

# HR & OD POLICIES

human resources and organisational development



## Equality Guidance

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# 1. INTRODUCTION

Aberdeenshire Council recognises the diverse culture present throughout our area. As an employer we value this diversity and strive to employ a workforce that reflects the community we serve.

Tackling discrimination and inequality helps to ensure we draw from the widest pool of talent, attract the best candidates, retain the best people and meet the needs of our customers.

This guidance is intended to provide further information, examples of common concepts and key legislation related to equalities.

## Legislation

Our commitment to equality is supported by the Public Sector Equality Duty, which forms part of the Equality Act 2010. In order to comply with this we are required to give due regard or consciously consider the following needs:

1. Advance equality of opportunity between people who share a relevant Protected Characteristic <sup>(1)</sup> and those who do not share it;

which involves:

- Removing or minimising disadvantages suffered by persons due to a shared protected characteristic.
- Taking steps to meet the needs of people sharing a protected characteristic which differ from the needs of other people.
- Encouraging people who share a protected characteristic to participate in public life, or any other activity in which their participation is disproportionately low.

2. Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act;

3. Foster good relations between people who share a relevant protected characteristic and those who do not share it.

These three requirements apply to the majority of the protected characteristics, with the exception of marriage and civil partnership – where only the requirement to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010 applies.

## (1) Protected Characteristics/Groups

The Equality Act 2010 protects from discrimination on the basis of protected characteristics. The protected characteristics are:

- Age
- Disability
- Sex (Gender)
- Gender Reassignment
- Marriage & Civil Partnership
- Pregnancy & Maternity
- Race
- Religion or Beliefs
- Sexual Orientation

## Human Rights

Acts constituting unlawful discrimination may infringe the victim's Human Rights.

The Human Rights Act 1998 came into force in the United Kingdom in October 2000, making Human Rights contained in the European Convention on Human Rights enforceable under UK law. The Act applies to public authorities, such as the Council; who are required to comply with the relevant rights and freedoms, which may only be restricted or denied in accordance with other laws.

Human Rights are based on core principles like dignity, fairness, equality, respect and autonomy.

The fundamental rights and freedoms that individuals in the UK have access to, as set out in the Act, include:

- Freedom from slavery and forced labour
- Freedom from torture and inhuman or degrading treatment

- Right to a fair trial
- No punishment without law
- Freedom of thought, belief and religion
- Freedom of expression
- Freedom of assembly and association
- Protection from discrimination in respect of these these rights and freedoms

Discrimination in the application of the Act is prohibited; the rights and freedoms set out apply to all.

A [Respecting Diversity](#) course is available via Aldo which aims to help us reflect on our attitudes towards others, give us an increased understanding of the challenges facing people from different groups and opportunity to think how we might respond to this.

## Types of Discrimination

### Direct Discrimination

Consists of treating a person less favourably because of a protected characteristic they have or are thought to have. Only in very limited cases can employment decisions be lawfully made on the basis of a protected characteristic (see 'genuine occupational qualification' below).

Direct Discrimination also covers:

- **Associative Discrimination**  
This is direct discrimination against someone because they associate with another person who possesses one or more protected characteristics.
- **Perceptive Discrimination**  
This is direct discrimination against an individual because others think they possess one or more protected characteristics. It applies even if the person does not actually possess that characteristic.

Instructing or pressurising another person to unlawfully discriminate, or to knowingly assist them to do so, is unlawful.

Any employee subject to such an instruction or pressure should contact a member of HR&OD Service and/or their [TU representative](#).

## Indirect Discrimination

Occurs when a person is disadvantaged because they cannot comply with an unjustifiable condition, provision, criterion or practice which, although applied equally, has a disproportionately adverse effect on the ability of individuals to comply due to their protected characteristic.

Only in a minority of cases can indirect discrimination be justified by showing that there is an objective business need for the requirement, i.e. that it is a proportionate means of achieving a legitimate aim.

### **Please Note:**

In general, the motive of a person who unlawfully discriminates is irrelevant. Good intentions are not enough to make an act lawful.

