

Equality, Diversity and Human Rights Policy

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Appendix 1 Guidelines for Managers and Staff:

Part 1

Legal Framework

- Equality Act 2010
- The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000
- The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002
- Trade Union and Labour Relations (Consolidation) Act 1992
- Rehabilitation of Offenders Act 1974
- Human Rights Act 1998

Part 2

Equality of Opportunity in practice

Raising awareness of the policy

- Communications
- Induction
- Training
- Monitoring
- Recruitment and selection
 - Recruitment process
 - Selection
 - Training and development

Appendix 2 Sample Scenarios.

Equality, Diversity and Human Rights Policy

1. Policy Statement

- 1.1 This policy sets out Scottish Borders Council's (the Council) commitment to the principles, as defined below, of equality, diversity and human rights in employment and sets out the approach to be followed in order to ensure that such principles are consistently met.
- 1.2 While successful implementation of this policy will ensure compliance with current legislation and national policy, the Council also recognises both the moral and business case for maintaining good employment practice in relation to equality, diversity and human rights.
- 1.3 The Council also recognises that it has a unique opportunity to influence the practice of those other organisations with which it engages and to champion equality, diversity and human rights within society more generally.
- 1.4 The Council is totally committed to the prevention of unlawful and unfair discrimination, harassment or victimisation on the grounds of age, race, sex, disability, sexual orientation, religion or belief, gender reassignment/ trans/ transgender identity, marriage or civil partnership, or pregnancy or maternity.
- 1.5 This policy has been agreed in consultation with the Council's recognised Trades Unions.

2. Equalities Statements – Protected characteristics

- 2.1 The equality statements explain how our policy relates to the nine protected characteristics covered by the Equality Act 2010, where people often face disadvantage, discrimination, harassment and victimisation
- 2.2 The core statements that apply to all strands are that the Council will:
- support all staff members to fully develop their potential
 - support the formation of groups, networks and services for staff
 - deal effectively and consistently with any harassment, violence, hate crime or prejudice towards any person
 - aim to develop a workforce that broadly reflects the community we serve, especially at senior management levels
 - work to give all staff members access to employment and training (including education)
 - ensure that all staff members are treated equally in pay and in terms and conditions of employment.
- 2.3 **Sex**
We know that some people face disadvantage and discrimination because of their sex . This is based on sexism – the belief that a certain sex is better. Sexism can mean a sex is the subject of negative stereotypes and attitudes, treated as inferior and denied the same quality of life as the othersex . It can also mean they face harassment, victimisation, hatred and violence.
- The Council will:**
- carry out our duties under the Equality Act 2010
 - Work towards removing stereotyping and assumptions on the grounds of sex.

2.4 **Race**

We know that black and minority communities face discrimination and disadvantage due to racism. Racism means negative beliefs about people based on their race, colour, nationality or national or ethnic origin.

The Council will:

- carry out our duties under the Equality Act 2010
- work to ensure that our policies are free from prejudice, and are consistently and effectively applied

2.5 **Disability**

We know that disabled people face disadvantage and discrimination. This is because of negative beliefs about disabled people and environmental barriers such as lack of disabled access. We also recognise that some people express pity, fear lack of respect and contempt towards disabled people. This means that disabled people do not have the same opportunities or choices as non-disabled people. They do not get the same respect or the chance to be fully included in society. Disabled people can also face harassment, hatred and victimisation.

We use the definition of disability used in the Equality Act.2010. In the Act, a person has a disability if:

- they have a physical or mental impairment
- the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities.

The Council will:

- carry out our duties under the Equality Act 2010
- promote equality of opportunity for disabled persons and non-disabled people
- work to give disabled people the same access to employment with the Council as everyone else by removing barriers they face
- carry out, review and build on our commitments under the 'Disability Confident Scheme'

2.6 **Sexual Orientation**

We know that lesbian, gay and bisexual people face disadvantage and discrimination. This is because of homophobia – hatred of lesbians, gay and bisexual people – or hetro-sexism – the belief that the lives of heterosexual people are better or more valid.

The Council will:

- carry out our duties under the Equality Act 2010
- promote a positive image of lesbian, gay and bisexual people
- support the right of lesbian, gay and bisexual people to be open about who they are. We will do this by creating an atmosphere and environment where it is safe for them to do so and by not assuming that all staff members are heterosexual

2.7 **Age**

We know that people can face disadvantage and discrimination because of their age. This can affect people at any stage of their lives, but it can particularly affect young people and older people. This is because of age discrimination or ageism – negative beliefs based on age. This can affect people seeking employment.

The Council recognises:

- a person's age does not affect their job performance
- it is very rarely a genuine occupational requirement that job candidates are above or below a certain age

- we should not make judgements about a person's physical and mental abilities based on their age
- we should not assume that length of experience is an accurate guide to ability or performance
- that being positive about age leads to a wider range of skills and abilities in the workplace.

The Council will:

- carry out our duties under the Equality Act 2010
- seek, listen and respond to the views of people of all ages and use this information to inform our policies

2.8

Religion or Belief

We know that people face disadvantage and discrimination, including negative stereotypes and attitudes, harassment, hatred and violence, as a result of their religion, faith, belief or non-belief.

The Council will:

- carry out our duties under the Equality Act 2010
- support staff members to practice their religion or belief in accordance with a good Work Life Balance.

2.9

Gender Reassignment/ Gender Identity

We know that some people feel that their gender identity cannot be defined by their birth sex.

Gender Reassignment is the term used in the Equality Act 2010 to refer to any part of a process of transitioning to live in a different gender (regardless of whether any hormonal or surgical changes take place).

We also know that some people feel that their gender identity cannot simply be defined by the binary terms of 'man' or 'woman'. Instead they experience their gender in another way. Typically this group of people are referred to as being 'non-binary'.

This term means

"Identifying as either having a gender which is in-between or beyond the two categories 'man' and 'woman' as fluctuating between 'man' and 'woman' or as having no gender, either permanently or some of the time."

