

**EQUAL OPPORTUNITIES
IN EMPLOYMENT POLICY STATEMENT**

1. INTRODUCTION

- 1.1. The City Council is committed to providing equal opportunities and avoiding unlawful discrimination in employment.
- 1.2. The policy statement is intended to assist the City Council to put this commitment into practice. Compliance with the policy should also ensure that employees do not commit unlawful acts of discrimination.

2. SCOPE

The policy statement applies to all employees in the City Council, except those in schools.

3. POLICY STATEMENT

- 3.1. The City Council complies with the Equality Act 2010 and has due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between different people when carrying out its activities.
- 3.2. In all aspects of its employment policies and procedures, the City Council adheres to the Equality Act 2010 and the obligation it has to meet the general and specific duties as stated below.
- 3.3. The City Council is committed to the principles of equal pay for work of equal value and uses the Job Evaluation Support System (JESS) to measure the relative value of all jobs in its pay and grading structure.

4. FRAMEWORK

4.1. The Equality Act 2010

- 4.1.1. Under the Equality Act 2010, it is unlawful to discriminate directly or indirectly in recruitment or employment because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (which includes colour, nationality and ethnic or national origins), religion or belief (including lack of belief), sex and sexual orientation. These are known as the "protected characteristics".
- 4.1.2. The Equality Act 2010 also covers unlawful discrimination after employment, eg in terms of refusing to give a reference for a reason related to one of the protected characteristics.
- 4.1.3. The following are types of unlawful discrimination under the Equality Act 2010. Direct discrimination, indirect discrimination, harassment, associative discrimination, perceptive discrimination, third party discrimination, victimisation

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and failure to make reasonable adjustments. Further information can be gained from the guidance document 'Types of unlawful discrimination' (*Add link*) or by contacting HR.

- 4.1.4. For some protected characteristics, the Equality Act 2010 does not provide protection in relation to all types of discrimination. Further information can be gained from the guidance document 'Types of unlawful discrimination' (*Add link*) or by contacting HR.

4.2. The Equality Duty

The City Council has a duty to meet the general and specific duties of the Public Sector Equality Duty.

4.3. The General Duty

The general equality duty requires the City Council, in the exercise of its functions, to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Equality Act.
- Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it.
- Foster good relations between people who share a relevant protected characteristic and those who do not share it.

4.4. The Specific Duty

The specific duty requires the City Council to publish information at least annually to show compliance with the general equality duty and set and publish equality objectives at least every 4 years.

4.5. Protected Characteristics

The new duty covers the following eight protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Public Authorities also need to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership status. This means that the first arm of the general duty applies to this characteristic but that the other arms (advancing equality and fostering good relations) do not apply.

4.6. Publishing Information

The information the City Council is publishing is available on the PCC website under 'Transparency'. – <http://www.portsmouth.gov.uk/yourcouncil/24336.html>

The types of information the City Council will publish will be determined annually but includes the publication of Equality Impact Assessments (EIAs)

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<http://www.portsmouth.gov.uk/yourcouncil/10787.html> and workforce profile information broken down by protected characteristic (where appropriate and available). It also includes the top 5% earners broken down by gender.

In order to help meet the equality duty, the City Council consults with trade union representatives and staff groups on policies and publishes the associated EIA on the PCC website.

The City Council monitors the ethnic origin, gender and age composition and the number of people with a disability in the existing workforce and of applicants for jobs, and will consider and take any appropriate action to address any problems that may be identified as a result of the monitoring process.

Information provided by employees and job applicants for monitoring purposes will be used only for these purposes and will be dealt with in accordance with the Data Protection Act 1998.

4.7. The Employee's Responsibilities

- 4.7.1. Each employee is required to assist the City Council to meet its commitment to provide equal opportunities and avoid unlawful discrimination in employment.
- 4.7.2. Employees can be held personally liable as well as, or instead of, the employer for any act of unlawful discrimination. Employees who commit serious acts of harassment may be guilty of a criminal offence.
- 4.7.3. Acts of discrimination, harassment, bullying or victimisation against employees or customers are disciplinary offences and will be dealt with under the Formal Action Policy.
- 4.7.4. If an employee considers that they may have been unlawfully discriminated against, they should initially raise it with their line manager (or the next more senior manager if the line manager is the cause of concern). The City Council will take any complaint of discrimination seriously and will seek to resolve any issues raised.
- 4.7.5. Employees should report any bullying or harassment by customers, suppliers, visitors or others to their line manager who will take appropriate action.

