

Equal Opportunities Policy Statement and Equality Act 2010 guidance

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1.0 Equality Statement

Waltham Forest Borough Council is committed to;

- Promoting equal opportunity for all
- Opposing all forms of discrimination, intolerance and disadvantage by reducing inequalities that limit people's life chances
- Ensuring our workforce reflects the diverse communities of Waltham Forest at all levels
- Providing inclusive, accessible and excellent services to all

2.0 Equal Opportunities

In Waltham Forest we recognise the impact that the Council activities can have on the quality of life of the people and communities that we serve. It's our role (in partnership with others) to protect the environment; improve public health; support the vulnerable; educate for life; improve the quality of homes people live in; develop the economy of the area; promote and foster choice and democracy.

What we do can make a real difference to the lives of the people that we serve. We are determined to be a modern Council, working with the community for the community – and equality of opportunity is at the heart of our thinking and effort.

Equal opportunity in service delivery means that we recognise the different and varied needs of the individuals and communities that we serve. We aim to meet these needs in a fair, objective and open way.

Our aim is to enable all our employees to make their distinctive contributions to the service we provide for the benefit of the people of Waltham Forest.

Equal opportunity in employment means offering genuine equivalent treatment to our staff and job applicants across our employment and recruitment practices.

The Council is committed to meeting its 4 equality objectives contained within the Waltham Forest Council Equality Plan 2015/2018:

- continue to promote and celebrate a cohesive borough ensuring that our community gets on well together
- promote the opportunities for all members of our community to benefit from local regeneration and growth
- use greater insight about our community to shape service delivery, including better understanding and managing the impact on protected groups
- advance the equality of opportunity for all staff, by having a diverse workforce that reflects the community it serves

Actions to deliver these equality objectives are included in our key strategies. We have set targets based on relevant performance measures which will be included in the Council's performance reports.

The Council is committed to developing a working culture that is fair and inclusive. Sadly, prejudice, whether conscious or unconscious continues to exist within today's society. However, we must not underestimate the power that positive influences can have within the workplace which can promote equality of opportunity in organisations, institutions and for individuals.

We believe that a commitment toward equality and diversity is right for society, right for the Council, right for staff, right for customers, and right for our community as a

whole. We will regularly review the effectiveness of our employment practices to ensure that they are appropriate and fair for all. We will encourage our staff and partners to welcome diversity, respect each person's individuality and value their creativity. We expect our managers to champion our values, challenge prejudice and be an example of appropriate and positive behaviour.

3.0 The Equality Act 2010

This following guidance covers the provisions of the Equality Act 2010 and ensures consistency in what we need to do to continue to make our workplace a fair environment and to comply with the law. The Public Sector Equality Duty states that we must undertake the following:

- (1) *A public authority must, in the exercise of its functions, have due regard to the need to—*
 - (a) *eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
 - (b) *advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
 - (c) *foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*
- (2) *A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).*
- (3) *Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—*
 - (a) *remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic*
 - (b) *take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it*
 - (c) *encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low*
- (4) *The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities*
- (5) *Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—*
 - (a) *tackle prejudice, and*
 - (b) *promote understanding*
- (6) *Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.*

The Equality Act covers the age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. These are now called 'protected characteristics'.

4.0 Types of discrimination

The Equality Act 2010 provides the following definitions:

4.1 Direct discrimination

Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (please refer to 4.2, perceptive discrimination), or because they associate with someone who has a protected characteristic.

4.2 Associative discrimination

This previously applied to race, religion or belief and sexual orientation but has been extended to cover age, disability, gender reassignment and sex. This is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

4.3 Perceptive discrimination

This is previously applied to age, race, religion or belief and sexual orientation. This was extended to cover disability, gender reassignment and sex. This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic.

4.4 Indirect discrimination

This applies to age, race, religion or belief, sex, sexual orientation and marriage and civil partnership but the Equality Act 2010 was extended to cover disability and gender reassignment.

Indirect discrimination can occur if we have a condition, rule, policy or even a practice that applies to everyone but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if it can be shown that we have acted reasonably in managing our business, i.e that it is 'a proportionate means of achieving a legitimate aim'. A *legitimate aim* might be any lawful decision we make in running the Council. If there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful.

Being proportionate means being fair and reasonable, including showing that we have looked at 'less discriminatory' alternatives to any decision we have made.

4.5 Harassment

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

Harassment applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership. Employees are able to complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves.

Employees are also protected from harassment because of perception and association.

4.6 Third Party harassment

This previously applied to sex legislation but was extended to cover age, disability, gender reassignment, race, religion or belief and sexual orientation. The Equality Act

makes the Council potentially liable for harassment of our employees by people (third parties) who are not employees of the Council, such as customers or clients. We will only be liable when harassment has occurred on at least two previous occasions, and we are aware that it has taken place, and we have not taken reasonable steps to prevent it from happening again.

4.7 Victimisation

Victimisation occurs when an employee is treated badly because they have made or supported a complaint or raised a grievance under the Equality Act; or because they are suspected of doing so. An employee is not protected from victimisation, if they have maliciously made or supported an untrue complaint.

There is no need to compare treatment of a complainant with that of a person who has not made or supported a complaint under the Act.

5.0 The Protected Characteristics

The following outlines the key points regarding the protected characteristics under the Equality Act 2010:

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

5.1 Age

The Act protects people of all ages. However, different treatment because of age is not unlawful direct or indirect discrimination if we can justify it, for example, if the Council can demonstrate that it is a proportionate means of meeting a legitimate aim.

5.2 Disability

The Equality Act 2010 defines disability as 'a physical or mental impairment which has substantial and long-term negative effect on a person's ability to normal daily activities'.