(Scottish Trans Alliance)

The umbrella term is Transgender/ Trans

We know that Transgender people face disadvantage and discrimination including negative stereotypes, victimisation, and harassment and this can affect people seeking employment.

We seek to be inclusive of all forms of gender identity and expression.

The Council will:

- carry out our duties under the Equality Act 2010
- treat our staff members of all genders with dignity and respect and ensure that their privacy will be respected.

2.10

Marriage & Civil Partnership

Marriage and Civil Partnership is defined as a formal union and social and legal contract between two individuals that unites their lives legally, economically, and emotionally..

The Council will:

- carry out our duties under the Equality Act 2010
- ensure that staff members are not discriminated against for being married or having entered a civil partnership
- ensure that our employment policies do not discriminate between those who have entered into marriage and those that have entered into a civil partnership.
- treat civil partners in the same way as married people including benefits, employment and vocational training.

2.11 **Pregnancy & Maternity**

Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. Protection against maternity discrimination is for 26 weeks after giving birth, and this includes protection against women being treated unfavourably because they are breastfeeding.

The Council will:

- carry out our duties under the Equality Act 2010
- ensure that staff members are not discriminated against when pregnant or during the period of maternity and that staff members are aware of their rights including maternity leave, paternity leave, parental leave and shared parental leave.

3 Disability Confident Scheme

3.1 Disability Confident has three levels: 'Committed', 'Employer' and 'Leader'. Each level has different requirements that increase in complexity as an organisation moves from being 'Committed' to 'Leader'

3.2 The Council currently holds the Disability Confident Accreditation Level 2 Employer status and is working towards 'Leader' Accreditation..

3.3 Commitments the Council has made under the Disability Confident Scheme are as follows:

- Ensuring that the recruitment process is fair and accessible;
- Providing reasonable adjustments to disabled people;
- Offering interviews to disabled candidates who meet the minimum criteria for the post;
- Supporting existing employees who develop a long-term illness/disability;
- Providing work experience and other opportunities to disabled people.
- Actively looking to recruit and retain disabled people;
- Working with and placing job adverts in disability news services/disability websites;
- Having the recruitment process tested by disabled people and working to remove barriers that they identify;
- Accepting job applications in a variety of formats;
- Making sure recruiting managers know how to support disabled applicants;
- Encouraging suppliers and partners to be 'Disability Confident' as well.

4 Scope

4.1 This policy applies to all those who work within or apply to work within the Council regardless of employment status. It therefore includes permanent, temporary and fixed-term staff members, members of staff on zero-hours contracts, supply or relief staff, those working within the Council on behalf of other agencies, those on secondment to

the Council, volunteers, and those on work experience or training placements. Therefore for the purpose of this policy all such persons will be termed as staff

- 4.2 This policy will apply to recruitment and selection, training, promotion, transfer, facilities, benefits, terms and conditions of service and all other employment issues.
- 4.3 This policy should be read in conjunction with the Equality, Diversity and Human Rights Guidelines (**Appendix 1**). This policy is associated to the following key policies and where applicable should be cross referenced to gain further detail:
- Use of Consultants, Agency Workers and Sole Traders
 - Attendance Management Policy and Procedure
 - Employee Code of Conduct
 - Protocol on Councillors Personal Behaviour
 - Disciplinary Procedures for Misconduct
 - Dignity and Respect in the Workplace
 - Equal Pay
 - Family Friendly
 - Flexible Working
 - Grievance
 - Investigation
 - Job Allocation
 - Leave
 - Mentally Healthy Workplace and Stress Management
 - Recruitment and Selection
 - Redeployment
 - Redundancy
 - References
 - Social Media
 - Substance Misuse
 - Temporary appointments
 - Trade Unions
 - Training and development
 - Staff Volunteering Guidance
 - Work Opportunities Scheme
 - Work Performance
 - Working Time Regulations

5 Definitions

- 5.1 The Council defines Equality as ‘the fair treatment of people regardless of their sex, gender reassignment/ gender identity, race, disability, religion, nationality, sexual orientation, age marital/ civil partnership status or pregnancy/ maternity’.

It is also about creating a fairer society where everyone has the opportunity to be all they can be. Sometimes this means providing extra help.

Equality has a basis in anti-discrimination law.

- 5.2 Diversity is defined as ‘recognising and valuing difference, where everyone is respected for who they are’

Acknowledging and managing diversity creates a society where talents are recognised and everyone is valued.

- 5.3 Human rights are defined as ‘the basic rights and freedoms to which all humans are entitled’. They ensure that people are treated fairly and with dignity and respect. (Equality & Human Rights Commission).

6 Aims of the Policy, Principles and Values

- 6.1 The aims of this policy are to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010 and less favourable treatment of other categories of worker as set out within other relevant legislation
- Advance equality of opportunity between people who share a protected characteristic (i.e. age, disability, gender reassignment/gender identity, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation) and those who do not
- Foster good relations between people who share a protected characteristic and those who do not share it. This involves tackling prejudice and building understanding
- Ensure that the organisation has due regard to the European Convention of Human Rights (ECHR) in the discharge of its functions.

- 6.2 This will be achieved by:

- Removing or minimising disadvantages suffered by people due to their protected characteristics and creating an environment in which individual differences and the contributions of all staff are recognised and valued
- Taking steps to meet the needs of people with protected characteristics where these are different from the needs of other people
- Taking steps to reduce underrepresentation of people with particular protected characteristics and increase the diversity of our workforce, both at an organisational level and within different job roles
- Taking a zero tolerance approach to intimidation, bullying, victimisation or harassment, recognising that all staff are entitled to a working environment that promotes dignity and respect for all.

