



Promoting Diversity and Equality of Opportunity in Employment

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Note: Blue typeface within the text below indicates information that is available on the staff Intranet/Czone.

This policy ensures equal access to opportunities in employment and promotes diversity in our workforce.

Key points

There is a duty on all County Council employees and members to:

- eliminate unlawful discrimination
- promote equality of opportunity
- promote good relations between all people

This policy should be read in conjunction with the County Council's [Equality of Opportunity and Diversity Policy Statement](#)

1. Why must we promote equality and diversity?

1.1 Our staff are the County Council's most significant and valuable asset. Underlying everything we do is the expectation that we will deliver a high quality service to the diverse community of East Sussex. That aim is best achieved by actively supporting a workforce drawn from all sectors of that community.

1.2 The County Council opposes all forms of discrimination on the grounds of race, colour, nationality, ethnic or national origin, religion or belief, gender and gender identity, marital and civil partnership status, sex and sexual orientation, medical condition (including people living with HIV or AIDS), disability and age.

1.3 The County Council will not accept unlawful discrimination or harassment. Discrimination and harassment undermine the personal dignity of individuals. Such behaviour is unprofessional, unacceptable, and may well be unlawful.

2. Should I treat everyone the same?

2.1 No: working towards equality of opportunity means understanding and respecting that we all have different needs. There are greater opportunities to gain from a more diverse workforce by seeking to understand the needs and aspirations of our staff and colleagues.

3. What are the duties?

3.1 We have legal duties, both within the County Council and across the County, to:

- eliminate unlawful discrimination
- promote equality of opportunity and
- promote good relations between all people

3.2 The duties require an active and positive approach - they are statutory requirements and **not** optional. They come with a commitment to remove institutional discrimination and to treat direct discrimination as a disciplinary matter.

4. Who does the policy apply to?

4.1 This policy sets out the County Council's general approach to diversity and equality in employment, and seeks to ensure that all employees, contractors, temporary workers and job applicants receive benefit from equality of opportunity. It applies irrespective of:

- gender or gender identity
- marital or civil partnership status

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- sex or sexual orientation
- pregnancy or maternity
- race, colour, ethnicity or national origin
- religion or belief
- disability
- medical condition, including people living with HIV or AIDs
- age
- trade union membership or activity
- political view or affiliation

4.2 This is not an exclusive list. The policy expects all employees to support the full, diverse range of lifestyle choices that exist in the community. Accordingly, we expect, subject to our reasonable business and service requirements a positive, supportive and flexible approach to staff that have:

- childcare or other caring responsibilities – such as caring for an adult with chronic illness or disability
- interests that support the community - such as voluntary or charity work
- interests that support society generally - such as magistrates or members of public bodies
- other personal interests - such as personal study

5. How is the impact of this, and other personnel policies, assessed?

5.1 All policies that have an impact on staff are subject to Equality Impact Assessment (EqIAs). We will use EqIAs to assist us with meeting the duties - in other words to look for opportunities to support diversity in our workforce. EqIAs are also used to identify relevant policies, and procedures that may be having a negative effect on any group. EqIAs, and the relevant policies, will be published and consulted upon with staff and members of the local community. Further advice on the process of EqIA in relation to personnel policies is available from Personnel and Training.

6. What does the law say?

6.1 Anti-discrimination law covers discrimination and harassment against all people. In employment it applies to:

- gender or gender identity
- race, colour, ethnicity or national origin
- disability
- sex and sexual orientation
- religion or belief
- age
- marriage and civil partnership
- pregnancy and maternity

6.2 The duties for public bodies originate from:

- The Equality Act 2010

6.4 The law also provides support and protection for:

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- new parents, including adopting parents
- people who want to work flexibly for childcare reasons

6.5 For more detail of the equalities legislation, refer to the County Council's [Single Equality Scheme 2010-2013](#) which is published on the County Council's web site.

7. What is discrimination?

7.1 Discrimination may be direct or indirect.

7.2 **Direct discrimination** occurs where someone is denied an opportunity, or offered special treatment because, for example, they are a woman, or they are white, or they are disabled.

7.3 **Indirect, or “institutional” discrimination** occurs where policies, practices and procedures tend to lead a particular group of people to be either at a disadvantage or an advantage.

