

All employees and managers must take care to avoid indirect and direct discrimination when using Council processes and procedures. This guidance was produced to help managers apply the principles of equality of opportunity when using our employment processes.

Recruitment

Equality of opportunity is extremely important when recruiting and selecting employees.

Recruiting managers must give careful consideration to the placement of job adverts so that knowledge of any job opportunities is not restricted unjustifiably to certain individuals or groups. Criteria relating to age, race, sex, disability etc should not be used in advertisements.

The Council's recruitment procedures are intended to reach eligible applicants from all sections of the community, encourage applications from suitable individuals, and ensure that the selection process is based on the skills, ability and experience of the applicant to be able to perform the job advertised. Interviewers and those concerned with selection must not be subjective on the basis of physical characteristics and unfounded assumptions, and must ensure their decisions are based on merit and objective criteria, relevant to the job. Selection criteria (e.g. job profiles and employee specifications) must be kept under review to ensure they are justifiable on non-discriminatory grounds, which are essential for the effective performance of the job. This will ensure that job applicants are assessed according to their capability to carry out a given job, based on justifiable, objective criteria that are clearly related to their duties.

Discrimination after an employee leaves employment may also be unlawful e.g. refusing to give a reference for a reason related to one of the nine protected characteristics; age, disability, gender re-assignment, marriage or civil partnership, pregnancy, race, religion or belief, sex or sexual orientation. If you do give references, they must not include comments about the employee's characteristic (or in the case of disability, comments about something connected with the employee's disability) that might be unlawfully discriminatory. The same rules apply to telephone and other verbal references. For further information see [RS57 HR How to Provide a Job Reference](#).

Recruitment and positive action

In recruitment, equality law allows positive action before or at the application stage. At this stage, the steps could include encouraging particular groups to apply (e.g. if recruiting managers find that the make up of their workforce is different to that of the local working population and decides to encourage people who share particular

under-represented protected characteristics to apply for vacancies.) The Council has adopted the Positive about Disabled People scheme, commonly known as the 'double tick scheme' or 'two tick scheme', as it is committed to employing and supporting disabled people. The two tick's scheme means that you are able to guarantee an interview to disabled applicants who meet the minimum criteria for the job. If an applicant is a disabled person and has said that they need adjustments for the interview, meeting or test, and these adjustments are "reasonable adjustments" then you must make them. A person's protected characteristic must not form any part of the decision making in selection or promotion. Positive action is voluntary and is not the same as 'positive discrimination' which means favouring a person from a particular under-represented or otherwise disadvantaged group solely because they have a particular protected characteristic. This remains unlawful.

Recruitment and general occupational requirements (GOR)

If you can show that a particular protected characteristic is central to a particular job or role (e.g. being a particular sex, race, having a disability, religion or belief, sexual orientation or age, or not being a transsexual employee, married or a civil partner), you can insist that only someone who has that particular protected characteristic is suitable. This would be considered a general occupational requirement (GOR). A particular vacancy may appear to require special work suited to one sex only (e.g. where the job involves physical contact with members of the opposite sex, or close contact with people in a state of undress.) In these circumstances a GOR may be justifiable on the grounds of decency or privacy. That said consideration should always be given as to whether this can be achieved within the overall workforce before applying a GOR to the post. Where there is a GOR to employ an employee of a particular race you must be able to show that there is a genuine need taking account of the type of work, or the context in which the work is carried out. At present there are no known occupations in the Council that require someone to be of a particular race.

There may be cases when you want to consider applying a GOR to a vacancy. If you are considering applying a GOR to a post then you should seek further advice from HR Direct prior to advertising. The Council has very few circumstances in which there is likely to be a GOR.

Recruitment and pre-employment health-related checks

Under the Equality Act it is now unlawful, except in certain circumstances, for employers to ask about a candidate's health before offering them work. You must only ask health and disability related questions during the recruitment process in a situation where such questions were necessary for the purposes of:

- making reasonable adjustments for the interview/ the recruitment process
- monitoring diversity
- supporting positive action
- identifying suitable candidates for a job where there is a GOR for the post-holder to be disabled

Any information provided by the applicant in response to any of the above points must not be used in the selection process.