6.3 Principles and Values

The following principles and values are key to the achievement of these aims:

- Equality, diversity and human rights must be at the heart of the Council; and everything it does
- All staff are required to complete mandatory elearning training on Equality and Diversity.
- Disadvantages suffered by people due to their protected characteristics will be removed or minimised in order to create an environment in which individual differences and the contributions of all staff are recognised and valued
- Steps will be taken to meet the needs of people from protected groups where these are different from the needs of other people
- Steps will be taken to reduce underrepresentation of people with particular protected characteristics and increase the diversity of our workforce, both at an organisational level and within different job roles

- A zero tolerance approach will be taken to intimidation, bullying, victimisation or harassment, recognising that all staff are entitled to a working environment that promotes dignity and respect for all
- The Council will act as an agent for change within local communities by positioning equality, diversity and human rights at the heart of local delivery plans and Community Planning Partnerships
- While this will be achieved in part by being championed at a senior level, it can only be fully achieved through all those working within the Council recognising and adhering to their own personal responsibilities in this regard, and the Council will take steps to ensure that everyone in the organisation understands their rights and responsibilities under the policy
- The Council will ensure that arrangements are in place to support staff who have equality, diversity and human rights issues
- Equality and diversity monitoring will be undertaken on a regular basis, with resulting improvement actions being identified and achieved
- Ensuring that all staff members are treated equally in pay and in terms and conditions of employment
- This policy will be subject to ongoing monitoring to ensure that it is being fairly and consistently applied and that the stated principles and values are being met. The policy will be subject to regular review in consultation with the recognised Trades Unions to ensure that it remains fit for purpose.

7 Roles and Responsibilities

7.1 Chief Executive/Strategic Leadership Team

- Ensure that equality, diversity and human rights are at the heart of the organisation and everything it does
- Act as agents for change within local communities by positioning equality, diversity and human rights at the heart of local delivery plans
- Ensure that everyone in the organisation understands what the Council's Equality, Diversity and Human Rights Policy (this policy) means for them. Practical training and positive support must be provided to all staff to ensure that they are aware of the Council's policy and of their rights and responsibilities within it.

7.2 Elected members and Equality Champion

7.2.1. Elected members will:

- Act as agents for change within local communities by positioning equality, diversity and human rights at the heart of local delivery plans
- Ensure that equality and diversity monitoring is undertaken and that resulting improvement actions are identified and achieved
- Understand and challenge appropriately the results of integrated impact assessments of policies and practices upon those with protected characteristics. This should not be an end in itself, but instead an important part of policy and decision-making, which should lead to improvements in policies and practices
- Work in partnership with the Council to ensure that they are fully engaged in all equalities training offered by the Council.

7.2.2 The Equality Champion

In addition to the above will:

- promote and drive improvement with regard to Equality and Diversity through all activities of the council, both for service delivery and employment activities

- raise awareness of Equality and Diversity issues
- show leadership of the council's Equality and Diversity duties
- promote and raise awareness of Equality and Diversity to other Members as appropriate
- help develop the council's relationships with community groups who associate with a protected characteristic, to promote understanding and inclusion.

7.3

Managers will:

- Ensure that they are fully aware of and comply with their responsibilities under the policy
- As part of the service/team induction process inform staff members of the Council's commitment to equality, diversity and human rights, and their rights and responsibilities under the policy (including the potential consequences of inappropriate behaviour) . Further ensure that all staff for whom they are responsible are also made aware of their responsibilities under, and have access to, the policy
- Ensure that they participate in training provided on the policy, and that they ensure that all staff for whom they are responsible similarly participate in training on the policy
- Ensure that they lead by example, demonstrating behaviours conducive to a culture which promotes equality, diversity and human rights, and dignity and respect
- Ensure that all staff for whom they are responsible adhere to their responsibilities, identifying and dealing with concerns which arise in this regard in a fair, consistent, and timely manner
- Ensure that they seek advice from their respective HR Business Partner or the HR Equality & Diversity Officer where necessary and appropriate, when dealing with any such issues.

7.4

Staff will:

- Ensure that they are aware of their responsibilities under the policy, and that they seek further guidance if unclear
- Take responsibility for ensuring that they participate in training provided on the policy
- Comply with such responsibilities, including demonstrating behaviours conducive to a culture which promotes equality, diversity and human rights, and dignity and respect
- Challenge or raise concerns with the appropriate manager, where they perceive others not to be demonstrating such behaviours or otherwise not complying with their responsibilities under the policy
- It is emphasised that under this policy staff have responsibility for their own behaviour and any acts of bullying, unfair discrimination, victimisation or harassment by an individual employee are unacceptable and will be viewed as serious offences in terms of the Council's disciplinary procedure.

7.5

Human Resources will:

- Develop and deliver, training on the Council policy for managers, trades union representatives and staff
- Support the process of equality and diversity monitoring, identifying and achieving resulting improvement actions, and ongoing monitoring of the application of the policy;
- Advise managers on the correct implementation of the policy
- Support staff by providing advice on the policy

- Ensure that application of the policy is monitored on an ongoing basis, to ensure that it is being fairly and consistently applied and that the stated principles and values are being met. The policy should be subject to regular review, in partnership, in order to ensure that it remains fit for purpose.

8 Equality, Diversity and Human Rights in practice

8.1

Recruitment and Selection

It is the policy of the Council to ensure that:

