
Hebden Royd town council

Serving Cragg Vale, Hebden Bridge and Mytholmroyd



EQUAL OPPORTUNITIES POLICY

Equal Opportunities Policy

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The Equality Act 2010

The Equality Act 2010 has completely changed discrimination law in the UK. All types of discrimination are now included in one Act. The majority of the provisions of this Act came into force on 1st October 2010.

The new Act has simplified the legislation surrounding equal opportunities and delivered a new, modern framework on which this Policy is based.

The previous Policy referenced several Acts including:

- Race Relations Act
- Sex Discrimination Act
- The Equal Pay Act
- Disability Discrimination Act
- Employment Equality (Religion or Belief) Regulations
- Protection from Harassment Act
- Age Discrimination Regulations
- Employment Equality (Sexual Orientation) Regulations

The Equality Act covers the same groups as were protected in the above legislation; race, age, disability, sex, gender reassignment, religion or belief, sexual orientation, pregnancy and maternity and marriage and civil partnership, but they are now called '*protected characteristics*'. Any person or group with a protected characteristic is afforded protection by the Act.

The above have all been replaced by the Equality Act. This policy is based on the new Act and its effects.

Equal Opportunities Policy Guidelines

The policy of Hebden Royd Town Council is that all applicants for employment and employees shall be given equal opportunities in all areas of employment. This means that no job applicant or employee receives less favourable treatment on the grounds of gender, age, marital status, social class, colour, race, ethnic origin, religion, sexual orientation, creed or disability. Nobody with a protected characteristic should be disadvantaged by conditions or requirements that cannot be shown to be relevant to the job.

The Council places great emphasis on maintaining procedures that are free from all forms of discrimination.

In promoting the above practice, the Council fulfils its social responsibility towards its employees and communities in which it operates, and also recognises its legal obligations under The Equality Act 2010.

Any employee who believes that he or she is being discriminated against in any of the areas covered by The Equality Act 2010 should raise the matters through the grievance procedure.

Current employment legislation is designed to prevent discrimination and identifies actions which will be regarded as unlawful. Discrimination may be either direct or indirect and may include victimisation and/or harassment.

Discrimination in Advertisement, Recruitment and Induction

Due to the fact that an employee does not need two years of qualifying employment to bring about a claim of discrimination, care must be taken to ensure that any discriminatory practice is eliminated at the earliest possible stage.

Discrimination when advertising, recruiting or inducting new staff is unlawful and must be avoided.

Advertisement

It is unlawful to publish or place for publication an advertisement or notice which indicates, or might reasonably be taken to indicate, an intention to discriminate against applicants of a certain age, from one sex or a particular racial group.

While it is rare to see advertisements specifying a particular race or gender, age discrimination is still frequent with phrases such as “young”, “would suit somebody who has just qualified” or “minimum of ten years experience”.

Recruitment and Induction

It is also unlawful to discriminate in the arrangements made for recruitment/selection and in the ways of affording access to opportunities for promotion, transfer or training. Selection criteria should be related to job requirements and must not be discriminatory.

Every candidate should be offered the same opportunities to give the best presentation of themselves, to demonstrate their suitability and to ask questions if necessary.

Forms of Discrimination

Direct Discrimination

Direct Discrimination arises when someone is treated less favourably than another person because of a protected characteristic.

Indirect Discrimination

Indirect discrimination occurs where the effect of a certain provision, criterion or practice or rule or policy that applies to everyone but disadvantages a particular protected characteristic.

It generally occurs when a rule or condition, which is applied equally to everyone, can be met by a considerably smaller proportion of people from a particular group who have a protected characteristic, the rule is to their disadvantage, and it cannot be justified on other grounds.

Victimisation

Victimisation occurs when someone is treated badly because they have made a complaint or raised a grievance or, supported a complaint or grievance that has been brought under the Equality Act. They are also protected if they are treated badly because they are suspected of making a complaint or raising a grievance or, suspected of supporting a complaint or grievance.

An employee is not protected if the complaint or grievance has been brought maliciously or made or supported an untrue complaint.

Harassment

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

Harassment applies to all of the protected characteristics except for pregnancy and maternity and marriage and civil partnership.

Employees will now be covered by the harassment laws if they find behaviour directed towards somebody else offensive, even if the complainant does not possess the relevant protected characteristic themselves.

You need to inform the Council straight away if issues like this occur.

Associative discrimination

Associative discrimination is a form of Direct Discrimination. It is discrimination against someone because the associate with another person who possesses a protected characteristic.