## Harassment

Unwanted conduct which is perpetrated on grounds of a protected characteristic and which affects the victim's dignity or creates an intimidating, hostile or offensive working environment for them, constitutes harassment. Harassment can include physical, verbal or non-verbal behaviours, including physical contact from touching through to violence, coercion, comments, threats, jokes, criticism, ridicule, gestures, pictures, setting unreasonable targets or standards, intrusion or isolation.

It is important to recognise individual differences, and that

- When conduct is unwanted it can constitute harassment
- Each person has a different view of what is acceptable, and from whom
- An individual's behaviour can constitute harassment even if this is not their intention.

If a manager has reason to believe that harassment is occurring, they have an obligation to investigate and to take action if necessary. There is no need for a formal complaint to have been made and the harasser need not be a Council employee. If necessary this should be addressed under the [Grievance Policy](#) or the [Disciplinary Policy](#), which both cover harassment on any grounds - not only those which constitute unlawful discrimination.

Procedures and support, available when raising any concerns of bullying and harassment in the workplace, can be found within the [Bullying and Harassment Guidance](#). HR&OD may also be contacted directly for advice.

## **Victimisation**

A person may not be treated less favourably because they have (or is believed to have) taken action regarding unlawful discrimination based on one or more protected characteristics. Taking action includes making an allegation, bringing a claim, or giving evidence in support of another person's claim. It is also unlawful to treat a person less favourably because of knowledge or belief that they will take such action.

## **2. AGE**

The Equality Act 2010 provides protection against discrimination on the basis of age in the fields of employment and vocational training to current, prospective and ex-employees.

### **Exceptions and Exemptions**

There are exceptions and exemptions from the age regulations:

- Pay and other employment benefits based on length of service. For example, holiday entitlement benefits of five years or less.
- Pay related to the national minimum wage. Nothing in the regulations will alter the provisions of the National Minimum Wage.
- Acts under statutory authority. Age criteria as used in legislation, to qualify for various licenses.
- Enhanced Redundancy Payments.
- Minimum age of 13 for an employee within Aberdeenshire Council (various restrictions apply).



## Default Retirement Age

The Default Retirement Age was removed on 01 October 2011 therefore it is no longer necessary that an employee retires at 65. For more information on retirement and pensions please refer to the [Retirement Policy](#).

For examples of age discrimination please refer to the [Discrimination Examples](#) which can be found in the Resource Pack.

## 3. DISABILITY

The Equality Act 2010 states that a disabled person is someone who has a physical or mental impairment which has an adverse effect on their ability to carry out normal day-to-day activities. The effect must be substantial and long-term (that is lasting or likely to last for more than 12 months, or for the rest of the life of the person concerned). Physical, sensory and hidden impairments can all constitute disabilities. The definition is much wider than many expect and includes impairments such as:

- Mental health conditions
- Learning difficulties e.g. dyslexia, dyspraxia
- Significant mobility difficulties
- Respiratory conditions e.g. asthma
- Cardiovascular diseases e.g. heart disease
- Multiple Sclerosis, epilepsy
- Cancer, HIV
- Hearing or sight impairments

Some conditions are specifically excluded from the definition of disability. These include addiction to nicotine, alcohol, or any other substance (unless originally caused by medical treatment). The [Alcohol and Drugs Misuse Policy](#) highlights support available for employees with this type of addiction.

## Reasonable Adjustments

The Council has a duty to make 'reasonable adjustments' which are amendments to working arrangements, or removal of any physical features of the workplace, which

put a disabled person at a substantial disadvantage. Failure to make reasonable adjustments when they are required would amount to unlawful discrimination.

Reasonable adjustments required are determined on a case-by-case basis and may include (but are not restricted to):

- making alterations to premises,
- modifying hours,
- amending duties and procedures,
- arranging training,
- acquiring or modifying equipment, and
- redeployment.

Whether a step is reasonable in a given situation will depend on issues such as its efficacy in resolving the disadvantage to the disabled person, practicability, costs, associated disruption to business, and the resources available. Managers can discuss the implementation of adjustments with a member of HR&OD.

Additional advice and possible funding towards the provision of practical support to help overcome work related obstacles resulting from a disability may be obtained from [Access to Work](#) (a scheme available through Jobcentre Plus). It would be best practice to discuss this with your line manager in the first instance, and a member of HR&OD if required.