You can ask whether or not an applicant can carry out a function 'intrinsic to the work concerned' (e.g. a home carer role that involves manual handling tasks, you could ask about any back problems or difficulties with heavy lifting because back problems or difficulties with heavy lifting may affect the applicant's ability to do the job.) However, you should not ask about past sickness absence levels as this does not directly relate to the applicant's current ability to carry out functions that are intrinsic to home care work.

Once a candidate has been successful at interview on their own merits and has been offered the job (whether it is an unconditional or conditional job offer) you are permitted to ask appropriate health-related questions. Therefore, a job offer can still be made on a conditional basis subject to receipt of, for example, satisfactory references and occupational health clearance. If you were concerned about the individual's ability to carry out the requirements of the post you should contact HR Direct for advice. They may recommend you complete an Occupational Health referral with the individual to establish if they are fit, or would be fit, with reasonable adjustments to carry out the requirements of the post. For further information please refer to the publications listed below.

[RS01 Recruitment and Selection Policy](#)

[RS11 Recruitment and Selection Guidelines](#)

[RS24 How to Recruit while the Equality Act Comes into Force](#)

[RS30 Recruitment and Selection Policy and Procedure Teaching Staff](#)

Attendance management

When applying trigger levels it is vital to record disability related absence and pregnancy related illness separately from sickness absence.

Care needs to be taken when applying trigger levels or if you are considering dismissing an employee because of sickness absence. You should always consider making reasonable adjustments as an alternative to dismissal and have fully exhausted all other options before proceeding to a capability hearing (You should seek advice from your HR Direct case officer at the earliest opportunity.) Dismissal for long term absence will almost certainly amount to unfavourable treatment arising from a disability, unless you can show that there is no reasonable alternative to the action that you are taking.

You should not use absences related to pregnancy related illness when making a decision about terminating a female employee's employment. This would be discriminatory and a woman may have unfair dismissal rights in these circumstances.

For further information please refer to the publications listed below.

[AM01 Attendance Management Policy](#)

[AM10 Attendance Management Procedure](#)

[AM02 Attendance Management Policy Teaching](#)

[AM32 Attendance Management Procedure](#)

Discipline and dismissal

If an employee is disabled, reasonable adjustments must be made so that they can participate in the disciplinary procedure, as far as reasonable, to the same standard as a non-disabled employee. You must also think about whether or not it would be

appropriate to make reasonable adjustments to the standards applied to employees where these standards place disabled employees at a substantial disadvantage compared to employees who are not disabled. You should also be aware of other groups of employees who possess other protected characteristics for example, where English is not their first language. This is especially important when it comes to completing and/or reading documents and attending meetings. For further information please refer to the publications listed below.

[DI02 Discipline Policy and Procedure](#)

[DI08 Discipline Policy and Procedure \(Teachers\)](#)

Managing change

Change is a part of working life. Employee roles change, office or work areas are rearranged, new management systems are put in place and teams expand or downsize. All these changes may affect not only the way services are delivered, but also employees and customers with protected characteristics. When looking at the effects of change it is important to consider their impact on different groups of people. You should consider undertaking an [Equality Impact Assessment](#) as this is a recognised method of estimating possible implications (both intended and unintended), of policies, strategies, projects or initiatives with the aim of enhancing potential positive impacts and minimising potential negative impacts. When going through a managing change exercise you should use a selection matrix containing a number of separate selection criteria rather than just one selection criterion to reduce the risk of any possible discriminatory impact. For further information see the [MA11 Managing Change Policy and Guidelines](#).

Equal pay

The term 'equal pay' was traditionally used to ensure that women and men who were carrying out equal work received the same rewards under their contracts of employment. The Equality Act makes it unlawful to prevent or restrict employees from having a discussion to establish if differences in pay exist that are related to any of the protected characteristics. The discussion can relate to any protected characteristic, not just equal pay between women and men provided it is a genuine enquiry to try to discover if differences in pay are the result of a protected characteristic. An employee can legally try and obtain pay information about a colleague or former colleague. If the colleague reveals this information they will not be breaking the law. Equality law calls these discussions 'relevant pay disclosures.' You must not take action against anyone because they have talked to someone about their pay in order to find out if their pay may be different because of a protected characteristic. This would be considered victimisation.

