct' would be not employing someone because they are Indian. 'Indirect' would be excluding job applications which have addresses in a certain area where a high number of Chinese people live.
- also covers victimisation and harassment.

### **Religion, Belief and Non-Belief**

This policy states that we should not discriminate against someone because of their religion, belief or non-belief. The main legislation which applies is the Equality Act 2010 which:

- states that you cannot treat a person less favourably because of their religion, belief or non- belief.
- covers all the main religions and also lesser-known religions such as Paganism and Rastafarianism. Also applies to those with no religious belief e.g. humanists and agnostics, as well as other beliefs (non-religious) that have a profound effect on the person's way of life or view of the world.
- covers direct and indirect discrimination. 'Direct' discrimination would be not employing someone because they are Hindu; 'indirect' discrimination would be applying a 'no headgear' rule could indirectly discriminate against Sikh staff who wear turbans for religious reasons.

- direct discrimination may only be justified in the very limited circumstances where a genuine occupational requirement can be justified.
- also covers victimisation and harassment.

### **Age Equality**

The Equality Act 2010 makes it unlawful to discriminate against employees, job seekers and trainees because of their age. The Equality Act also removed the upper age limits on unfair dismissal and redundancy. It also states that we should think about the entire age range of people when planning for how services are delivered.

The main legislation which applies is the Equality Act 2010 which states:

- you cannot treat someone less favourably because of their age.
- you cannot discriminate against someone, either directly or indirectly, because of their age. 'Direct' discrimination would be specifying that candidates must be below a certain age. 'Indirect' discrimination may be to specify that a certain length of experience were required which may prevent younger people from applying.
- it is unlawful to harass or victimise someone because of their age.

### **Gender Reassignment Equality**

Gender reassignment is a personal, social, and sometimes medical, process by which a person's gender presentation (the way they appear to others) is changed. Anyone who proposes to, starts or has completed a process to change his or her gender is protected from discrimination under the Equality Act. An individual does not need to be undergoing medical supervision to be protected. So, for example, a woman who decides to live as a man without undergoing any medical procedures would be covered.

The main legislation which applies is the Equality Act 2010 which states:

- you cannot treat someone less favourably because of their gender reassignment.
- you cannot discriminate against someone, which includes direct and indirect discrimination, discrimination by association, discrimination by perception, discrimination in cases of related absence from work because of their gender reassignment.



'Direct' discrimination would be telling a transgender man in the process of undergoing gender reassignment from female to male that he couldn't attend a training course because he would make the other candidates feel uncomfortable.

'Indirect' discrimination would be where a training provider refuses to change the name on an existing training certificate for a transsexual person which has previously been awarded. This places the transsexual person at a disadvantage because they will have to provide any prospective employer with their training certificates in their old name, thereby disclosing their transsexual status.

- it is unlawful to harass and victimise someone because of their gender reassignment.
- the Human Rights Act 1998 provides protection to trans people, principally under the right to a private life.

### **Marriage and Civil Partnership**

This policy states that we should not discriminate against someone because of their marriage or civil partnership status.

The main legislation which applies is the Equality Act 2010 which states:

- you cannot treat someone less favourably because of their marriage or civil partnership status.
- you cannot discriminate against someone, which includes direct and indirect discrimination because of their marriage or civil partnership status. 'Direct' discrimination would be if a young married female was not offered the job on the basis that she would be less career focussed than an unmarried candidate. 'Indirect' discrimination would be where people are posted out to internal offices in order to gain a promotion. This may affect candidates who are married as their partner may not be able to move, making it harder for married people to qualify for promotion.
- it is unlawful to victimise someone because of their marriage or civil partnership status.
- civil partners must be treated in the same way as married partners in terms of access to employer benefits, for example, pensions.

### **Pregnancy and Maternity**

This policy states that we should not discriminate against someone because of pregnancy or maternity.

The main legislation which applies is the Equality Act 2010 which states:

- you cannot treat someone less favourably because of pregnancy or maternity.
- you cannot discriminate against someone, which includes direct or indirect discrimination because of maternity, pregnancy or because of an illness she has suffered as a result of her pregnancy. This also includes breastfeeding and covers people who have given birth in the last 26 weeks. 'Direct' discrimination would be refusing to appoint a female who is pregnant. 'Indirect' discrimination would be where a female returns to work after maternity leave and asks to work part time using the right to request flexible working. If the manager turns this request down because other jobs which are similar to hers are not part time then this would be indirect discrimination.
- it is unlawful to victimise someone because of pregnancy or maternity. Pregnancy and maternity is not protected directly under the harassment provisions, however, unwanted behaviour will amount to harassment related to sex.