8. What is harassment?

8.1 Harassment is unwanted or unjustified behaviour which affects the dignity of anyone in the workplace, and which the recipient finds threatening, demeaning or offensive, **even if this is not the intention**. Harassment is specifically covered by all strands of equality legislation and is unlawful.

9. What is victimisation?

9.1 Victimisation is subjecting an individual or a group to detrimental treatment or unjustified behaviour because they have done or may do a 'protected act' as defined by the Equality Act 2010. Protected acts are:

- bring proceedings under the Act
- giving evidence of information in connection with proceedings under the Act
- doing any thing for the purposes of or in connection with the Act
- making an allegation that another person has contravened the Act

10. How will the County Council deal with discrimination, harassment or victimisation?

10.1 The County Council takes all complaints about discrimination very seriously. There are occasions however, when staff will want to discuss an issue informally before bringing a formal complaint or grievance. The Staff Counselling Service is able to discuss concerns informally, you may also discuss discrimination issues with the HR Policy Manager.

10.2 **Direct discrimination** is never acceptable. It is unlawful and, for complaints against staff, will be considered either to be “serious” or “gross” misconduct and may lead to dismissal and to legal action. A complaint that a Councillor is discriminating unlawfully against any person should be referred to the County Council's Monitoring Officer. Complaints will be considered either by the Standards Committee or the Standards Board for England. Complaints that are upheld may lead to disqualification from office.

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10.3 **Indirect discrimination** is unlawful. All staff have a duty to report instances of indirect discrimination through their manager to their Director/Headteacher as appropriate. There may be instances in which staff do not feel able to report the matter through their manager. If so, they may discuss the matter formally or informally with the HR Policy Manager. Where appropriate, staff may also use the [Confidential Reporting \(Whistleblowing\) Procedure](#).

10.4 The County Council, and all staff, have a duty to seek to identify indirect discrimination and either to remove it or to reduce its effects. All policies that have a direct effect on people are subject to an Equality Impact Assessment (EqIA). EqIAs consider the effectiveness of policies and, in particular, how effective they are at meeting the requirements of the duties.

10.5 Where EqIA's identify that indirect discrimination, as it affects staff, is likely to be occurring the County Council has a duty to act. The policy will be amended to remove, or reduce as far as possible, the effects of the discrimination.

10.6 Where indirect discrimination exists it is, by its very nature, built into the way that staff and members currently work. Action following the identification of indirect discrimination may range from simply amending the policy or procedure, provision of general awareness raising, to dismissal and legal action if, for example, the County Council has knowingly, or negligently, been exposed to a breach of the law.

10.7 Failure to act to remove discrimination, where it is identified, could be treated either as "serious", or "gross", misconduct and may be unlawful, and action may be taken against the County Council as a whole and against staff responsible. Failure on behalf of members to act to remove indirect discrimination affecting staff will be treated as described for direct discrimination.

10.8 **Harassment or victimisation** in relation to any of the groups covered by equality legislation is unlawful. Harassment or victimisation may either be intentional or unintentional and action against individuals will range from awareness raising to dismissal and possibly to legal action. Where harassment or victimisation is intentional it will be treated as "gross" misconduct. Complaints of harassment or victimisation of staff by elected members may be considered as described for direct discrimination.

10.9 The [Code of Conduct for Employees](#) requires staff to report instances of harassment or victimisation. You may discuss informally with the Staff Counselling Service whether actions are likely to constitute harassment or victimisation. However, failure to report harassment or victimisation occurring to others could be treated as "serious" or "gross" misconduct.

11. Are there ever any circumstances where discrimination may be appropriate?

11.1 It is never appropriate to discriminate on any of the grounds covered by this policy unless there are "genuine occupational reasons". These reasons will be **absolutely exceptional** and must be agreed at Chief Officer/Headteacher level following discussion with Personnel and Training and legal advisors.

12. How do I promote equality in employment?

12.1 **Recruitment** is covered by our [Recruitment and Selection Policy](#). You are required always to select the person best suited for the job.

12.2 Monitoring of workforce diversity indicators shows positive results, with an increase in all categories monitored. Proportions of women, ethnic minorities and disabled in the top 5% of earners have increased as have proportions of disabled and ethnic minorities in the workforce as a whole. However, there is still under representation in the County Council when considered against the local population. This may be the result of direct discrimination against particular groups or indirect discrimination, in that fewer can comply with the selection criteria chosen. Monitoring of sexual orientation, religion and belief and age is undertaken and published in our [Annual Equalities Report](#).