Perception discrimination

Perception discrimination is a further form of direct discrimination, and covers all of the protected characteristics. It is discrimination against another person because others think they possess a particular protected characteristic. It applies even if the person being discriminated against does not possess the characteristic.

Also protected from harassment (see above).

Discrimination On The Grounds Of Age

The Equality Act 2010 protects people of all ages.

Like all the above, the Act covers various areas of employment including:

- recruitment, selection and promotion
- the provision of training
- provision of benefits
- occupational pensions

An employer could be responsible for the acts of employees who discriminate on the grounds of age.

Indirect discrimination may occur against older workers, for example, by using other redundancy criteria – such as part-time working – when selecting employees for redundancy.

The previous age discrimination legislation introduced a default retirement age of 65. This meant that employees had the right to request to work beyond that age and employers had a duty to consider such requests. The default retirement age has been revoked by The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011. The Council therefore no longer operates a default retirement age. Please see the Retirement Policy for further details.

The Equality Act 2010, together with the 2011 Regulations has made it essential to ensure that there are no hidden age barriers in the selection and promotion processes. For example, advertisements should be placed in publications read by a range of age groups.

Also, redundancy procedures will be based on business needs rather than age. Employees will not be selected because of age.

Discrimination on the Grounds of Disability

It is unlawful for any employer, regardless of size, to directly discriminate against a disabled person because they are disabled. Also they must not discriminate against a disabled person for a reason related to their disability, unless this can be justified.

Under the Equality Act 2010, a person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. This does not include drug or alcohol abuse or a tendency to start fires, steal or physically abuse others, amongst other exclusions.

The Disability Discrimination Act 2005 widened this definition of disability, providing protection for people with cancer, HIV and multiple sclerosis, effectively from the point of diagnosis. The restriction that mental illness must be "clinically well-recognised" before it is judged to be a mental impairment has also been removed. This still stands under the new Act.

It is unlawful to refuse to interview, employ, train or promote a disabled person, simply because of their disability. The Equality Act also protects disabled people from harassment (see above) and indirect discrimination.

The Equality Act includes a new protection from discrimination *arising from disability*. The new Act states that it is discrimination to treat a disabled person unfavourably because of something connected with their disability. This type of discrimination is unlawful where people are aware of the disability, and where it cannot be justified by showing a proportionate means of achieving a legitimate aim.

Reasonable adjustments must be made to enable a disabled person to work or continue working.

Discrimination On The Grounds Of Gender Re-Assignment

The Equality Act has made changes to this area of discrimination law. The Act provides protection for transsexual people. A transsexual person is someone who proposes to, or starts, or has completed a process to change his or her gender. It's unlawful to discriminate against a person on grounds that they have undergone, are undergoing or intend to undergo gender reassignment.

It is an act of discrimination to treat transsexual people less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment, than they would be treated if they were off sick for another reason e.g. sickness or injury for similar period.

The Equality Act differs from previous legislation, and no longer requires a person to be under medical supervision to be protected – so a woman who decides to live as a man but does not undergo any medical procedures would be protected.

A person recognised under the Gender Recognition Act 2004 has the right not to be discriminated against as a person of their acquired gender - limited exceptions apply in recruitment.

Discrimination On The Grounds Of Race

Racial discrimination may be defined as a hostile or offensive act or expression by a person or group of one racial or ethnic origin against a person or group of another, or incitement to commit such an act on racial grounds. For the purposes of the Equality Act 2010 'race' includes colour, nationality and ethnic or national origins.

Such behaviour may include;

- insults and racist jokes;
- verbal threats and abuse;
- physical attack;
- ridicule of an individual for culture differences;
- exclusion from normal workplace conversation or social events;
- derogatory name-calling;
- unfair allocation of work and responsibilities;
- Racist graffiti or insignia.

This form of discrimination can apply to the way you recruit, train, promote and/or select people for dismissal, perhaps on grounds of redundancy, or, after they have left, if you refuse to provide a reference because they have lodged a discrimination claim against you.

There are no length-of-service or age requirements in bringing a claim and where the claimant is an employee, they do not need to have left your employment.

Discrimination On The Grounds Of Religion Or Belief

Discrimination against an employee or job candidate on the grounds of their religion or belief is unlawful.

The Equality Act has extended the protection from discrimination by covering *any* religion. It also protects a person with a lack of religion, which includes people who do not follow a certain religion or have no religion at all. However, to fall within the Act, a religion must have a clear structure and belief system. For a person to be protected, a belief must satisfy various criteria including that it is weighty and substantial aspect of human life and behaviour.