- All those involved at any stage in the recruitment and selection process have or have planned appropriate training in both recruitment and selection, and equality, diversity and human rights
- Where an applicant's protected characteristics are suggested in the application form or subsequent selection process, this is not used to determine the success or otherwise of the applicant
- Role profiles and recruitment profiles are not discriminatory, accurately describing the job and containing only those necessary or desirable criteria which are objectively justifiable
- Where appropriate, vacancies are advertised widely in order to select staff from as wide and diverse a pool of potential applicants as possible, with advertisements accessible to all those eligible to apply
- Advertisements are not discriminatory, and state that all applications will be considered solely on merit and that reasonable adjustments will be made for disabled people. Where a genuine occupational requirement exists which restricts applications to those with a particular protected characteristic, a statement will be included to this effect. Where there is a lack of representation from those with particular protected characteristics within the job role or the wider organisation, a statement may be included encouraging applications from such individuals
- Any recruitment agencies operating on behalf of the Council are expected to have due regard to the promotion of equal opportunities in the undertaking of their role and to demonstrate that they have equivalent policies in place
- Reasonable adjustments will be made for disabled applicants, during both the application and selection process stages. Disabled applicants who meet the essential criteria for the job and who indicate, on their application form, that they wish to participate in the Disability Confident scheme, will in all cases be short-listed for interview
- Short-listing of applicants is based only on information provided in the application form
- Selection methods are well designed, properly administered and recognised as a reliable method of predicting an applicant's performance in a particular job
- Interviews are conducted strictly on the basis of the application form, the role profile and recruitment profile, and the results of any selection tests, avoiding inappropriate or irrelevant questions
- Employment decisions are based solely on the objective application of agreed scoring methods. Where there is more than one candidate of equal merit, and one possesses a protected characteristic under-represented in the job role or wider workforce, recruiting managers are encouraged to use this as a tie-breaker, making

a decision as a proportionate means of achieving the aim of addressing disadvantage or under-representation in the workforce

- Except in the case of individuals who are barred from undertaking regulated work under the Protecting Vulnerable Groups Scheme, criminal convictions do not automatically prevent employment being offered
- A reference is only obtained, either following a decision on selection of the candidates(s) or prior to interview with the applicant's consent
- The terms on which successful candidates are offered employment are free from the taint of discrimination
- Comprehensive records are kept, in line with Data Protection law, which will allow the Council to justify each decision and the process by which it was reached, to respond to any complaints of discrimination and to enable regular monitoring to identify any significant disparities between groups of people sharing different protected characteristics. If disparities are found, the Council will investigate the possible causes in each case and take steps to remove any barriers.

8.2 During Employment

It is the policy of The Council to ensure that:

- For all staff, at all stages and in all aspects, their employment relationship with the organisation is free from discrimination, victimisation and harassment. This will be achieved through delivering the appropriate training for all staff in equality, diversity and human rights, both during induction and thereafter during the course of their employment
- The Dignity and Respect in the Workplace policy, is implemented consistently, with the commitment that inappropriate behaviour within or outwith the workplace (where still considered to be relevant to the individual's employment), including that related to a protected characteristic, will not be tolerated
- Consideration is always given to making reasonable adjustments for disabled members of staff so as to avoid their being placed at a substantial disadvantage compared to other staff. Such staff are assured that any information disclosed about a disability will be held confidentially, and only disclosed to others with the individual's consent or as reasonably required to implement the adjustment.
- Due regard is paid to the need to address pay inequality between women and men and staff members with different protected characteristics making every effort to identify where equal pay is an issue and, where appropriate, taking steps to address such issues
- All staff will have the right to make a request for flexible working and any refusal of such a request will be objectively justified and in accordance with the statutory provisions
- The policy and its associated appendices is non-discriminatory in design and applied fairly and consistently
- The Council will consult with relevant staff to understand the requirements of their religion or belief, such as religious observances, and make appropriate provision to support them in doing so, where reasonably practicable

- If a member of staff is undergoing gender reassignment, the Council will consult with them sensitively about their needs in the workplace and whether there are any reasonable and practical steps that can be taken to help them as they go through their gender reassignment process
- The Council will comply with the in providing appropriate support to those applicable
- Training and development opportunities are made known to all relevant members of staff, with selection for training (including any criteria used for selection) being free from discrimination. Furthermore, the Council will take positive action in the provision of such opportunities to remedy disadvantage, meet different needs or increase the participation of people who share a protected characteristic
- The Council will ensure that review/appraisal processes are free from discrimination, by ensuring that such processes are in line with this policy, with performance measured by transparent, objective and justifiable criteria using procedures that are consistently applied
- The Council will ensure that work is assigned to staff by managers in a fair and consistent manner
- The Council will ensure that decision-making processes in relation to displacement on organisational change grounds, subsequent redeployment decisions, and, where applicable, decisions on redundancy or voluntary severance, are non-discriminatory in design and application, and meet the requirements of the
- The Council will ensure that associated policies/guidance such as the Code of Conduct for Employees, Work Performance, Attendance Management, Dignity and Respect in the Workplace and Family Friendly Policies, (not an exhaustive list) do not discriminate against members of staff either in the way they are designed or how they are implemented in practice
- Where changes to policies and procedures are being considered, the Council will consult with its recognised trades unions as a first step towards understanding the diverse needs of members of staff
- Proper records are maintained, in line with the Data Protection law, of decisions taken in relation to individual members of staff, and the reasons for these decisions
- Regular monitoring of overall workplace figures on matters such as requests for flexible working, promotion, training and disciplinary procedures is undertaken in order to identify any significant disparities between groups of people sharing different protected characteristics. If disparities are found, the Council will investigate the possible causes in each case and take steps to remove any barriers.

9 Equal Pay

9.1 The Council is committed to ensuring equal pay for its workforce and our Equal Pay Policy complies with the legal duties under the Equality Act 2010. To ensure equal pay the Council will:

- Undertake every two years equal pay audits and provide appropriate analysis in a report format to Senior Management
- Examine existing and future pay practices for **all** staff members to ensure that they comply with any future developments in employment legislation

- Continue to seek improvements to the equal pay practices it operates by monitoring and impact assessing any developments in best practice
- Provide information to staff members on the Council's equal pay responsibilities by publishing the outcomes of pay audits within the Council's Mainstreaming Report and Equality Outcomes
- Provide appropriate training and guidance for those involved in making decisions about pay and benefits
- Carry out integrated impact assessments prior to the introduction or revision of any pay related condition of employment, either corporate or at a Service level
- Ensure equal pay developments are subject to an integrated impact assessment and that these are consistent with the Council's Equal Pay Policy
- Provide management information about the Council's workforce and analyse the findings and take any appropriate action in relation to equal pay
- Analyse and publish information on the gender pay gap and on occupational segregation relating to men and women, People who are disabled and those who are not and People who fall into a minority racial group and those who do not.

