

**DRAFT**  
**Wiltshire Council Human Resources**  
**Equality and Diversity Policy and Procedure**

This policy can be made available in other languages and formats such as large print and audio on [request](#).

**What is it?**

This policy outlines Wiltshire Council's approach to equality and diversity to ensure fair and lawful practices and procedures at all times throughout recruitment and employment. This policy is closely linked with the [Dignity at Work policy](#) and takes in to account changes under the [Equality Act 2010](#).

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### **Who does it apply to?**

This policy and procedure applies to all employees and prospective employees (job applicants and prospective job applicants) apart from school teachers and non teaching school staff.

This is a harmonised policy and applies to both Wiltshire Council and ex-district TUPE employees.

Contractors, sub-contractors, consultants, agency workers, staff seconded from other organisations and volunteers are expected to adhere to the principles set out in this policy and procedure whilst undertaking work or tasks for Wiltshire Council.

### **When does the policy apply?**

This policy and procedure applies at all times including prior to employment, during the recruitment process, and throughout employment.

### **When does the policy not apply?**

There are no exemptions under this policy.

### **What are the main points?**

1. Wiltshire Council is committed to employment policies, procedures and practices which do not discriminate unfairly or unlawfully against anyone and which promote equality and diversity for all and aim to ensure equality of outcome through equality impact assessment. This is reflected in the council's [equality and diversity policy statement](#).
2. On coming in to force on the 1 October 2010 the Equality Act 2010 consolidated and harmonised much of the previous discrimination legislation (which has now been repealed) and introduced some new changes which have been built in to this policy and procedure as appropriate. Further details about the changes can be found in [ACAS guide The Equality Act – What's new for employers?](#) In brief the main areas of change following the implementation of the Equality Act 2010 are set out below:
  - identifies nine characteristics which are protected under the act from direct and indirect discrimination, harassment and victimisation in services and public functions, premises, work, education etc;
  - introduces the concept of discrimination arising from disability;
  - prevents employers asking questions relating to an employee's health by restricting when employers may ask any pre-employment health questions;

- increases the powers of employment tribunals;
  - applies the definition of indirect discrimination to all protected characteristics;
  - extends protection to people who are associated with a person who has a protected characteristic or in circumstances where a person is discriminated against because they are perceived to have a protected characteristic;
  - makes provision for pay gap information relating to gender;
  - allows positive action in regards to recruitment and promotion.
3. The 'protected characteristics' which qualify for protection from discrimination under the act include:
- Age
  - Disability
  - Gender reassignment
  - Marriage and civil partnership
  - Pregnancy and maternity
  - Race
  - Religion and belief
  - Sex
  - Sexual orientation

This policy and procedure also sets out details of the different types of discrimination.

4. This policy and procedure also provides you with details of:
- how this policy will apply to other council employment policies and procedures
  - how this policy will be monitored
  - the rights and responsibilities of everyone to whom the policy applies
  - what is acceptable and unacceptable behaviour at work
  - how to raise a concern or complaint
  - the procedure for dealing with breaches to the policy
5. The following policy and procedures are also directly linked and form part of this policy and procedure:
- Disability support policy and procedure
  - Religious practices and beliefs policy and procedure

## **Equality and Diversity policy statement**

6. Wiltshire Council believes in equality of opportunity throughout employment (including pay, training & development, recruitment and retention) and commits to developing policies, practices and procedures that promote equality and diversity and anti-discriminatory practices.
7. Employees should understand and accept that there is a diverse workforce and that everyone has the right to be treated with dignity and respect and afforded equality of access to opportunities that are available within the working environment. Valuing diversity means that we recognise and embrace that we all have unique identities which will help to ensure that we can provide the best services possible. These can include, but are not limited to race, gender, disability, age, sexual orientation, religion or belief, pregnancy and maternity, marriage or civil partnership or gender reassignment.
8. No employee will receive less favourable treatment or be disadvantaged by policies, procedures, conditions or requirements which cannot be shown to be justifiable. Recruitment processes will ensure that individuals are short listed, selected and promoted solely on the basis of their relevant merits and abilities\*. All HR policies are continually reviewed and equality impact assessed to ensure that this policy is fully effective.
9. \*Justification of positive action can include our commitment to the award of the Double Tick 'positive about disabled people' symbol for our disabled staff and applicants. This includes guaranteeing an interview to all job applicants who declare a disability at the application stage who meet the essential requirements of the person specification and consider them on their abilities

### **Equalities and key HR Policies and Procedures**

10. Details of equalities issues in relation to key HR policies and procedures are set out below and specific details are also included in the relevant policies and procedures and in many of the new toolkits which accompany these documents.

