

EYTHORNE PARISH COUNCIL

EQUAL OPPORTUNITIES POLICY

INTRODUCTION

This policy is based upon the Equality Act 2010 which came into force on 1 October 2010. This policy will bring together previous legislation; Sex Discrimination, Race Relations, Disability Discrimination and Equal Pay Acts.

This policy will refer to protected characteristics, these are as follows:

- a) Age
- b) Disability
- c) Gender reassignment
- d) Marriage and civil partnership
- e) Sex (gender)
- f) Pregnancy and maternity
- g) Race
- h) Religion or belief
- i) Sexual orientation

(for a more in depth description see the KALC LTN 78 Equality Act 2010 amended)

1. DIRECT DISCRIMINATION

1.1 Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic. Direct discrimination is broad enough to include:

- a) less favourable treatment of a person because of a protected characteristic that he or she is thought to have (perception discrimination)
- b) less favourable treatment of a person because they associate with someone who has a protected characteristic (associative discrimination)

1.2 Direct discrimination can never be justified except in the case of age. A claim of direct age discrimination may be defended if the treatment complained of is a proportionate means of achieving a legitimate aim.

1.3 A complainant of direct discrimination cannot just claim he or she has suffered less favourable treatment, he or she must be able to show that he or she has experienced less favourable treatment because of a protected characteristic, a complainant would need to compare the complainant's less favourable treatment to the treatment of another.

2. INDIRECT DISCRIMINATION

2.1 Indirect discrimination occurs when a person applies a 'provision, criterion or practice' which disadvantages a person with a protected characteristic and others that share that characteristic and the discrimination cannot be shown as a proportionate means of achieving a legitimate aim. A provision, criterion or practice could include contractual terms, written or unwritten policies, rules or

arrangements. Indirect discrimination applies to all the protected characteristics except pregnancy and maternity.

2.2 A person complaining of indirect discrimination would need to show an appropriate pool of people to whom the provision would apply and disadvantage. Once this disadvantage has been demonstrated, an indirect discrimination claim may only be defended if a person can show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim. A person defending a claim would need to demonstrate that the arrangements complained of are sufficient to outweigh the negative impact on the complainant and others who share his or her characteristic having considered an alternative.

3. HARASSMENT

3.1 Harassment is defined as 'unwanted conduct related to a 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'. A harassment claim may be brought by the person who is subject of the harassment but also someone whose environment is negatively affected by the harassment of another person. A single incident could amount to harassment.

3.2 An employer risks liability for the harassment of an employee by a third party who is not an employee. An employer may only be liable for harassment by a third party if it has occurred during the course of a person's employment, on at least 2 previous occasions, and the employer is aware that it has taken place and has not taken reasonable steps to prevent the third party continuing to harass.

3.3 Harassment as a form of discrimination applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnerships.

4. VICTIMISATION

4.1 Victimisation occurs when a person is subjected to detriment because they are suspected of doing so.

5. SPECIFIC EMPLOYMENT MATTERS

Discrimination is unlawful in respect of job applicants, employees and workers. A worker is a person employed by third party and supplied by that third party to work for another.

5.1 Recruitment

This section relates to the recruitment process and specifically covers the enquiries that can be made before employment. An employer is not permitted to ask questions about an applicant's health before offering work. If an employer does ask health questions before a job is offered and then does not offer the person a job, the burden of proof will be in the employer to prove that there was no discrimination.

a) Employers may ask health related questions before a job offer is made only in limited circumstances for any of the following reasons:

i. identifying if a candidate is able to participate in an assessment in the recruitment process or establishing whether there is a duty to make reasonable

adjustments to enable the disabled person to participate in the recruitment process.

ii. to assess whether the candidate is able to perform functions intrinsic to the job, with reasonable adjustments in place.

iii. to monitor the diversity of people who apply for work. It is recommended that the interviewers do not see this information.

iv. supporting positive action in respect of the employment of disabled persons

v. establishing whether the candidate has a particular disability if this is a requirement for the job

b) All applicants must be looked at properly to see if they can do the job in question, and that they are not ruled out just because of issues related to or arising from their health or disability, such as health problems which occasioned sickness absence in a previous job, which say nothing about whether they can do the job advertised.

c) there is no prohibition on making enquiries about a person's health or disability after a job is offered or offering a job on the condition of the employer making enquiries of the person's health or disability. An employer may ask appropriate health related questions to ascertain if someone's health or disability would prevent them from doing a job. An employer will be open to a claim if the job offer is subsequently withdrawn because of the person's disability.