12.3 The County Council wants to make the most of the skills and experience available in the community, and many people who may be the best person for a job are not working with us yet. Recruiting managers can promote equality of opportunity by:

- identifying whether any people covered by this policy are currently underrepresented and, if they are:
- considering how to make posts more attractive to people with diverse needs
- stating clearly that hours and working patterns are flexible and can be adapted, subject to the needs of the service, to the needs of applicants
- actively challenging their own preconceptions of candidates

12.4 All recruiting managers must complete the [online Recruitment & Selection Training](#) (available to schools based recruiting managers from early 2012).

12.5 Job descriptions and essential criteria for posts must be written carefully to allow for as wide a diversity of the local population to apply as possible. It is particularly important not to require an attribute that would tend, unnecessarily, to prevent a group of people applying. For example, if work can be done flexibly, requiring all staff to be in the office before 8:30 may count against applicants with childcare responsibilities. It is also recommended that you do not quantify the amount of experience you require a candidate to have. If for any reason you do need to do this, you must not ask for more than five years experience in line with the Equality Act 2010.

12.6 **Development and training** are covered by the [Training and Development Policy](#). Appropriate opportunities should be offered to all staff depending on needs identified through discussion on performance. It is possible that people from disadvantaged groups may have had fewer formal developmental or education opportunities. It is **not** acceptable to apply that assumption to all staff from a particular group.

12.7 The County Council's policy is to provide development and training opportunities to staff that match the business needs of the County Council. For example, raising awareness of the duties to promote equality within the County Council and countywide through management of staff, working relations and service delivery is appropriate through many development activities.

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12.8 All staff can expect access to training in a way that is appropriate to their needs and those of the County Council. The needs of individual staff may mean that they require additional support, such as one-to-one training or training materials provided in different formats. These will be considered as “reasonable adjustments” as appropriate.

12.9 **Complaints and grievances** are covered under the [Complaints Procedure](#) and [Grievance Procedure](#) respectively. These procedures help the County Council to address discrimination and harassment where they have occurred.

12.10 They are though a last resort and should follow discussion and active attempts to work to a positive solution. Action on the basis of the procedures will be appropriate to the act or issue, the effects and the level of intention. Action is likely to range from awareness raising to dismissal and legal action.

13. Am I accountable for promoting equality of opportunity in employment?

13.1 Yes, we are accountable individually, and as an organisation, to meet the duties. Further details can be found in the County Council’s [Single Equality Scheme](#).

13.2 As a County Council we collect data across six equality strands: race, gender, disability, sexual orientation, religion and belief and age and this information is published in our [Annual Equalities Report](#). Our aim is to have a workforce which is representative of the local community of East Sussex.

14. How do I improve opportunities for particular groups of people?

14.1 We all bring views of what men and women, black and white, gay and straight people, or disabled people are like into the workplace. Where those views lead us to discriminate, directly or indirectly, intentionally or unintentionally, we have a duty to change our behaviour.

14.2 We cannot change the environment or culture we have been brought up in and shifting our perceptions of others takes willing, an open mind and flexibility - attributes expected of all staff. Seeking to empathise with others, extending trust, accepting difference and starting from a position of respect for others are a good start.

14.3 **Gender** - women form a significant proportion of the County Council’s workforce. However, women are still underrepresented in middle and senior management positions while many posts are held, predominantly, by either men or women. To extend diversity and equality of opportunity all staff are encouraged to challenge their own perceptions of what roles are carried out by men or by women.

14.4 Any practice or procedure that tends to advantage or disadvantage men over women is likely to be a result of indirect discrimination. Where that action is clearly gender based it is likely to be unlawful.

14.5 It is not appropriate to *assume*, for example, that women are more likely than men to want to work flexibly to meet childcare needs. However, as is the case,

more women than men have childcare responsibilities and it is likely to be discriminatory against women, and therefore unlawful, to unnecessarily limit flexibility. It would also be discriminatory to assume that male staff will not want to work as flexibly as women to cover their childcare responsibilities.