10 Employing Ex Offenders

- 10.1 The Protecting Vulnerable Groups (PVG) scheme and Disclosure checks put the onus on the Council to adopt policies that ensure information on criminal records is used in a way that protects the vulnerable, is fair and improves overall recruitment and retention processes.
- 10.2 We recognise that it is vital to involve managers, staff members and their representatives. In particular we aim to:
- Review new posts to assess whether they involve any risk
 - Ensure staff involved in recruitment are provided with guidance on the employment of ex offenders and the Rehabilitation of Offenders Act
 - Train staff involved in recruitment on training and employment programmes for the unemployed, including programmes intended specifically for ex offenders .
 - Provide all unsuccessful applicants with relevant feedback if the decision not to appoint is related to their convictions.
- 10.3 In addition to this a Protecting Vulnerable Groups (PVG) check must be carried out through Disclosure Scotland for posts which involve unsupervised contact with children or protected adults, undertaking particular duties with members of these groups (principally teaching, instructing or counselling) or working in certain places such as a school or care home.
- 10.4 Other roles, such as accountants or solicitors, require a standard Disclosure check. This must be done regardless of hours worked or other contractual conditions, and may be appropriate to other categories e.g. volunteers and work placements.
- 10.5 It should be specifically noted that a satisfactory PVG/ Disclosure must be received prior to an individual being offered a post or placement.
- 10.6 When recruiting to any post, whether or not it requires a PVG or Disclosure check, if the recruiting manager becomes aware that the applicant has previous convictions, advice must be sought from the. Director People Performance & Change. Please contact the HR Case Management Team for further advice.

11 Remedies

11.1 The Council will not tolerate behaviours that may constitute discrimination, harassment or victimisation of its staff in the course of their employment. Nor will it tolerate such behaviour by its staff whether directed against colleagues or other people with whom they come into contact during the course of their employment.

11.1.1 All staff must adhere to this policy, and a failure to do so may lead to disciplinary action.

Grievances

11.2 Any member of staff who believes that they have been treated less favourably because of their age, disability, gender reassignment/ gender identity, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation, part-time status, fixed-term contract status or membership (or non-membership) of a trade union/professional organisation is encouraged to raise the matter through the Council's Dignity and Respect at Work Policy

Dignity and Respect

11.3 If the complaint is about bullying, harassment or victimisation, then the staff member should raise the matter using the Council's **Dignity & Respect in the Workplace Policy**.

Vexatious Complaints

11.4 Where customer complaints are believed to have been made against members of staff because of their age, disability, gender reassignment/ gender identity, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation then the member of staff should speak to their line manager or a more senior manager. Such matters are dealt with through the Managing Customer Engagement Policy.

Dealing with Grievances/Harassment

11.5 It is the policy of the Council to ensure that:

- Where a complaint is received, staff are not discriminated against by the way that the organisation responds to it
- Such matters will be taken seriously, investigated promptly and not simply dismissed as 'over-sensitivity' on the part of the member of staff
- The matter will be thoroughly investigated using the appropriate policies and where an investigation recommends that a disciplinary process is appropriate, the alleged perpetrator will be given a fair hearing
- Members of staff who have raised allegations in good faith, regardless of whether or not they are upheld, and members of staff who have participated in the process, (e.g. as a witness), must not be subject to any detriment because of having done so.

12 Raising Awareness

12.1 To support the fair and consistent application of this policy, Managers will ensure that all staff understand what this policy means for them, with regard to both rights and responsibilities. In addition HR Business Partners and/ or the Equality & Diversity Officer (HR) will:

- Ensure that this policy is publicised widely using appropriate communication channels

- Work with managers to ensure that the Council's commitment to equality, diversity and human rights is included within the service/team induction sessions
- Require all staff and elected members to participate in the e-learning training on equality, diversity and human rights
- Develop and deliver additional targeted training in response to any issues identified as a need or as part of the monitoring process
- Ensure all those staff with a managerial responsibility participate in additional management training (as soon as possible on becoming a manager and from time to time thereafter) on their vital role and responsibilities under the policy, particularly in relation to how to prevent equality and diversity issues arising and on how to manage such situations where they do arise within the workplace.

13 Equality, Diversity and Human Rights Monitoring

13.1 The Council recognises that monitoring and evaluation, and subsequent action, is essential to ensure that this policy is successfully applied, is known about and works.

HR Business Partners/ HR Equality & Diversity Officer will:

- commit to monitoring information in relation to each of the protected characteristics listed under the Equality Act 2010, fulfilling the terms of the Equality Act 2010 (Specific Duties) Scotland) Regulations 2012 as well as monitoring information in relation to other categories of worker protected under legislation from less favourable treatment (**see further Appendix 1 Part 2**)
- only collect information which is required by law and can be used effectively
- ensure that all those from whom we are seeking such information are made aware of how we will use this information, how they will benefit in the long term and that this data will be gathered, stored and used in line with Data Protection law.
- information collected will be regularly collated and analysed, according to the timescales locally agreed in partnership.

14 Action Planning

14.1 By undertaking equality, diversity and human rights monitoring, the Council can:

- Establish whether this policy is effective in practice
- Analyse the effect of other policies and practices on staff with particular characteristics
- Highlight possible inequalities and investigate their underlying causes
- Set targets and timetables for reducing disparities
- Send a clear message to applicants and members of staff that equality, diversity and human rights issues are taken seriously within the organisation.

14.2 The Council will agree equality outcomes, which will be monitored and reviewed in line with legislative requirements with a plan detailing how these objectives will be met. The aim of these will be to improve equality, diversity and human rights within the organisation.

14.3 The Council will ensure that communication on progress against and achievement of the equality outcomes are published and promoted both internally and externally in accordance with legislative timescales.

