

EQUALITY AND DIVERSITY POLICY

APPROVED AT GOVERNANCE AND PROCEDURES COMMITTEE 30 OCTOBER 2018

REAPPROVED AT POLICY AND RESOURCES COMMITTEE 1 MARCH 2022

1. Legislation

- 1.1 The primary legislation in this area is the Equality Act of 2010 which replaced a number of specific Acts of Parliament in the areas of employment, provision of services, etc. and across various areas of possible discrimination such as race, marital status or gender. It is an all-bracing act which covers the law regarding a number of protected characteristics and covers a wide range of activities. Where relevant to the work of a parish council, the Equality Act of 2010 is relied upon in this policy and references to legal requirements are references to that Act.

2. Public Sector Duty to Reduce Inequality

- 2.1 Section One of the Act requires public authorities to assess their strategic policies and decisions as to how they will reduce inequality and promote social cohesion. This section does not fully apply to parish councils, that is, we are not under the same legal obligation to monitor and report as the larger councils. It follows that the Council does not have a statutory duty to produce equalities impact assessments on its major policies. However, the Council has made the decision to adopt a form of equality impact assessment as an aid in reviewing its impact on the community. Members of the Committee decided to see equality impact and impact on social cohesion as part of consideration of major items such as the budget, the grants policy and award criteria. When the Council considers twinning or international linkage, Members decided to consider the beneficial impact on social cohesion recognising the diversity of Hereford's resident community.
- 2.2 There is nothing in law to prevent a private citizen from considering how their activities affect equality in their neighbourhood and no specific prohibition on the Council from taking such consideration either. It follows that assessing activities for equality impact, including spending time, salary and possibly external support on such assessment would be strictly lawful within the General Power of Competence, provided the Council renews its use of that power when required and is eligible to do so.
- 2.3 The highest priority should be given to assessing the equalities impact of these activities which are specifically designed to impact on the community; this is where the greatest harm could be done by inadvertent discrimination of some kind, and where the greatest positive impact can be achieved in building diversity, equality and social cohesion.

3. Direct Discrimination and Harassment

- 3.1 These are strictly unlawful activities, and this prohibition does apply to the City Council. The exemption referred to above only refers to a specific duty to make positive assessments.

Direct discrimination occurs when person A (who can be a corporate person such as a council) acts in such a way that the equality of person B is denied or undermined on any of the following grounds, which are known as protected characteristics. The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage or civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.

3.2 There are some qualifications to this such as the right of a religious group only to employ clergy or the equivalent who subscribe to the beliefs of the organisation, but these are very tightly defined. There are detailed regulations in some areas such as maternity and employment which are acknowledged and protected within conditions of service. If they were not, an employee could complain of direct discrimination. There are also further sections clarifying the precise meaning of some of the protected characteristics which, for example, include that the characteristic on religion or belief refers to any ethnical code or set of principles, not necessarily only those that imply belief in a deity, and that absence of religion or belief holds the same protection.

3.3 Harassment is unwanted conduct related to a protected characteristic for the purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. There is nothing to prevent harassment rules being drawn up for the general protection of staff, service users and members beyond the protected characteristics, for example such behaviour may also be outlawed because of personal dislike or ambition to replace someone in their post, etc. which are not protected characteristics. However, any policy the Council has regarding harassment when it is referred to in codes of conduct, disciplinary procedures, etc. must at least meet the test prescribed in the Equality Act.

3.4 The provisions in the Act on direct discrimination and harassment apply to the provision of service, employment and treatment at work; and also to support, and facilities for, elected members of a local authority. Parish councils are specifically included in the definition of local authority applied in this section of the Act. Discrimination in the provision of such support on grounds of political affiliation might be covered by "religion or belief" but should in any case be outlawed in a council policy to uphold the Nolan Principle of Fairness in the provision of services.

4. Indirect Discrimination

4.1 This is the phenomenon of having procedures or policies which have an unequal effect on people within a protected characteristic. It is important to note that a complaint of indirect discrimination does not have to come from someone with a protected characteristic who has suffered personally as a result of the discrimination. Indirect discrimination does not have to be proved to have been intentional to lead to a complaint being upheld. As with direct discrimination this applies to service users, employees and elected members.