For examples of disability discrimination please refer to the [Discrimination Examples](#).

## 4. SEX (GENDER)

The Equality Act 2010 provides protection against discrimination on the basis of gender in the fields of employment and vocational training to current, prospective and previous employees.

### Male/Female

All terms and conditions of employment, including the application of a provision, criterion or practice are required to apply to men and women equally. If it is found that a condition of employment puts one gender at a disadvantage compared to the

other (and cannot be demonstrated as a proportionate means of achieving a legitimate aim), this would amount to gender discrimination.

Under the Gender Recognition Act 2004 a person may legally change their gender. Where a full gender recognition certificate is issued to a person, the person's acquired gender will be legally recognised for all purposes, i.e. they must be treated as a member of that gender. This will include claims of gender discrimination.

## Transgender

Is an umbrella term which includes:

### **Cross Dressing People**

Some people cross dress occasionally or more regularly, for emotional satisfaction or just because they feel more comfortable doing so, but are generally happy with their birth gender and have no wish to permanently alter the physical characteristics of their bodies.

### **Transgender Women (male-to-female)**

Someone that had been labelled male at birth but has a female gender identity and therefore transitions to live as a woman.

### **Transgender Men (female-to-male)**

Someone that had been labelled female at birth but has a male gender identity and therefore transitions to live as a man.

### **Non-binary Gender People**

Some people may not feel comfortable thinking of themselves as simply either male or female. Some may identify their gender midway between male and female, while others may feel mainly male but not 100% male (or vice-versa not feel 100% female). Alternatively, they may reject defining their gender in terms of male and female in any case.

### **Intersex People**

Sometimes when an individual is born their external genitals, their internal reproductive system or their chromosomes are in between what is considered clearly male or female. People born with these kinds of variations are often referred to as intersex people.

Transgender people, such as cross dressers, who do not intend to live permanently in the gender opposite to their birth sex, are not protected by the Equality Act 2010. However, an individual subject to bullying or harassment would have the option of taking informal or formal action as a means of resolving the problem through the grievance procedures outlined within the [Grievance Policy](#).

## 5. GENDER REASSIGNMENT

The Equality Act 2010 provides protection for transgender people. A transgender person is someone who proposes to, starts or has completed a process to change his or her gender. A person does not have to be under medical supervision to be protected – so a woman who decides to live permanently as a man but does not undergo any medical procedures would be covered.

It is discrimination to treat transgender people less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would have been treated if they were absent due to illness or injury.

Employees undergoing gender reassignment must be dealt with sensitively.

If an employee is considering undergoing, are undergoing or have undergone gender reassignment and wish to discuss the effect this may have on their work environment they should speak to their line manager or contact a member of HR&OD.

For examples of gender discrimination please refer to the [Discrimination Examples](#).

## 6. MARRIAGE AND CIVIL PARTNERSHIP

Employees who are married or in a civil partnership are protected against any form of discrimination under the Equality Act 2010.

For examples of discrimination related to marriage and civil partnership please refer to the [Discrimination Examples](#).

## 7. PREGNANCY AND MATERNITY/PATERNITY

Treating a woman less favourably in connection with her pregnancy counts as sex discrimination, although it is permissible to offer provisions such as maternity leave.

For examples of discrimination related to pregnancy, maternity leave and paternity leave please refer to the [Discrimination Examples](#).

## 8. RACE

Prospective, current and previous employees will not be discriminated against on the basis of race. The Equality Act 2010 defines 'race' as colour, nationality, and ethnic or national origins including gypsies/travellers.

For examples of race discrimination please refer to the [Discrimination Examples](#).

## 9. RELIGION OR BELIEF

In the Equality Act, religion includes any religion, including the lack of one. Employees and applicants are protected if they follow any religion, do not follow a certain religion or have no religion at all.

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

For examples of religious discrimination please refer to the [Discrimination Examples](#).

## 10. SEXUAL ORIENTATION

The Equality Act 2010 prohibits discrimination of any form on the grounds of a person's actual or perceived sexual orientation. The regulations give equal protection to gay, straight and bisexual people.