5.2 Positive action in respect of recruitment and promotion

a) employers should always carry out an objective assessment at all stages of recruitment and promotion. However, an employer can take positive action in recruitment and promotion with the aim of enabling or encouraging persons who share a protected characteristic to overcome or minimise that disadvantage or participate in recruitment or promotion.

b) An employer is permitted to treat a person with a protected characteristic more favourably for recruitment or promotion than a person that does not have a protected characteristic if the following applies:

i. two candidates, one with a protected characteristic and one without, are 'as qualified' as each other

ii. the employer does not have a policy of treating persons who share the protected characteristic more favourably regarding recruitment and promotion than persons who do not share it

iii. taking action is a proportionate means of achieving the aim of enabling or encouraging persons who share a protected characteristic to overcome or minimise disadvantage or participate in recruitment or promotion

5.3 Employment contract secrecy clauses relating to pay

a) employers are not permitted to prevent or restrict an employee from discussing his or her pay with a colleague if the discussion is aimed at finding out whether or to what extent there is a connection between pay and a protected characteristic. There is no general ban on secrecy clauses in contracts, they are unenforceable if an employee wants to discuss pay for the above reason.

5.4 Equality of terms

a) a sex equality clause needs to be included in the terms under which people are employed. The effect is that any term in the employment contract which is less favourable than that of a comparator of the opposite sex is modified to ensure that both have the same effect.

5.5 Defences to discrimination for occupational requirement

An employer can defend a claim for direct discrimination if it can show that

- a) the protected characteristic is an occupational requirement
- b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
- c) the person to whom the requirement is applied does not meet it

5.6 Retirement

a) As from 6 April 2011, retirement of an employee constitutes age discrimination unless it can be justified as a proportionate means of achieving a legitimate aim. It will no longer be lawful for an employment relationship to terminate by retirement unless the employer can justify it or the employee agrees to it.

5.7 Exceptions to discrimination relating to age

- a) payment of minimum wage – which is set for those no longer at school and aged 16 and 17 or over
- b) dismissal of an employee up until 5 April 2011 based on the default retirement age of 65
- c) the provision of certain benefits based on length of service in so far as such benefit is earned by not more than 5 years service
- d) statutory redundancy pay which is calculated in accordance with a person's age and length of service

6. PUBLIC OFFICE

6.1 It is unlawful for local authorities to discriminate against a member of the authority in relation to the member's carrying out of official business. It is unlawful for a local authority to discriminate against, harass or victimise their members in relation to providing access to facilities such as training which relates to the carrying out of their official business. This does not apply to election or appointment to offices within or by the local authority.

6.2 There is a duty on local authorities to make reasonable adjustments for disabled members.

7. SERVICES AND PUBLIC FUNCTIONS

7.1 the Equality Act 2010 prohibits discrimination, harassment and victimisation by providers of a service to the public or a section of the public

7.2 refusing to provide or not providing a service includes providing a person with a service of different quality, or in a different way or on less favourable terms than the service would normally be provided is unlawful.

8. PREMISES

8.1 The Act prohibits discrimination, harassment and victimisation in relation to the disposal, management and occupation of premises.

9. POSITIVE ACTION

9.1 A person is permitted to take action which is proportionate means of achieving the aim of

- a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage

- b) meeting those needs
- c) enabling or encouraging persons who share the protected characteristic to participate in that activity in respect of
 - i. persons who share a protected characteristic suffer a disadvantage connected to the characteristic
 - ii. persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
 - iii. participation in an activity by persons who share a protected characteristic is proportionately low

10. PUBLIC SECTOR EQUALITY DUTY

10.1 Public authorities in the exercise of their functions have a duty to take into account

- a) the need to eliminate discrimination and harassment, victimisation and any other conduct that is prohibited by or under the Act
- b) to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- c) to foster good relations between those who share protected characteristics and those who do not

For more information a summary guide can be accessed at:

www.equalities.gov.uk/pdf/401727_GEO_EqualityLaw_PublicSector_acc.pdf