#### Recruitment (including promotion)

11. The council's recruitment policy and procedure provides recruiting managers with a fair and equitable process for recruiting to vacancies in the council and all managers are required to follow the policy and procedure to ensure that appointments are based on:
  - candidates' ability to do the job (based on skills, experience and knowledge)

- equality of opportunity
  - current legislation
  - the council's objective to have a workforce which reflects the diverse community it serves
12. If you apply for a post with the council as a prospective or existing employee, the recruitment policy also contains the following measures to assist with equality:
- Double tick symbol – ensures if you are a disabled candidate and have declared this on your application form, you will be guaranteed an interview if you meet the essential criteria in the person specification.
  - Reasonable adjustments to ensure that barriers can be removed for candidates with protected characteristics who might otherwise be placed at a substantial disadvantage. This could be at any stage from application to attending the interview or considering adjustments for the post itself.
  - Positive action – may be used on an individual case by case basis to address under represented groups. See [toolkit equality and diversity guidance](#).
13. In line with the Equality Act 2010 you should not be asked questions about your health before you are offered a post with the council except in [restricted circumstances](#). This includes health questionnaires or questions about health at interview.
14. You will be asked to complete a pre-employment health questionnaire once you are offered work on a conditional or unconditional offer. You should not be unfairly discriminated against on the basis of the information provided in your health assessment and the recruiting manager is responsible for making reasonable adjustments where appropriate.
15. For further specific information see [Recruitment toolkit - Manager's guide to equality and diversity in recruitment](#) and [Manager's guide to completing job descriptions](#)

#### Induction

16. If you are a new starter with the council you will be sent details of this equality and diversity policy and procedure with your statement of particulars and you will be provided with an appropriate and fully accessible induction programme. E-learning modules are available as part of the corporate online induction package which includes an equality and diversity module.

#### Terms and Conditions of work

17. As an employee you have a range of terms and conditions which should be applied fairly and equitably to you. These are set out in your statement of particulars and include your pay, grade, hours of work, annual leave, other leave, sickness entitlement, notice periods, allowances etc. Details of how individual terms and conditions are applied can be found on [HR Direct](#).

#### Training and development

18. Access to training and development will be related to the needs of the job and section/department, the available resources and by an assessment of the employee's needs. Your manager will identify your training needs in consultation with you and you are also able to make requests for training either through supervision, appraisal or informally or, where appropriate, through the formal time to train policy.
19. Where appropriate, if you have a disability or another protected characteristic your manager will consider reasonable training and development adjustments in relation to access and support to training. Training may be provided as a suitable adjustment in itself.
20. If you have declared that you have a disability at any time during your employment your manager should ensure that there is a mechanism in place to discuss, at any time, but at least once a year, (with periodic reviews) what can be done to make sure that you can develop and use your abilities. This discussion can take place as part of your annual appraisal. Alternatively, your manager may choose to do this at a separate meeting. Further advice on reasonable adjustments may be sought from Occupational Health where appropriate and following discussion with you.
21. Trainers are also responsible for checking whether course delegates require any adjustments in the terms of the delivery of the course including content of course, presentation/training methods, venue and facilities and support needs. Timing of courses should also be considered at the planning stage.
22. Positive action may be considered in relation to training on a case by case basis to address disadvantage or under-representation or to meet the particular needs of those who share a protected characteristic. See toolkit equality and diversity guidance.

#### Key HR policies and procedures

23. Written policies and procedures exist to ensure that there is a fair and equitable process for managing all key HR issues such as

disciplinary, grievance, work performance, absences and circumstances which involve an employee leaving the council.