For examples of sexual orientation discrimination please refer to the [Discrimination Examples](#).

## 11. FURTHER POINTS TO NOTE

### Part Time Workers

The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 specify that part-time workers must be offered the same terms and conditions of employment (except for hours to be worked) and receive treatment comparable with full time workers, including:

- pay rates (including sick pay, maternity, paternity and adoption leave and pay)
- pension opportunities and benefits
- holidays
- training and career development
- selection for promotion and transfer, or for redundancy
- opportunities for career breaks

It is however appropriate to apply a 'pro rata' principle, (e.g. to pay and holiday entitlements), and to pay a part time employee at an un-enhanced rate for additional hours until they've worked beyond the normal hours of a full-time worker.

## Fixed Term Employees

Fixed term employees are those whose contracts are expected to terminate after a set period, on completion of a particular task, or on the occurrence or non-occurrence of a specific event.

Employees temporarily covering permanent posts (e.g. providing maternity leave or sickness cover), and those employed in temporary posts (e.g. seasonal employees, those employed for a specific period or project only) are fixed term employees. [agency workers](#), and [apprentices](#) or students on a work placement of one year or less as part of a higher education course, do not count as fixed term employees.

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, detail important rights that have an impact on the use of fixed term and temporary contracts, which include:

- Fixed term employees must not be treated less favourably than comparable permanent employees on grounds of their temporary status, and must be offered the same terms and conditions of employment (except for length of contract), unless there is an objectively justifiable reason.
- Any period of continuous employment under a fixed-term contract from 10 July 2002 will be taken into account when calculating continuous employment.
- The use of successive fixed term contracts is limited to no more than 4 years, after which the contract should become permanent. The only exception would be due to an objectively justified reason.

- The right to be informed and have access to information regarding permanent employment opportunities within the organisation.

Teachers are eligible to be offered a permanent post, either by being transferred to the post to which they were appointed on a temporary basis or they will be offered another available permanent vacancy in accordance with the LNCT agreement.

Further detail for local government employees can be found with [Fixed Term Contracts](#) guidance.

Further details relating to fixed term contracts for teachers and associated professionals can be found within the LNCT agreement for the use of Fixed Term Temporary Contracts, for Teaching Staff and Transfer of Teaching Staff on Temporary Contracts to Permanency ([EL&L Circular ST2 043](#)), which should be read in conjunction with appendix 2.8 and 2.8A of the [SNCT Handbook of Conditions of Service](#).

## Trade Union Membership

Employees have a free choice as to whether they wish to belong to a trade union, and may be a member of any union they choose.

The Trade Union and Labour Relations (Consolidation) Act prohibits discrimination on grounds related to union membership:

- A person's membership or non-membership of a trade union
- A person's unwillingness to accept a requirement to become, to cease to be, to remain or not to become a member of a trade union
- A person's unwillingness to make payments or suffer deductions in lieu of being a union member.
- A person may not be refused employment on grounds related to their union membership. 'Refusing employment' includes refusing to consider an application, refusing to offer employment (or withdrawing an offer), offering a post on unreasonable terms, or causing a person to cease to pursue their application.

Job adverts must not indicate that availability of employment is related to union membership. An employee may not be subjected to a detriment for the purpose of influencing or penalising their union membership, or participation in appropriate union activities. Neither may they be selected for redundancy or dismissed on grounds related to union membership or participation in appropriate union activities.

For more information on the recognised TUs for collective bargaining purposes by Aberdeenshire Council please refer to the [Trade Union Recognition, Consultation and Negotiation Policy](#).

## 12. RECRUITMENT AND SELECTION

No aspect of the recruitment and selection process should be made which would be discriminatory or indicate a bias towards any protected characteristic. This is vitally important when preparing the job description, person specification, advertisement and interview questions. The recruitment process undertaken must follow the procedures and requirements as indicated in Aberdeenshire Council's [Recruitment and Selection Policy](#).

When qualifications are required for a position, the vacancy documentation will ensure that the qualifications required are not disadvantaging anyone of a specific age.