The Equality Act applies to discrimination on grounds of religion, religious belief or similar philosophical belief. It covers discrimination on grounds of perceived as well as actual religion or belief and the religion or belief of someone with whom the person associates.

As with other forms of discrimination, the legislation recognises both direct and indirect discrimination on the grounds of religion or belief.

Direct discrimination may occur in areas such as recruitment, selection, training, promotion, selection for redundancy or dismissal when someone is treated less favourably than another because of their actual or perceived religion, religious or philosophical beliefs.

An example of this would be where an employee is dismissed on grounds of misconduct for taking leave for a religious occasion.

Indirect discrimination occurs when an employer applies a provision, criterion or practice which disadvantages people of a particular religion or of particular religious or philosophical beliefs and which cannot be justified.

The regulations also outlaw:

- harassment - unwanted conduct that violates people's dignity or creates an intimidating or offensive atmosphere
- victimisation - treating people less favourably because of something they have done under or in connection with the regulations, eg made a formal complaint of discrimination or given evidence in a tribunal case

There are no length-of-service or age requirements in bringing a claim and where the claimant is an employee, they do not need to have left your employment.

Discrimination On The Grounds Of Sex

Sexual discrimination occurs in a variety of situations which share a common element; the inappropriate introduction of sexual activities or comments into the work situation. Sexual discrimination often involves relationships of unequal power, and contains elements of coercion. However, it may also involve relationships among equals.

Such behaviour may include;

- suggestive and unwelcome comments or gestures emphasising the sexuality of an individual or of a group;
- displaying of pornographic pictures at the workplace;
- unwelcome or derogatory remarks regarding the sexual orientation or preference of an individual or a group;
- unnecessary and unwelcome physical contact, touching or patting;
- criminal acts such as indecent exposure or sexual assault.

Sexual discrimination occurs when any such behaviour creates an intimidating, hostile or offensive environment for employment or for social life. Differences of attitude or culture or the misinterpretation of social signals can mean that what is perceived as sexual discrimination by one person may not seem so to another.

The defining features, however, are that the behaviour is offensive or intimidating to the recipient and would be regarded as sexual discrimination by any reasonable person. It should be noted that the perception of a third party will be considered to be as important as the actual parties to the incident.

Discrimination On The Grounds Of Sexual Orientation

Discrimination against an employee or job candidate on the grounds of their sexual orientation became continues to be unlawful under the Equality Act 2010 and the provisions are almost identical to the prohibition of discrimination based on religion or belief.

The Equality Act applies to discrimination on grounds of orientation towards persons of the same sex (lesbians or gays), the opposite sex (heterosexuals) and the same and opposite sex (bisexuals). It covers discrimination on grounds of perceived as well as actual sexual orientation and the sexual orientation of someone with whom the person associates.

As with other forms of discrimination, the Act recognises both direct and indirect discrimination on the grounds of sexual orientation. Under the Act, a person who is a civil partner in a registered civil partnership of a same-sex couple should not be treated less favourably than a married person in similar circumstances. If a civil partner is treated less favourably, they may be able to bring a claim for sexual orientation discrimination under the Sexual Orientation Regulations or a claim for sex discrimination.

Direct discrimination may occur in areas such as recruitment, selection, training, promotion, selection for redundancy or dismissal or in awarding employment-related benefits when someone is treated less favourably than another because they are - or are thought to be - lesbian, gay, bisexual or heterosexual.

Indirect discrimination occurs when an employer applies a provision, criterion or practice which disadvantages people of a particular sexual orientation and which cannot be justified.

Indirect discrimination could also occur where a civil partner is treated less favourably than a married employee on a range of employment rights and employee benefits including the right to:

- make a request for flexible working
- statutory paternity leave and pay for a newborn child or newly adopted child
- vocational training
- access to a benefit that is given to a married employee – such as a pension or private health care

The Act also outlaws:

- harassment - unwanted conduct that violates people's dignity or creates an intimidating or offensive atmosphere
- victimisation - treating people less favourably because of something they have done under or in connection with the regulations, eg made a formal complaint of discrimination or given evidence in a tribunal case

There are no length-of-service or age requirements in bringing a claim and where the claimant is an employee, they do not need to have left your employment.

Discrimination over membership or non-membership of Trade Unions

Employees may not be refused a job, dismissed, selected for redundancy or discriminated against, for:

- joining a trade union, or declining to join one
- carrying out trade union activities at an appropriate time
- making use of trade union services at an appropriate time

Also, they cannot be dismissed or selected for redundancy for refusing to accept an unlawful incentive by an employer to give up any of these trade union rights, or give up their collective agreement rights.