24. Key employment policies and procedures have also been equality impact assessed which includes an assessment of the outcome and impact to reduce the potential for discrimination and highlight good practice.
25. If you are involved in a formal procedure the manager responsible for managing the procedure should also ensure that:
  - they are accompanied by an HR Advisor or another senior manager at any formal meetings where formal action may/may not be taken.
  - you have the opportunity to be accompanied by a trade union representative or work colleague at any formal meetings (as appropriate to the policy).
  - they give consideration to the potential impact of protected characteristics in relation to operation of the policy and on final decisions, including making reasonable adjustments.
26. If you are involved in the absence management policy and procedure and you have a disability your manager will need to take this in to account in terms of assessing the impact of your disability on your overall absence levels and whether a reasonable adjustment would help your attendance. Advice from Occupational Health should also be sought in these circumstances.
27. If you have a disability provisions are also available under the absence management policy and procedure in relation to time off to attend appointments relating to your disability.

#### Policies which provide flexibility

There are also a number of policies and procedures aimed at providing you with the opportunity to request flexibility at work which can also assist with improving access to the workplace. These are:

- Flexible retirement
- Flexitime scheme
- Flexible working for parents and carers of adults
- Leave for carers
- Flexible working e.g. annual hours, job share and compressed hours
- Employment break scheme for parents and carers
- Work patterns
- Career break scheme

28. If you are making an application for flexibility in your working arrangements your manager will also take in to account circumstances where you are making the application in connection with someone associated with you, who has a protected characteristic e.g. requesting reduced hours to care for a disabled parent or partner.

### **Equal pay**

29. The Equality Act 2010 states that men and women doing equal work and work rated as of equal value are entitled to equal pay and that employers may wish to carry out a pay audit to ensure that men and women are getting equal pay. This part of the Equality Act makes provision for the publishing of data relating to pay in order to enable an objective assessment of the gender pay gap.
30. In 2007, the council undertook a pay reform process to ensure that we operate a robust system of job evaluation, ensuring all jobs are assessed objectively and paid fairly in relation to other jobs within the council. The majority of posts will have been evaluated under this scheme. Some specialist and senior roles will have been assessed under other evaluation schemes.

### **Workforce monitoring**

31. The Equality Act has clarified the general and specific duties in relation to data collection and monitoring information. The Equality and Human Rights Commission have also produced guidance on these duties and work is currently being undertaken to comply with this guidance.
32. Monitoring data is currently collected in relation to recruitment, selection, leavers, discipline and grievance, performance appraisal and training for the following protected characteristics: gender, age, ethnicity and disability. The range of monitoring is likely to increase under the general and specific duties.
33. The Equality Act recognises that whilst being good practice to collect data on other more sensitive protected characteristics this should only be the case where the culture is ready to do so and where the data will be used appropriately. This will remain under review and subject to the development of corporate guidance.
34. Diversity monitoring is not just the collection of statistical information, but an annual process of analysis and evaluation which informs policy developments and process changes. The monitoring and evaluation cycle should:



- Highlight possible inequalities
  - Investigate their causes
  - Remove, mitigate or justify any discrimination or disadvantage
  - Develop appropriate positive action initiatives
  - Evaluate the effectiveness of any changes
35. Annual reports on diversity monitoring are produced for the Staffing Policy Committee and to Service Directors. This provides the opportunity for consideration of information in the context of the council's people strategy, workforce planning and potential positive action in appropriate areas.
36. Published reports on diversity data are "headline" figures, and do not identify individuals. All personal staff data is protected by data protection legislation.
37. You can access details of the current equality and diversity employment monitoring figures on the Wiltshire Council website.

#### **Acceptable/unacceptable behaviour at work**

38. All employees are expected to be familiar with and comply with the responsibilities and behaviours for employees identified under:
- This equality and diversity policy and procedure (and directly linked procedures)
  - The dignity at work policy and procedure
  - The council's code of conduct
39. Unacceptable behaviour towards anyone including those with a protected characteristic includes some of the following examples: (this list is not exhaustive)
- using offensive language
  - offensive jokes or inappropriate language
  - creating or contributing to hostile working environment
  - bullying and harassment in any form
  - excluding or isolating a colleague(s)
  - inappropriate use of internet or electronic communication including social networking.
  - discrimination against a member of staff or the public on any grounds of sex, race, disability, age, religion or belief, sexual orientation, pregnancy and maternity; gender reassignment or marriage or civil partnership
  - behaviour or body language which demonstrates prejudice or ignorance

40. Unacceptable behaviour extends to all the types of discrimination outlined in this policy including:
- discrimination by association where someone is associated with someone with a protected characteristic (e.g. a child, parent or partner)
  - discrimination by perception where someone is perceived to have a protected characteristic but does not actually possess it.
  - Harassment is also extended to protect those who witness harassment of others and find it offensive.
  - Victimisation as set out below.