- 4.2 Indirect discrimination is best addressed by a review of policies and procedures, practice and language using a basic form of equality impact assessment, simply asking the question “How might what we are doing, or proposing to do, affect the various protected characteristics and is there anything which is unintentionally discriminatory that we should address?”
- 4.3 Indirect discrimination can arise from the control and distribution of information, the use of language or images which display a preference against people in the various categories of protected characteristics. Positive encouragement to certain groups to apply for employment, take up the offer of a service, etc. where there is historic inequality is not unlawful indirect discrimination. It is a lawful act to encourage equality and build social cohesion.

5. Areas of Concern Regarding Direct and Indirect Discrimination

- 5.1 Direct discrimination is a normative act, a decision to treat someone less than equally because they hold one of the protected characteristics, or more than one. It is relatively easy to prohibit such behaviour through including appropriate sections in disciplinary rules or behaviour codes and professional standards for staff, codes of conduct for members, rules for assessing grant applications or dealing with the public.
- 5.2 Indirect discrimination can be hard to spot by the providers of a service or a public body. It is injurious to the reputation of a public body to be found to be indirectly discriminating and while prompt corrective action is usually sufficient to avoid litigation, this is not the best way to deal with such issues. Members are therefore invited to consider two areas where it is possible that complaints of indirect discrimination might arise from the way the Council currently operates.
- 5.3 Recruitment to salaried posts at the Council is by way of open advertisement or a suitable recruitment agency who itself has an equality of opportunity policy for recruitment. Advertisements are expressed in non-discriminatory language, shortlisting is done against relevant and job related criteria and final selection is conducted in the same way. No specific positive messages are added concerning addressing historic areas of inequality where the staff group does not reflect the diversity of the local population, and these could be included where the statistics support the identification of under-representation. While the staff group is gender balanced there is no staff member from a visible ethnic minority, and this means the staff group does substantially under-represent the local population. Positive encouragement to people from minority ethnic groups could therefore be added to advertisements for jobs as and when they arise.
- 5.4 Recruitment to the Liveried Team has historically been on the basis of people expressing an interest and being selected on the basis that they fit the uniforms, are apparently in reasonable health for the role and are next on the list. This has not prevented the Council from recruiting women but might be indirectly discriminatory in that the opportunity is not widely known. The Act does not specify how posts should be advertised. To address this, future vacancies will be filled after a public advertisement with the express intention of opening the opportunity to serve in this capacity to people who may not have previously considered it, including encouraging a wide diversity of applicants. This does not preclude selecting people who fit the available uniforms provided reasonable adaptation and alteration is available.

- 5.5 To avoid giving the perception that the team is for male recruits only, and to avoid belittling the existing female members of the team, the group should always be referred to as the Livered Team, rather than the historic term Livered Men.
- 5.6 The Mayor is referred to as such, regardless of the gender of the incumbent. The term is itself gender neutral. A female consort may if they wish be styled the Mayoress, if they prefer to be called the Mayor's Consort this will be respected. Conferring the Mayoralty upon a member of the Council is an honour not the provision of a service and is not employment. It is achieved by election of members of one of their number who will preside at council meetings for a year, and members are not legally obliged to state why they may be voting against a particular candidate, if they feel it is right to do so.
- 5.7 The question of whether it is possible for a Mayor who does not subscribe to the Christian faith and might therefore not be willing to attend Christian religious services has been addressed by many Councils. Many non-Christian Mayors are none the less willing to attend services in their civic role without making any specific or personal act that requires or implies such belief such as receiving communion or reading scripture. Others may prefer not to attend at all and ask the Deputy to represent them at such events. The former solution is the more common one in local government. No one has ever tested whether expecting a Mayor to take part in religious services could be indirectly discriminatory. The nearest comparator was in Bideford where a member sought to argue that holding prayers before (not as part of) a Council meeting was directly or indirectly discriminatory and it was ruled not to be. A subsequent ruling that it was ultra vires was overturned by the introduction of a clause into the following Localism Act 2011.
- 5.8 Throughout its existence the City Council has referred to the Mayor as "Chairman" of the Council and has used the term "Chairman" to describe the person who chairs a committee. This is not unlawful in terms of direct discrimination as women have been elected to both roles on many occasions. It may or may not be indirectly discriminatory in that it might be held that by referring to the presiding member at a meeting in a term which identifies them, or their role, as male, the participation of women in that role is being discouraged. A statement that the term is gender neutral might have been sufficient in the past but the widespread use in other public bodies of the term "Chair" to describe the person who "chairs" a meeting means that this is becoming increasingly archaic. To avoid any possible imputation of indirect discrimination in this area members may wish to use the term "Chair" in future to describe the person who presides at a meeting. It is not necessary for an individual to identify themselves as having been deterred from participation in the Council as a candidate by the use of the archaic term for a complaint of indirect discrimination to be upheld.