Any withholding of a job offer, dismissal, or selection for redundancy, for membership or non-membership of a trade union could lead to a claim at an employment tribunal.

Employers could also face an employment tribunal claim for dismissing, selecting for redundancy, or treating detrimentally an employee who takes part, or proposes to take part, in trade union activities or makes use of a trade union's services at an appropriate time.

An "appropriate time" may be, for instance, outside working hours, during an employee's lunch break or at a time when the employer has agreed that they may take part in trade union activities.

Expectations

Discrimination can cause misery for those who suffer from or are on the receiving end of it. Such behaviour may occur in any working environment used by the Council's staff including the telephone and e-mail facilities. It may include;

- intimidation, haranguing, threats or abuse, victimisation;
- insults or ridicule about a person's work, attitudes, character or personal life;
- derogatory remarks concerning personal or physical characteristics or appearance;
- persistent teasing;
- constant unfounded criticism of the performance of work tasks.

In recognising its legal and social responsibilities, the Council has established the following policies and procedures to help ensure that equal opportunities are being practiced which are consistent with the relevant legislation and Codes of Practice.

It is the responsibility of all employees to ensure that these policies and procedures are complied with. Any employee who is found to have breached the policy will be subject to disciplinary action which could result in dismissal.

If you feel you have been discriminated against, you should invoke the procedure set out below. If you feel unable to discuss this with your line manager, please contact the Town Clerk at any time.

The Council wishes to make it clear that conduct involving the harassment of *any member of staff for any reason is unacceptable*. The Council aims to ensure that such unacceptable behaviour does not take place and will communicate this statement and this Equal Opportunities Policy to all members of staff.

The Council will not tolerate intimidation, victimisation or unfair discrimination against any member of staff who makes a complaint or assists in an investigation of alleged harassment. Retaliation against a member of staff who complains of harassment can be expected to lead to disciplinary action and may even be a criminal offence resulting in prosecution.

It is the policy of Hebden Royd Town Council to make every effort to provide a working environment free from all forms of harassment and intimidation the Council is committed to equality of opportunity in reality and in which every individual can seek, obtain and continue employment without unfair discrimination. In line with its philosophy, the Council expects all members of staff to be treated with respect.

PROCEDURE FOR DEALING WITH DISCRIMINATION

Introduction

This procedure has been designed to deal with complaints of discrimination, victimisation and harassment, which need to be handled in a sensitive manner. The procedure, therefore, seeks to ensure minimal stress for the complainant, timely resolution of complaints and a degree of flexibility appropriate to individual circumstances.

At all stages of the procedure, the need to maintain confidentiality will be paramount. Information circulation will be minimised to that which is necessary to ensure a fair investigation and hearing.

This procedure is separate from the disciplinary procedure, which may be used following the results of the investigation under this procedure. Alternatively, an incident may be so serious, or there may be sufficient evidence to proceed straight away with the disciplinary procedure.

If at any stage in this procedure an employee does not receive a response to a formal complaint in accordance with the specified or agreed time limits, or where the response is inadequate or inappropriate, the employee is entitled to raise the matter under the Council's grievance procedure.

It is recognised that in bringing a complaint, the complainant must be protected from further discrimination or detriment arising from the alleged incident and associated complaint.

Keeping a record

It is important that anyone who believes that they have suffered from discrimination should keep notes of the details outlined below for each incident and that they are made as soon after the event as possible. Detailed notes should include the following:

- date;
- time;
- place;
- name of person harassing them; what actually happened;
- how the person actually felt at the time;
- name of any witnesses;
- action taken and whether reported to management;
- any correspondence relating to the incidents and subsequent complaints.

Informal Resolution

Every effort will be made to resolve the issue informally in the first instance, if this is appropriate. As soon after the incident as possible, the individual should make it clear to the offender that the incident is not welcomed and should stop. If too embarrassed to speak directly, this could be done by writing, or asking a colleague to do this for them. A note should be made of the action taken.

If the action continues, or the individual cannot take personal action, then they are advised to contact their line manager (if appropriate) for advice on the next stage. If the line manager is the person against whom the complaint is being made, the matter should be reported to a member of management. Where the employee indicates that they would prefer to discuss the matter with a person of the same sex / race etc, this should be arranged whenever possible.

Any discussion will be confidential and no further action will be taken without the consent of the complainant, unless the line manager considers the incident so serious, in which case they will inform the employee of their need to take action against the alleged harasser, following consultation with the employee concerned.

The employee may have a work colleague / trade union representative present at all stages of the procedure.