The phrase 'or equivalent' will be added in each case. Aberdeenshire Council will not ask for a certain number of years experience as this may also be deemed as discriminatory under the terms of the age regulations.

Any medical questionnaires, risk assessments or tests in relation to the recruitment process will only comply with the regulations if they require to be undertaken by all candidates and not any particular candidate because of a protected characteristic. Health questionnaires will only be issued once a job offer has been made, other than in the restricted circumstances allowed under the Equality Act 2010.

### Genuine Occupational Requirement

In very limited circumstances an employer may show that an occupational requirement applies to a post, whereby a job is required to be undertaken by a person with a protected characteristic. It must be shown that the requirement to discriminate is a 'proportionate means of achieving a legitimate aim'.

When deciding if an occupational requirement applies it is necessary to consider the nature of the work and the context in which it is carried out.

**For example:**

- When there is a requirement of familiarity with the language, culture, customs and sensitivity to the needs of a racial group, which can most effectively be



provided by a person of that racial group - race may be a genuine occupational qualification in certain circumstances.

- When there is a requirement for a male care assistant whose job would involve helping men dress or use the toilet - gender may be a genuine occupational qualification.

It should also be noted that where an occupational requirement applies to only a proportion of the duties for a job, the exception may not be valid if others with the required protected characteristic could undertake them, if the work were rearranged. Where an occupational requirement does apply, it must be stated on the advertisement and job details.

Advice should be obtained from the Recruitment Team within the HR&OD Service before access to any post is restricted on the above grounds.

## Positive Action

Positive discrimination such as lowering qualifying criteria for certain groups to give them an advantage is prohibited, however, positive action, which is preventing or compensating for a disadvantage is permitted. For example using directed advertising to attract job applicants from under-represented groups is 'positive action'. However, the best person for the job must then be selected regardless of background – to select a weaker applicant because they belong to an under-represented group would be positive discrimination.

Advice must be sought from the Recruitment Team within the HR&OD Service before taking positive action.

## Training

Any training and development opportunities should be made available to all employees. Any training requests should be treated equally and must not be refused on the basis of any protected characteristics.

## Rehabilitation of Offenders

The Rehabilitation of Offenders Act 1974 allows certain criminal convictions to be considered 'spent' after a set length of time (known as the 'rehabilitation period'). The rehabilitation period varies with the nature and number of an individual's conviction(s), and only certain convictions can ever become spent.

In general, spent convictions must be ignored in recruitment and selection; it is unlawful to discriminate against a candidate on the basis of a spent conviction. If an individual is asked whether they have a criminal record, they are entitled to answer 'no' if the convictions are spent.

The foregoing applies unless the person is applying for a post that is 'exempt' under relevant legislation, such as posts that involve regulated work with adults or regulated work with children. In such cases spent convictions must be disclosed, relevant convictions may be taken into account when deciding whether to offer employment, and if an individual is found to have failed to disclose a spent conviction when required, this can be grounds for dismissal.

Information on the Protection of Vulnerable Groups Scheme and Rehabilitation of Offenders is also included in the [Criminal Record Checks for Employment Policy](#).

Further guidance can be sought from the Recruitment Team within the HR&OD Service.

### 13. WORKFORCE MONITORING

To help support an inclusive workplace, where diverse skills, views and backgrounds are acknowledged and valued, it is important that we collect, store and analyse data relating to our workforce.

This information can help to highlight any inequalities that may exist - the underlying cause of which may be investigated to remove any unfairness or disadvantage - thereby helping to ensure our equality and human resources policies and practices are as effective as possible.

Results obtained from monitoring the workforce are published within the [Equalities Mainstreaming Report](#) which is updated every two years.

Further information can be found within the [Workforce Monitoring Factsheet](#).

For further advice and guidance on any of the above please contact [HR&OD](#).

# Equality

## Index of Documents

### Guidance

<b>Revision Date</b>	<b>Previous Revision Date</b>	<b>Summary of Changes</b>
15-08-2011	-	Creation of all Documents
23-05-2014	15-08-2011	Updates to third party harassment and revision of wording
30-06-2015	23-05-2014	Format update
19-10-2018	30-06-2015	Removal of Prejudice Incident Reporting