14.6 Caring responsibilities are an essential aspect of life in the County and staff who have these responsibilities bring valuable skills and experiences into the work place. Accordingly, we can encourage more carers to apply for work with us, and to remain in work once they have taken on these responsibilities, by offering support and flexibility to staff with caring responsibilities. The County Council's [Flexible Working Directory](#) offers a range of flexible working and flexible leave options to help carers accommodate their responsibilities at home and at work, recognising the additional pressures carers face in managing work and their caring responsibilities.

14.7 Ethnic Origin - the proportion of people who are Black or from Minority Ethnic (BME) backgrounds in the County Council is increasing steadily. However, generally and particularly in middle and senior management positions, BME people are underrepresented when considered against the local population.

14.8 People from similar ethnic backgrounds may share cultural experiences and language. However, it is not appropriate to make assumptions that people from a particular ethnic background will tend to behave in a certain way. Many BME people, be they Black, Irish, Gypsies, Asian, share experiences of racism, discrimination and harassment.

14.9 Racism may also be unintentional or institutional; it is equally unacceptable. Always consider what a person may be able to do on the basis of objective assessment. Avoid making assumptions about a person's abilities, for example, about how they communicate or their temperament based on a preconception about how someone from their ethnic group may behave. Assumptions based on preconceptions are frequently incorrect. Acting on them is unacceptable and means that you are not working effectively.

14.10 Disability - disabled people are underrepresented in the County Council generally and particularly in middle and senior management positions. Well intentioned people often want to assist disabled people, but please note the following principles:

- seek to "enable" people
- focus on ability - avoid applying your own expectations of whether a person with a certain impairment can perform a particular task
- always ask the disabled person first
- always include the disabled person in any discussion or decision relating to them
- the disabled person nearly always knows best about what they need and want
- medical conditions are personal - they are for individuals and their doctor unless they choose to discuss the matter with you
- it is appropriate to discuss, in appropriate confidence, the **effects** of a person's impairments on their work but only if the discussion is about how to make reasonable adjustments to assist the person work more effectively

- if a person's impairments start to affect their work the County Council is under a duty to make reasonable adjustments
- personal matters, relating a person's impairments, are treated as sensitive under the Data Protection Act so information must be kept and used in appropriate confidence

14.11 The County Council requires all staff to follow good practice in the recruitment and management of disabled people in line with the "Positive About Disabled People" (or "2 Ticks") symbol. The County Council has signed up to the 5 principles of the scheme and all employees are expected to follow them. They are:

- offer an interview to all disabled people who meet the essential criteria of the post
- discuss, at any time, but at least once a year, with disabled employees how best to develop and use their abilities
- make every effort, when employees become disabled, to enable them to stay in employment
- ensure all employees develop the appropriate level of disability awareness needed to make these commitments work
- review these commitments and what has been achieved annually to plan ways to improve on them and let employees and Jobcentre Plus know about progress and future plans

14.12 The County Council has formally committed itself to work within the "social model" of disability. Essentially, the social model considers that people are disabled in society when they face unreasonable barriers to opportunity in relation to physical, learning or mental health impairment.

14.13 The model starts from considering what the organisation can do to be as accessible as possible to as many people as possible, and how it can quickly, effectively and without fuss, make adjustments for people with additional requirements. It does not start from considering medical conditions or assumptions about what a person with certain impairments can or cannot do.

14.14 Disabled people, like all people, are not a single or separate, homogenous group. Always consider a disabled person's abilities against an objective assessment. If the effect of their impairment is likely to affect their ability to do a certain job the Equality Act 2010 requires us to apply reasonable adjustments. Adjustments are very wide ranging as they must be appropriate to the individual and to the situation. You will need to consider issues including: can the job be changed or can an adjustment be made to enable the person to work on an equal basis? Examples of adjustments are set out in the Statutory Guidance to the Act.

14.15 The definition of whether a person is disabled is set out in the Equality Act. Broadly, a person is disabled under the Equality Act if they have, or have had, an impairment that has a significant effect on their day to day life or their ability to perform normal day-to-day activities which has, or is expected to, last more than 12 months. The actual definition is far more complex and open to interpretation in court - for further advice please contact the Personnel and Training Team.

14.16 It is unlawful to discriminate against disabled people or against people with certain medical conditions. There will be occasions where the effects of a disabled

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person's impairments would mean that they are unable to meet the essential requirements of a post. However, unnecessary conditions may be examples of direct or institutional discrimination. Any decision not to employ someone without a well justified and robust case may well end up in court.