6. Policy Statement

- 6.1 Hereford City Council is committed to equality of opportunity for all in the areas of service provision, employment, access to information and support in elected office. It is opposed to all forms of direct and indirect discrimination which undermine the equality of opportunity for any person holding one or more of the protected characteristics defined in the Equality Act 2010.
- 6.2 To give effect to this policy the City Council will examine the wording and operation of its procedures and policies to ensure that they are free from indirect discrimination. Employment will be on legitimate criteria to establish suitability to fill a post and grants will be awarded by

an assessment of the merits of the application against published criteria. Person specifications and grant award criteria will be reviewed as and when necessary to ensure that they operate without indirect discrimination.

- 6.3 The City Council will require any agencies through which it recruits staff or provides services to demonstrate that they share the commitment to equality of opportunity expressed by the City Council and may require presentation of policies and other documents as part of any consideration before awarding a grant, contract, service level agreement, partnership or other such arrangement.
- 6.4 The City Council will state in advertisements for vacancies that it positively welcomes applications from people with disabilities and ethnic minorities to its staff team and from people with disabilities, ethnic minorities and women to its Liveried Team where there is historic under representation. Applicants with disabilities who are the most suitable for a post will be employed provided they are able to perform the duties of the post after reasonable adjustments to equipment, working practices and access are made.
- 6.5 The City Council welcomes comments about the equalities impact of its policies and actions which should be addressed to the Town Clerk at Town Hall, St. Owen Street, Hereford HR1 2PJ or by email to clerk@herefordcitycouncil.gov.uk.
- 6.6 The City Council will not tolerate direct discrimination against, or harassment of, any person with one or more a protected characteristic. Complaints of such behaviour by staff will be treated as disciplinary issues and dealt with under that procedure. Complaints against elected members will be referred to the Monitoring Officer as complaints regarding a possible breach of the code of conduct for members. Complaints against service partners, agents, contractors, etc. will be referred to those bodies for prompt and thorough investigation and where necessary adverse findings or a lack of response will be reported by the Town Clerk to the appropriate Council Committee for a Council response to be determined.

7. Elected Members and Officers of Dignity

- 7.1 Elected members are not employees and the control of who is appointed rests ultimately with the electorate, not the Council, except in the rare case of the co-option of a member. The membership of the Council is, like the staff group, gender balanced, but not in terms of ethnic minorities who are not represented at all among the elected group. It would be a useful sign of commitment if those seeking to recruit candidates on behalf of the various political parties and groups that operate in the City would make every effort to give positive encouragement to candidates from ethnic minority groups to come forward for election. The one area where the Council does have control of who is appointed to office, the selection of the Junior Mayor has seen the appointment of both boys and girls in roughly equal proportion, and the election of a Junior Mayor from the East European community, one of Afro-Caribbean origin and one from a family of Egyptian origin.

8. Review

- 8.1 Unless a change of employment law requires that this policy be reviewed or amended, it shall be reviewed every three years. The next regular review is therefore expected to be in the Spring of 2025.

Steve Kerry
Town Clerk