**GUIDANCE
TYPES OF UNLAWFUL DISCRIMINATION**

1. TYPES OF UNLAWFUL DISCRIMINATION

- 1.1. Direct discrimination** is where a person is treated less favourably than another because of a protected characteristic. An example of direct discrimination would be refusing to employ a woman because she is pregnant.

In limited circumstances, employers can directly discriminate against an individual for a reason related to any of the protected characteristics where there is an occupational requirement. The occupational requirement must be crucial to the post and a proportionate means of achieving a legitimate aim.

- 1.2. Indirect discrimination** is where a provision, criterion or practice is applied that is discriminatory in relation to individuals who have a relevant protected characteristic (although it does not explicitly include pregnancy and maternity, which is covered by indirect sex discrimination) such that it would be to the detriment of people who share that protected characteristic compared with people who do not, and it cannot be shown to be a proportionate means of achieving a legitimate aim.
- 1.3. Harassment** is where there is unwanted conduct, related to one of the protected characteristics (other than marriage and civil partnership, and pregnancy and maternity) that has the purpose or effect of violating a person's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment. It does not matter whether or not this effect was intended by the person responsible for the conduct.
- 1.4. Associative discrimination** is where an individual is directly discriminated against or harassed for association with another individual who has a protected characteristic (although it does not cover harassment because of marriage and civil partnership, and (according to guidance from the Government and ACAS) pregnancy and maternity).
- 1.5. Perceptive discrimination** is where an individual is directly discriminated against or harassed based on a perception that he/she has a particular protected characteristic when he/she does not, in fact, have that protected characteristic (other than marriage and civil partnership, and pregnancy and maternity).
- 1.6. Third-party harassment** occurs where an employee is harassed and the harassment is related to a protected characteristic (other than marriage and civil partnership, and pregnancy and maternity), by third parties such as clients or customers. For an employer to be liable:
- the harassment must have occurred on at least two previous occasions (although not necessarily by the same harasser or suffering the same type of harassment);
 - it must be aware that the previous harassment has taken place; and
 - it must have failed to take reasonable steps to prevent harassment from happening again.

GUIDANCE TYPES OF UNLAWFUL DISCRIMINATION

- 1.7. **Victimisation** occurs where an employee is subjected to a detriment, such as being denied a training opportunity or a promotion because he/she made or supported a complaint or raised a grievance under the Equality Act 2010, or because he/she is suspected of doing so. However, an employee is not protected from victimisation if he/she acted maliciously or made or supported an untrue complaint. There is no longer a need for a complainant to compare his/her treatment with someone who has not made or supported a complaint under the Equality Act 2010. For example, if a blind employee raises a grievance that the employer is not complying with its duty to make reasonable adjustments, and is then systematically excluded from all meetings, such behaviour could amount to victimisation.
- 1.8. **Failure to make reasonable adjustments** is where a physical feature or a provision, criterion or practice puts a disabled person at a substantial disadvantage compared with someone who does not have that protected characteristic and the employer has failed to make reasonable adjustments to enable the disabled person to overcome the disadvantage.

2. TYPES OF UNLAWFUL DISCRIMINATION

For some protected characteristics, the Equality Act does not provide protection in relation to all types of prohibited conduct (eg discrimination types above).

- In relation to marriage and civil partnership, there is no protection from discrimination if a person is unmarried or single.
- For marriage and civil partnership, there is no protection from direct discrimination by association or perception or harassment. However, harassment related to civil partnership would amount to harassment related to sexual orientation.
- For pregnancy and maternity, there is no express protection from direct discrimination by association or perception; indirect discrimination; or harassment. However, in these three situations, a worker may be protected under the sex discrimination provisions.
- Apart from discrimination by association or perception, protection from direct discrimination because of disability only applies to disabled people.
- Indirect disability discrimination and discrimination arising from disability only apply to disabled people.
- An employer is only under a duty to make reasonable adjustments for a disabled worker or an actual or potential disabled job applicant.

Further information is available on the Equality and Human Rights Commissions' website:

<http://www.equalityhumanrights.com/>

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employercode.pdf