15 Review of Policy

- 15.1 In line with existing practices this policy will be reviewed on a two yearly basis (or earlier if there are changes to legislation) to ensure that it remains fit for purpose to enable the Council to demonstrate adherence to its obligations in terms of Equality, Diversity and Human Rights.

Appendix 1

Equality, Diversity and Human Rights Guidelines

This document provides a summary of Equality and Human Rights legislation and the implications for staff. It has deliberately been written in an *aide-memoire* format and therefore does not seek to provide comprehensive guidance on what is a complex area.

Nevertheless, it is worthy to note that there is no qualifying period of employment for individuals bringing claims against organisations in discrimination cases. Furthermore, an individual need not necessarily be an employee in order to raise a claim, for example in the case of a job applicant.

These guidelines should be read in conjunction with the main body of this policy. Further advice is available from HR Ext 5052/5053 or askhr@scotborders.gov.uk

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Part 1 - Legal Framework

Equality Act 2010

The Act provides a legislative framework to protect the rights of individuals and advance equality of opportunity for all; to update, simplify and strengthen earlier equality legislation; and to deliver a simple, modern and accessible framework of discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

The Act covers discrimination because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These are known as the 'protected characteristics'.

The Act additionally sets out an equality duty for public sector organisations. Further specific duties are imposed on Scottish public sector organisations by the Equality Act 2010 (Specific Duties) Scotland Regulations 2012.

Further information on compliance is also set out in the statutory codes of practice on equal pay and employment which accompany the Act. These are obtainable by visiting <http://www.equalityhumanrights.com>.

Equality Act 2010 Public Sector Equality Duty

This duty requires organisations to have a 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it
- Foster good relations between people who share a relevant protected characteristic and those who do not share it. This involves tackling prejudice and building understanding.

***Due regard** means 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, and encouraging people with protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

To assist public bodies in meeting the Public Sector Equality Duty, further specific duties are established for Scottish public authorities by the **Equality Act 2010 (Specific Duties) Scotland Regulations 2012**

Under these regulations, public sector bodies are required to comply with the following duties:

- Report progress on mainstreaming the Public Sector Equality Duty
- Publish equality outcomes and report progress
- Assess and review policies and practices [equality impact assessment]
- Gather and use employee information
- Publish a statement on equal pay
- Consider award criteria and conditions in relation to public procurement
- Publish in a manner that is accessible.

The purpose is to gather and publish specific categories of data, within set deadlines, and to use the data to improve performance of the Public Sector Equality Duty.

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000

The regulations provide that a part-time worker has the right not to be treated less favourably than an employer treats a comparable full-time worker, unless such treatment can be 'objectively justified'.

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

The regulations provide protection for fixed-term employees, including the right not to be treated less favourably than comparable permanent employees because they are on a fixed-term contract, unless there are 'objectively justifiable' circumstances for doing so.

Trade Union and Labour Relations (Consolidation) Act 1992

The Act contains rights in relation to trade union membership and activities, including:

- The right not to be refused employment because an individual is, or is not, a member of a trade union
- The right not to be subjected to any detriment by any act or failure to act by their employer for the sole or main purpose of preventing or deterring them from taking part in trade union activities, or penalising them for doing so
- The right not to be dismissed for taking part, or proposing to take part, in trade union activities.

Rehabilitation of Offenders Act 1974

The Act sets out to improve the rehabilitation prospects of people who have been convicted of a criminal offence and served their sentence.

Under the Act, unless a post is excluded, individuals are only required to declare any convictions which are unspent. A conviction becomes spent after a certain period of time has passed (the 'rehabilitation period'). The length of time it takes for a conviction to become spent will depend on the nature of the conviction and the sentence. It should be noted that some convictions never become spent.

Certain posts require disclosure of some spent convictions also. These are mainly posts which involve work with children and/ or protected adults and certain other positions of responsibility. Please contact HR Shared Services for further advice.

The Human Rights Act 1998

The Human Rights Act 1998 (also known as the HRA) came into force in the United Kingdom in October 2000. It is composed of a series of sections that have the effect of codifying the protections in the European Convention on Human Rights into UK law.

All public sector bodies carrying out public functions have to comply with the Convention rights.

The Act sets out the fundamental rights and freedoms that individuals in the UK are entitled to. They include:

- Article 2 Right to life
- Article 3 Freedom from torture and inhuman or degrading treatment
- Article 4 Freedom from slavery and forced labour
- Article 5 Right to liberty and security
- Article 6 Right to a fair trial
- Article 7 No punishment without law
- Article 8 Respect for private and family life

- Article 9 Freedom of thought, belief and religion
- Article 10 Freedom of expression
- Article 11 Freedom of assembly and association
- Article 12 Right to marry
- Article 14 Protection from discrimination in respect of these rights and freedoms
- Article 1 of the first protocol Protection of Property
- Article 2 of the first protocol Right to education
- Article 3 of the first protocol Right to participate in free elections
- Article 1 Abolition of the death penalty

Further information on the HRA can be found by visiting <http://www.equalityhumanrights.com/>

Part 2 – Equality of Opportunity in practice

Raising awareness of the policy

The Council must ensure that all staff (including elected members) understand what this Equality, Diversity and Human Rights policy means for them, with regards to both rights and responsibilities. Communication of and training on the policy also helps to demonstrate that the Council is genuinely committed to preventing discrimination, harassment and victimisation, promoting equality of opportunity, valuing diversity and recognising human rights.

Communication

The Council will ensure that the policy is publicised widely using appropriate communication channels (e.g. team meetings, , intranet, website, yammer and directly to staff).

Induction

As part of the service/team induction process, managers are required to include the following,

- A clear statement on the Council's commitment to equality, diversity and human rights
- Rights and responsibilities of staff under the Council's policy (including the potential consequences of inappropriate behaviour)
- How to respond if they are subject to or witness inappropriate behaviour
- This should subsequently be followed up by participation in training as outlined below.