One of the following courses of action may then be followed:

- to take no further action at this stage, but to record any future incidents as recommended above and to keep the situation under review, enabling the employee to seek further advice in the future if necessary;
- if the offender has not already been approached, then ask the person to stop the offending behaviour and again keep the situation under review;
- make a formal complaint

Counselling

If the behaviour does not cease, or is serious, then the complainant can approach their line manager who can direct them to a counsellor. The role of the counsellor is to provide support and assistance to the complainant during this stressful time. The role also extends to the alleged harasser, if requested. However, the same counsellor should not advise the alleged harasser. The counsellor has no role in formal investigations and neither are they a source of evidence in any proceedings, since all discussions between counsellor and employee are confidential.

Serious Criminal Offences

In cases of an alleged assault or alleged behaviour that is considered to be a criminal offence, the Council should contact the Police for their appropriate action, if the complainant so wishes and / or if the Council considers the incident to be a serious criminal offence.

Investigating a Complaint

It is necessary for the investigators to protect the rights of both parties involved and ensure that both are entitled to a full and fair opportunity to put their version of events.

All departments are expected to co-operate in releasing staff from their normal duties to participate in the investigation as required.

Time Limits

The investigation should normally be completed within 5 working days of the complaint being received. On occasions, it will not be possible to keep within this timescale. In such cases, the complainant and the alleged offender must both be kept informed of any need for an extension and the likely timescale for completion.

HOW THE COMPLAINT WILL BE INVESTIGATED

Initial response

Where possible, the investigation will be carried out by either:

- a) a panel comprising of the person who received the complaint and a senior manager or director.
- b) An external Company.

Neither should be connected with the case in any way. The line manager should ensure that those carrying out the investigation should reflect the nature of the complaint in terms of race/sex/disability as far as possible. This may require bringing in a third person to the panel.

The person against whom the complaint has been made should be informed of the nature of the complaint and sent a copy of the letter, details of the procedure involved and advised to seek representation.

Possible Suspension or Redeployment During the Investigation

In order to relieve the stress and pressure on one or both parties, to prevent the risk of further incidents and to prevent victimisation it may be necessary to suspend the alleged harasser.

Suspension under this procedure does not constitute part of the disciplinary procedure and will be on full pay.

Temporary redeployment of one or both parties may also be considered. The complainant should be given the choice, though normally the alleged harasser would be redeployed first.

The Council may wish to consider granting special leave in appropriate circumstances, upon the request of the complainant.

Meeting the Parties Involved

The panel (or a representative of the panel) will meet with the complainant and the alleged harasser separately. Detailed written statements will be taken, which the relevant parties should sign and date, confirming that they agree with the statements collected. Both parties should be given the opportunity to nominate witnesses whom they wish to be interviewed.

Meeting With Witnesses

The panel will meet anyone else who was present or who has information which is relevant to the issue. Notes of this meeting will also be taken and the individuals called will be able to be accompanied by a friend or trade union representative.

Further interviews may need to take place to clarify or gain further information. The panel will also need to ensure that they have collected all relevant written materials.

Consideration of Information

The panel will, on completion of the investigation, review the material collected and decide whether the complaint is substantiated. In cases of sexual discrimination, in no circumstances will evidence of the complainant's appearance and sexual attitudes be taken as relevant information.

In some cases, there will not be any witnesses and it will be one person's word against another's. In these cases, the panel will consider whether on the balance of probabilities, the incidents/actions occurred.

Further action

The panel will consider the facts and will decide either to:

- take no action, that is the allegation has not been substantiated; or
- initiate the Council's agreed disciplinary procedure; or
- take management action other than to initiate the disciplinary procedure. This could include:
 - a recommendation of redeployment of one or both parties, either on a temporary or permanent basis. Should a transfer take place, this must not be on any less terms and conditions of employment, unless action is taken within the disciplinary procedure to demote an individual;
 - setting up arrangements to monitor the situation;

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- required attendance on training courses;
 - making arrangements for both parties to work as separately as possible within the same workplace;
 - a further period of compassionate leave.

Keeping management records

After a complaint has been heard, the following storage arrangements should be followed:

- Where the complaint is informal, no record will be kept on personal files, but it is recommended that the complainant makes a note of their meeting.
- Where the complaint is not substantiated, then no record will be kept on the alleged offender's file.
- Where the matter proceeds to a disciplinary hearing, then the storage of records should be in accordance with the disciplinary procedure.

Action When the Complainant is Dissatisfied

If the complainant or alleged harasser disagrees with the decision, then they have the right to raise this matter under the Council's grievance procedure.