### **Breaches to this policy**

41. As a prospective employee or employee you are entitled to both be treated with dignity and respect and expected to treat others with dignity and respect at all times (including outside of working hours in cases of misconduct - see code of conduct policy and procedure)
42. If you are an employee and feel that you have been discriminated against or treated unfairly you should raise this under the dignity at work policy with your line manager or with your manager's manager if the matter concerns your manager. Redress over inappropriate behaviour or language can be sought through this policy which could include mediation. In relation to more serious contraventions the policy includes provisions for the matter to be treated in line with the disciplinary policy and procedure.
43. Prospective employees should raise concerns either with the manager responsible for recruitment to the post for which they have applied for or with the recruitment team.
44. As a prospective employee or employee, if you feel that you have been the subject of harassment by a third party (i.e. someone who is not directly employed by the council e.g. a member of the public, service user, you should report this to your line manager or potential line manager who will take reasonably practical steps to deal with the matter. See guidance for managers – equality and diversity policy.

### **Types of discrimination and what do they mean:**

45. The Equality Act has harmonised and strengthened discrimination legislation, the main aspects are defined below, but for further detail and clarification you can go to further information from the Equality and Human Rights Commission.

46. **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 or because they associate with someone who has a protected characteristic.

*Example:*

If an employer recruits a man rather than a woman because s/he assumes that women do not have the strength to do the job, this would be direct sex discrimination.

47. **Indirect discrimination** - Indirect discrimination can occur when you have a condition, rule, policy or practice in your organisation that applies to everyone but particularly disadvantages people who share a protected characteristic.

*Example:*

A manager holds all of his team meetings from 2.00 – 4.00 pm making it very difficult for many part time staff to attend. The majority of part time staff are women and therefore this practice is indirect sex discrimination

49. **Discrimination by association** - This is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

*Example:*

An employer refuses to appoint an employee because she is married to a Muslim, this would be indirect religious or belief-related discrimination because of her association with her husband

50. **Perception discrimination** - 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.

*Example:*

Where an employer fails to shortlist an applicant on the basis that because of an Irish sounding name they must be Irish, even when they are not actually Irish.

51. **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". Employees will now be 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.

*Example:*

An employee is subject to homophobic banter and name calling on the basis that he went to a public school. Even though his colleagues are aware that he is not gay, and he is aware that they know he is not gay this constitutes sexual orientation harassment and is unlawful under the Equality Act.

52. **Third party harassment** - The Equality Act makes you potentially liable for harassment of your employees by people (third parties) who are not employees of your company, such as customers or clients. You will only be liable when harassment has occurred on at least two previous occasions, you are aware that it has taken place, and have not taken reasonable steps to prevent it from happening again.

*Example:*

A Pakistani library assistant repeatedly informs his manager that he is upset by a member of the public who regularly makes derogatory remarks that jobs in England should be for the English and not given to foreigners. If his manager does nothing to try to prevent this from happening he himself would be liable for racial harassment.

53. **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.

*Example:*

A non disabled employee gives evidence on behalf of a disabled colleague at a disciplinary hearing against a manager and is subsequently relocated to a different team with no promotion prospect and less responsibility because of their action at the hearing. This would constitute victimisation under the act which is unlawful.