Training

Training on the Council's policy must be undertaken by all staff by utilising the e-learning package, particularly where the policy has been revised.

Monitoring

Monitoring and evaluation, and subsequent action, is essential as it will help to ensure that this Equality, Diversity and Human Rights policy is successfully applied, is known about and works. Information, where available, in relation to each of the protected characteristics listed under the Equality Act 2010 will be collected. The following list provides the type of data that shall be collected, monitored and evaluated.

Recruitment (including redeployment and successful and unsuccessful applicants)	Applicants for employment (internally and externally)
	Those who are successful (or not) in the short-listing process
	Those who are successful (or not) at each subsequent stage of the selection process
During employment (including those on fixed-term contracts and promoted)	Members of staff in post by job, location and grade
	Applicants for training
	Members of staff who receive training
	Time spent at a particular grade
	Members of staff who have undertaken an annual Appraisal
	Requests for flexible working
	Pay
	Occupational segregation
	Members of staff involved in grievance/dignity at work procedures
	Members of staff subject to formal procedures relating to conduct, capability or sickness absence
	Members of staff displaced as a result of organisational change
Termination of employment	Dismissals
	Retirement
	Resignation (including exit interview information)
	Termination for other reasons

Recruitment and Selection

A crucial part of the Council's Equality and Diversity policy is its recruitment and selection practices. Recruitment and selection govern access to employment and therefore other equal opportunities are meaningless if disadvantaged groups find difficulties in being appointed in the first place. The aim must always be to select the most suitable person for the job; it is therefore important that procedures are reviewed regularly and changed if they fail to meet this principle.

It is essential that selection decisions are based on criteria relevant to the job and not on the basis of preconceptions about particular groups or on the type of work they are capable of doing.

- **Recruitment Process**

The following steps will help departments to guard against unfair discrimination in recruitment

- have clear, concisely written and up-to-date role profiles and recruitment profiles. Ensure that job titles are not gender biased and are accurate

- avoid over inflated or unnecessary job criteria. Even in times of high unemployment, when it may be practicable to raise the level of qualifications demanded, they still should not exceed the real needs of the job
 - check that skill requirements are really necessary to do the job and are not a reflection of traditional practices which may be operating to the disadvantage of those protected by the Equality Act
 - ensure that methods of recruitment are fair to all potential applicants and do not effectively screen out those protected by the Equality Act. In particular the 'word of mouth' approach can be discriminatory since it will tend to perpetuate a workforce from the same sources as at present
 - ensure that all staff involved in the recruitment process are given adequate training, to reduce the risks of possible discriminatory attitudes affecting decisions and to ensure that they are conversant with the relevant provisions of the legislation.
- **Selection**

Departments should review their selection procedures to ensure objective and non discriminatory decisions are taken in the following areas:

Occupational Tests

Any selection tests or other techniques used must be an appropriate and unbiased means for assessing the skills and attributes necessary for the job. People with disabilities should be provided with appropriate aids and facilities.

Shortlisting

Candidates should be selected according to whether they possess the requirements identified. The reasons for rejection / selection should be recorded. Shortlisting carried out by more than one person reduces the possibility of bias. In some cases it may be necessary to seek further information on foreign qualifications.

Interviews

Before the interview:

Interviewers should be conversant with the Council's Equality, Diversity and Human Rights Policy. They should be provided with the role profile and recruitment profile in sufficient time to prepare for interviews. The structure of the interview should be decided in good time e.g. what standard questions will be asked of all applicants? Where necessary arrangements should be made for people with disabilities. These may include ensuring that the place of interview is accessible to any candidate with limited mobility, or that assistance is available to help them on arrival.

During the Interview:

It is recognised that interviews can be highly susceptible to interviewer bias and stereotyped perceptions. A number of cases alleging discrimination against local authorities, relating to questions at interview, have been successfully pursued at Employment Tribunals. Therefore:

- care should be taken to avoid questions which could be construed as discriminatory e.g. questions to young female applicants about marriage plans, or worse, family planning plans.
- other questions which might be considered discriminatory are:
 - Don't you think that care assistant work is more suitable for a woman?
 - What will you do if you get married before the end of your training?
 - Do you consider that women can cope with the pressure of the job?
 - Do you have children? What are their ages?

- An interviewer is entitled to discuss with the applicant any domestic or personal circumstances which might have an adverse impact on effective performance of the job, but this should be done without making any assumptions based on the sex of the applicant.
- For example, a proper question would be:
“You will occasionally be required to work until 7.00pm at rather short notice. Will you be able to do that?”

A less satisfactory approach would be to ask:

“What arrangements would you have to look after your son if you had to work late?”

No doubt the former question might lead naturally to an explanation of the matter raised in the latter, but this would not then be an intrusion into private matters.

- care should be taken to ask similar kinds of questions of all applicants regardless of their sex. If some questions are regarded as having particular significance, make sure that all candidates have the opportunity to reply fully to these questions.

After the Interview

Clear notes or records of interviews should be made and returned to HR along with the other interview documents. These should show why applicants were rejected or successful. Such information may be of vital importance in responding to an applicant who complains of discrimination but also will be useful in answering more routine enquiries.

Clear, concise and timely feedback must also be provided to all unsuccessful applicants if requested. Where applicable interviewers should use words of encouragement that explain how best candidates can improve their performance at interview or assessment centres.

- **Training and Development**

To ensure that equality of opportunity is afforded to all staff within the Council, it is recommended that service areas should ensure that:

- Training and development opportunities are made known to all relevant members of staff, with selection for training (including any criteria used for selection) free from discrimination and meet the different needs or increase the participation of people who share a protected characteristic
- Those who share a protected characteristic are being trained and developed by participating in appropriate training courses and other development activities
- no assumptions exist that those who share a protected characteristic do not want promotion
- appraisal schemes overcome any potential problems with unequal standards of appraisers.