14.17 Sexual orientation - we have begun to collect information on the sexual orientation of staff, although it is not yet being monitored against targets. We do know, anecdotally, that some gay staff consider that they would be discriminated against if they were open about their sexual orientation. Further information and consultation with staff is sought in our biennial Staff Survey. As a Stonewall Diversity Champion the Council is committed to challenging discriminatory attitudes and to supporting gay, lesbian, bisexual and transgender staff.

14.18 Some faiths do not believe that it is appropriate to be Lesbian, Gay, Bisexual or Transgender (LGBT). It is not, however, acceptable to discriminate against LGBT people in employment. We are not aware of any faith or religion that supports or encourages disrespectful behaviour, or harassment, towards LGBT people. Whatever one's beliefs the County Council, and the law, does not allow discriminatory behaviour or harassment of LGBT people.

14.19 Religion or belief - we have begun to collect information on the religion or belief of staff, although it is not being monitored against targets. We do know that faith and religious observance are of significant importance to many of the County Council's staff.

14.20 In line with our policy of promoting diversity we expect managers to be flexible in allowing people to meet their cultural, religious and faith needs. Applications to take annual leave or flexi-leave for religious observance must be considered seriously and every reasonable effort made to comply with the request within the business needs of the County Council.

14.21 As with ethnic groups there is a tendency to apply preconceptions to people who belong to certain faiths. Anti-Semitism is well known and examples of Islamophobia have increased in recent years. Avoid making assumptions about what is, and is not, acceptable to people who follow a particular faith - politely, and in appropriate confidence, ask the person before acting on an assumption.

14.22 Age - many people have preconceptions about whether a person is too young or too old for a job, acting on those preconceptions amounts to inappropriate discrimination.

14.23 It is common to assume that younger people bring youthful enthusiasm and new ideas while older people bring experience and wisdom. Acting on these assumptions is likely to lead you to discriminate against people. It is important to consider the full range of abilities of each and every person. Do not assume that an older person lacks enthusiasm or new ideas and do not assume that a younger person lacks the level of judgement required for the post.

14.24 It is acceptable to consider the age profile of part of the organisation to ensure that recruitment and development processes are sufficient to cover expected retirements. It is not acceptable however to limit employment opportunities for older people on the assumption that they may want to retire early

or at the standard retirement age for the purposes of accessing pension benefits under the Local Government Pension Scheme.

14.25 Since 1 October 2011, the County Council no longer operates a default retirement age, which means that older workers may not be dismissed solely on the grounds of their age and they will be able to exercise choice about when they wish to retire depending on their individual circumstances.

14.26 **Gender reassignment** - is a choice permanently to change one's gender. It is no more appropriate to discriminate or harass a person who has undergone, or is undergoing, or considering, gender reassignment or chooses to live as a member of the opposite gender without undergoing any medical procedure, than any one else. Discrimination is covered by the Equality Act 2010. Additionally, the Gender Recognition Act 2004 provides for people to have legal recognition, in the form of gender recognition certificates, in their acquired gender.

14.27 A person who has obtained a gender recognition certificate is recognised for **all** legal purposes under their acquired gender. A person's gender, prior to gender reassignment, **must not** be considered relevant for current posts. The County Council expects managers and staff to be supportive of colleagues who are considering, or going through gender reassignment.

14.28 **HIV, AIDs** and other conditions such as mental health matters have been associated with stigma, discrimination and harassment. The County Council expects all staff to be supportive of colleagues living with HIV, AIDs or mental health issues and to ensure that they have the same access to opportunities as anyone else.

14.29 It is not acceptable to discriminate against anyone because of these, or any other, conditions. People who have HIV or AIDs are covered from the point of diagnosis under the Equality Act 2010.

15. Where can I find out more?

15.1 If you want to discuss a personal matter start with your manager or with colleagues. If you feel that you would like advice from someone else you should contact Personnel and Training, or you may also want to talk to the Staff Counselling Service or your Trades Union representative. Formal complaints should follow the [Complaints](#) and [Grievances Procedures](#) as appropriate.

15.2 If you would like to discuss this policy, its general application or the associated legislation please contact the HR Strategy Team on 01273 481194.