The Council implemented the Single Status Agreement in April 2006 with the objective of eradicating the gender pay gap, by using a job evaluation system. The Council will continue to monitor existing and future pay practices and their impact, to ensure we continue to reward fairly the skills, experience and potential of all employees. For further information see the [EO02 Equal Pay Policy Statement](#).

Flexible working

The right to request flexible working is currently available to employee's who are parents of children under 17, or 18 if the child is disabled, and employee's with

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caring responsibilities for dependent adults providing they have 26 weeks continuous service. It is important to consider requests carefully as employees can now claim that they have suffered discrimination on the basis of association (e.g. because they are a carer to a disabled relative.)

Whilst it is true that women are more likely to work flexibly, or part-time to help with caring for dependents, you need to avoid making assumptions about who has responsibilities for caring for children or adults (e.g. on the basis of whether they are a woman or a man, their age or their sexual orientation) or consider their request for flexible working differently based on this assumption. If you treat someone less favourably because of an assumption, this may be direct discrimination. For further information see the [FWI I Flexible Working Guidelines](#).

Rest Breaks and time off

Legally, employers have to give employee's flexibility for religious activities (such as prayer) outside normal rest breaks. An employee can request that their rest break coincides with their religious obligations to pray at certain times of the day. Such requests can be refused if they conflict with legitimate organisational needs. However, if the refusal could not be justified then it may be considered discrimination. Whilst you do not have to accept unreasonable disruption to activities you should bear in mind that time taken for prayer is probably no longer than for a tea or coffee break.

If an employee's religion or belief has special festival or spiritual observance days, they can ask to take their holidays at a particular time in order to celebrate festivals or attend ceremonies. You should consider their request where it is reasonable and practical for them to be away from work, and they have sufficient holiday entitlement available. There is no legal obligation to give them extra leave, either paid or unpaid, and in fact doing so may discriminate against employees who do not hold that or any religious or other belief, who will not get the additional leave.

All pregnant employees have the right not to be unreasonably refused the time off work they need for antenatal care, and this time off must be paid (employees are entitled to reasonable time off to travel to and from the appointment, wait for the appointment and attend the appointment or class.)

Antenatal care can include:

- Medical examinations
- Appointments with a midwife
- Antenatal classes
- Relaxation or parent craft classes

Managers can of course, ask that an employee tries to arrange appointments in such a way as to minimise disruption at work if this is possible but cannot refuse her the right to an appointment without good reason. A woman cannot be required to make up the time she has missed at some other time. Nor can she be made to take annual leave to cover the time off. For further information see [MAI I Maternity Provision Guidelines](#).

There is no specific legal right to time off for fertility treatment, such as, in vitro fertilisation (IVF) and the laws that protect pregnant women do not apply to those trying to conceive. However, the Council will allow employees to take one period of

paid leave for one course of IVF treatment. Because both men and women can undergo fertility treatment, it will not necessarily be sex discrimination if you act less favourably towards an employee than you would to someone who was not undergoing IVF treatment because you would treat someone of the opposite sex the same in similar circumstances. For further information see [AM55 Time Off for Medical Appointments](#).

It would be discriminatory to treat transsexual people less favourably or differently for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment. Medical procedures for gender reassignment such as hormone treatment should not be treated as a 'lifestyle' choice.

Maternity, paternity, adoption and parental leave

When you are dealing with employees who request or take maternity, paternity, adoption or parental leave you must make sure that you do not discriminate against an employee because of a protected characteristic e.g. because of their sexual orientation.

Learning and development

We encourage all employees to undertake courses of study and training, where appropriate. You must ensure that selection for such training is applied on a fair and consistent basis and in line with organisational objectives as well as development based.

You must not make assumptions on the basis of an employee's protected characteristic about their ability to take part in training. If a disabled employee has requested reasonable adjustments to be made then you may want to consider changing the timing, style of delivery or location. An employer cannot deny a woman training for a reason related to her pregnancy (or impending maternity leave) unless they are protecting her from health and safety (a specific risk must have been identified.) There is further information on learning and development in the publications detailed below.

[OD01 Employee Development Policy](#)

[OD11 Employee Development Guidelines](#)

Contribution management/ Supervision

Contribution management/ Supervision ensures that employees performance is assessed on the basis of having completed agreed job relevant objectives, therefore, avoiding the risk of discrimination.

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