Appendix 2

Sample Scenarios

Sarah, who is 28 and has one small child, applied for a post with a prospective employer. She was asked at the first interview stage if she intends to have any more children. Although she felt embarrassed by and uncomfortable with the question, she said that it was not her intention to have any more children. Sarah did not get the job and felt that the questions had been aimed at sifting out women of child-bearing age who might become pregnant. She later found out that two men in their 40s had been called back for second interviews.

This is direct discrimination based on Susan's sex and her age.

Please use the following links for further information:

<u>ACAS – Age</u>	<u>ACAS – Sex</u>
<u>Age UK - Age</u>	
<u>CAB - Age</u>	<u>CAB – Sex</u>
<u>EHRC – Age</u>	<u>EHRC – Sex</u>

Olivia was a teacher at a school. She is a lesbian and began regularly experiencing homophobic taunts and abuse by pupils at the school. This mainly took the form of oral abuse, including the use of words such as "dyke". These incidents were reported to the headteacher, who told her that taunts from pupils were an accepted part of the job and she had to "grin and bear it" or she was in the wrong job. The abuse continued and Olivia took sick leave suffering from stress. She never returned to work and eventually had to take ill-health retirement.

This is harassment on the grounds of sexual orientation

Please use the following links for further information:

<u>ACAS Sexual Orientation</u>	<u>CAB – Sexual Orientation</u>
<u>EHRC– Sexual Orientation</u>	<u>Stonewall Discrimination in the work place</u>

Paul is disabled and is claiming harassment against his line manager after she frequently teased and humiliated him about his disability. Richard shares an office with Paul and he too is claiming harassment, even though he is not disabled, as the manager's behaviour has also created an offensive environment for him.
This is disability discrimination both direct and through association.

Henry is a 62-year-old factory worker and has developed arthritis from repetitive work in a factory, which meant that he had a higher-than-average level of absence. His company had to cut costs and announced that it would have to make redundancies. His manager made an off-the-cuff remark to him immediately after the announcement that it would make sense for him to be made redundant as he was due to retire in three years and he received a higher salary than most of his colleagues. Henry was placed in a redundancy pool with two other workers aged 55 and 58. Henry received the lowest score in the redundancy selection procedure and was made redundant.

This is discrimination due to Henry's age and disability.

Please use the following links for further information:

<u>ACAS - Disability</u>	<u>CAB – Disability</u>
<u>DirectGov - Disability</u>	<u>EHRC – Disability</u>

Emma is White British and works in an office where the majority of her colleagues make racist jokes. Emma feels uncomfortable about this and does not join in with her colleagues. Emma has brought this to the attention of her manager, who fails to see the harm in this when there is a Black and Minority Ethnic (BME) member of staff who also joins in with these joking sessions. The manager believes that because Emma is not BME she has no grounds to make a complaint when jokes of this nature are being told. This is not true - if Emma finds these jokes offensive and they make her feel uncomfortable then she can make a complaint on the grounds of harassment.

Please use the following links for further information:

<u>ACAS - Race</u>	<u>CAB – Race</u>
<u>EHRC – Race</u>	

Aisha is a Pakistani Muslim who was employed as a roads operative. She wears a headscarf covering her head and neck in accordance with her religious beliefs. The employer introduced a new dress code policy, which prompted her manager to tell her that she could not wear her headscarf at work because of health and safety concerns. Aisha refused to do so and was suspended. She was later dismissed.

This is indirect discrimination on the grounds of religion.

A member of staff is a practising Methodist. Some colleagues make mocking comments about people who believe in Christianity in general and who practice Methodism in particular. This is harassment on the grounds of belief

Please use the following links for further information:

<u>ACAS – Religion or Belief</u>	<u>CAB Religion or Belief</u>
<u>EHRC - Religion or Belief</u>	

Gemma is 12 weeks pregnant and works full time. An opportunity for promotion has arisen and Gemma applies for the new post and is short listed for interview. Her manager informs her 2 days after the interview that she has been unsuccessful for the post. Gemma requests feedback on her interview to find out where she needs to improve. The manager explains that she would have been the perfect candidate, but due to her pregnancy and subsequent maternity leave it was easier to give the post to a candidate that was not about to leave the organisation for a minimum of 6 months. Gemma has been directly discriminated against because of her pregnancy.

Please use the following links for further information:

<u>ACAS – Pregnancy/Maternity</u>	<u>CAB – Pregnancy/Maternity</u>
<u>EHRC – Pregnancy/Maternity</u>	

Louise is transgender and is legally recognised as a female. She has started working at a new organisation. Louise is planning to undergo surgical treatment to complete her gender reassignment. After a week of working at the organisation Louise is asked by her manager to stop using the female toilets as there have been complaints made. Louise explains that her gender identity is that of a female and that it would be inappropriate for her to use any toilets other than the female toilets. Her manager advises her to use the accessible toilet until she has undergone surgical treatment as her colleagues do not want to share the facilities with her. Although an alternative has been provided, Louise is being discriminated against because of gender reassignment.

Please use the following links for further information:

<u>ACAS – Gender Reassignment</u>	<u>CAB – Gender Reassignment</u>
<u>EHRC – Gender Reassignment</u>	<u>Scottish Trans Alliance</u>
<u>LGBT Youth Scotland</u>	

Craig has recently entered into a civil partnership. Craig's employer provides benefits of a private health care service to employees and this benefit is also available to spouses of any employees. Craig enquires about registering his partner to use this health care service and is told that he is unable to do this as they are not married and that the offer doesn't extend to employees in a Civil Partnership. Craig is being discriminated against because he is in a civil partnership.

Please use the following links for further information:

<u>ACAS – Marriage and Civil Partnership</u>	<u>CAB – Marriage and Civil Partnership</u>
	<u>EHRC – Marriage and Civil Partnership</u>

Key:

ACAS - Advisory, Conciliation and Arbitration Service

Scottish Trans Alliance

CAB – Citizen's Advice Bureau

LGBT Youth Scotland

EHRC – Equality & Human Rights Commission