The Act puts a duty on the Council, as an employer, to make reasonable adjustments for our staff to help them overcome disadvantage resulting from a disability. Please refer to the Council's Disability Equality Guidance [here](#).

The Act includes protection from discrimination arising from disability.

This states that it is discrimination to treat a disabled person unfavourably because of something connected with their disability (for example, refusal to offer someone a post because they have dyslexia without identifying whether s/he will be able to undertake duties with the aid of a reasonable adjustment such as the provision of assistive technology. This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know, that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is a proportionate means of achieving a legitimate aim. Additionally, indirect discrimination covers disabled people. This means that a job applicant or employee could claim that a particular rule or requirement that we may

have in place disadvantages people with the same disability. Unless we could justify this, it would be unlawful.

The Act also includes a provision which makes it unlawful, except in certain circumstances, for employers to ask about a candidate's health before offering them work.

All information submitted on the Council's recruitment application, Monitoring Disability section will be assessed to see if the applicant has met the essential **minimum** requirements of the post.

The Council has also has its Disability Confident Scheme accreditation. As part of this accreditation the Council applies the Job Interview Guarantee scheme which means that all applicants who declare a disability who meet the **minimum** requirements for the post will be interviewed.

5.3 Gender reassignment

The Act provides protection for transsexual people. A transsexual person is someone who proposes to, starts or has completed a process to change their gender. The Act does not require a person to be under medical supervision to be protected.–

Transgender people such as cross dressers, who are not transsexual because they do not intend to live permanently in the gender opposite to their birth sex, are not protected by the Act.

It is 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 absent because they were ill or injured. Medical procedures for gender reassignment such as hormone treatment must not be treated as a 'lifestyle' choice.

Please refer to the Council's [Transgender Policy](#) for more information.

5.4 Marriage and civil partnership

The Act protects employees who are married or in a civil partnership against discrimination as follows:

- Same-sex couples who register as civil partners or who marry have mostly the same employment rights as married opposite-sex couples.
- The Equality Act protects employees who are in a civil partnership or marriage against discrimination.
- Recruitment and selection policies must not discriminate on the grounds of civil partnerships, marriage or sexual orientation.

5.5 Pregnancy and maternity

A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and any statutory maternity leave to which she is entitled. During this period, pregnancy and maternity discrimination cannot be treated as sex discrimination.

The Council must not take into account an employee's period of absence due to pregnancy-related illness when making a decision about her employment.

5.6 Race

For the purposes of the Act 'race' includes colour, nationality and ethnic or national origins. A racial group can be made up of two or more different racial groups (for example Black Britons).

5.7 Religion or belief

In the Equality Act, religion includes any religion. It also includes a lack of religion, in other words employees or jobseekers are protected if they do not follow a certain religion or have no religion at all. Additionally, a religion must have a clear structure and belief system. Belief means any religious or philosophical belief or a lack of such belief.

To be protected, a belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour. Denominations or sects within a religion can be considered a protected religion or religious belief. Humanism is a protected philosophical belief but political beliefs would not be protected.

Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief.

5.8 Sex

Both men and women are protected under the Act. The Council will promote and report on its obligations under the [gender pay gap reporting regulations](#). Please refer to London Borough of Waltham Forest [Gender Pay Gap](#) for further details.

5.9 Sexual orientation

The Act protects bisexual, gay, heterosexual and lesbian people.

6.0 Equality Act 2010 - Positive action

The Equality Act allows the Council to take positive action if we think that employees or job applicants who share a particular protected characteristic suffer a disadvantage connected to that characteristic, or if their participation in an activity is disproportionately low.

6.1 Pre-employment health-related checks

The Equality Act 2010 limits the circumstances when the Council can ask health-related questions before we have offered the individual a job. Up to this point, the Council can only ask health-related questions to help us to:

- decide whether we need to make any reasonable adjustments for the person to the selection process
- decide whether an applicant can carry out a function that is essential ('intrinsic') to the job
- monitor diversity among people making applications for jobs
- take positive action to assist disabled people
- be assured that a candidate has the disability where the job genuinely requires the jobholder to have a disability

A jobseeker cannot take the Council to an Employment Tribunal if they think we are acting unlawfully by asking questions that are prohibited, though they can complain to the Equality and Human Rights Commission.

Once a person has been offered the post after the interview process has been completed, whether this is an unconditional or conditional job offer, the Council are then permitted to ask appropriate health-related questions.

6.2 Employment tribunal powers

An Employment tribunal can make recommendations that an Organisation takes steps to eliminate or reduce the effect of discrimination on other employees, not only on the claimant. For example, the tribunal might specify that an employer needs to

train all staff about the Organisation's bullying and harassment policy. This power does not apply to equal pay cases.

6.3 Equal Pay – direct discrimination

The Equality Act states that in most circumstances a challenge to pay inequality and other contractual terms and conditions has to be made by comparison with a real person of the opposite sex in the same employment.

The Equality Act allows a claim of direct pay discrimination to be made, even if no real person comparator can be found.

This means that a claimant who can show evidence that they would have received better remuneration from their employer if they were of a different sex may have a claim, even if there is no-one of the opposite sex doing equal work in the organisation. This would be a claim under sex discrimination.

6.4 Pay secrecy

The Act makes it unlawful for an employer to prevent or restrict their employees from having a discussion to establish, if differences in pay exist that are related to protected characteristics. It also makes terms of the contract of employment that require pay secrecy unenforceable because of these discussions. An employer can require their employees to keep pay rates confidential from some people outside the workplace, for example a competitor organisation.