## Line manager responsibilities....

54. To ensure that all employees are managed fairly and consistently in line with the principles outlined within this policy and specifically:
55. To carry out recruitment and selection in accordance with the current policy and guidance and to ensure that prospective employees are also treated fairly and consistently in line with the principles outlined within this policy.
56. To ensure that employees receive an appropriate and fully accessible induction including information about policies, practices and procedures when they start a new post and that they continue to be informed and updated about changes to these.
57. To apply all other employment related policies and procedures and terms and conditions of employment fairly and consistently.
58. To ensure that supervision, appraisal and learning development plans for employees take full account of Wiltshire's commitment to equality and diversity as set out in this policy and procedure.
59. To ensure that equality and diversity is fully integrated into any training and development that is commissioned and delivered for employees.
60. To ensure that there is a mechanism in place to discuss, at any time, but at least once a year, with a disabled employee what can be done to make sure that they can develop and use their abilities – this can be through the appraisal process or at a separate meeting
61. When an employee declares their disability to ensure that reasonable adjustments are implemented to remove barriers for disabled staff (and employees with protected characteristics) which potentially put employees at a disadvantage to ensure that they can perform effectively and have equal access to progression in the work place.
62. To make every effort when employees become disabled to enable them to stay in employment including redeployment where appropriate.
63. To give careful consideration to requests for flexible working arrangements including parental or carers leave which enables staff to combine work and other responsibilities and to seek to agree these unless there are operational, financial or other legitimate reasons for not doing so under the relevant policy and procedures.
64. To challenge discrimination and unfair treatment in the workplace and ensure that it is dealt with appropriately and where necessary under the dignity at work/disciplinary policy and procedure.

65. To provide support to any employee who is the subject of unlawful or unacceptable discrimination in the course of his/her employment.
66. To take appropriate action in relation to complaints and concerns raised by employees and prospective employees about third party harassment.
67. To be mindful and take action to avoid all forms of discrimination as set out in this policy and procedure and to ensure that equal rights and opportunities are provided to all.
68. To undertake Equality Impact Assessments for policy, procedure and practice where appropriate.

#### **Employee Responsibilities....**

69. To treat colleagues, managers, councillors, service users and members of the public with dignity and respect, in accordance with the principles set out in this policy and procedure and in the council's equality statement, the dignity at work policy and the code of conduct policy and specifically:
  - to embrace a culture which provides supportive and positive working relationships and behaviour which underpins the council's vision, values and belief.
  - to be mindful of and take action to avoid becoming involved in any form of discrimination as set out in this policy and procedure.
  - not to aid or collude in circumstances where colleagues, managers, councillors, service users and members of the public are treated in a manner which contravenes the policy and to report any such instances.
  - to make colleagues aware if their conduct or behaviour is inappropriate and to report this to your manager.
  - provide support to someone who is subject to such conduct or behaviour
  - to promote good community and workplace relations to foster and encourage an atmosphere of tolerance and support so that there is no place for behaviours which would negatively impact upon the community or workplace.

#### **HR responsibilities**

70. HR has an overall responsibility for the reviewing, updating and monitoring of this policy and procedure and specifically to:

- make available to employees its written policies, practices and procedures on equality and diversity and anti-discriminatory practice in employment through HR direct online.
- send the equality and diversity policy and procedure to all new employees.
- inform new employees of its policies, practices and procedures during induction training.
- inform all employees of changes to, and developments of its policies, practices and procedures.
- provide advice and support and training to managers in relation to equality and diversity issues and issues relating to breaches of the policy and procedure.
- to carry out equality impact assessments for all HR policies and procedures.

### **OH responsibilities**

71. OH has an overall responsibility for providing manager's with advice on an employee's fitness for work from a professional health perspective. In the context of this policy and procedure OH:
- provide advice and support to managers in relation to pre-employment questionnaires (once a job offer has been made)
  - provide advice and support to managers and employees in relation to fitness for work under the absence management policy and procedure
  - provide advice and support to managers and employees in relation to reasonable adjustments where required. Access to this service is via manager's completion of the agreed referral form.
  - have a reasonable adjustment budget which is managed by the Health and Safety Manager to reimburse manager's budgets where either the Access to Work funding is not available or does not cover the total cost of the reasonable adjustment. Managers and employees are encouraged to contact OH prior to going to Access to Work.

### **Frequently asked questions....**

72. **There is regular 'office banter' which often includes mild swearing and derogatory language which I find offensive even though it is not directed at me, can anything be done about this?**

Yes, language or behaviour which one person finds acceptable may not be acceptable to another and if you are finding language or behaviour offensive you should raise this with your line manager. The relevant team members will be informed that the language used is unacceptable to work colleagues and therefore it should not be used. If

the informal approach does not succeed formal action can be taken in accordance with the disciplinary policy and procedure. Additional support maybe required at the informal stage to raise awareness in the form of training or coaching in appropriate cases.

**73. What is expected from me in helping to provide a positive working environment and culture?**

Employees are expected to comply with the requirements of the dignity at work policy and procedure and code of conduct policy and procedure to co-operate and support managers in addressing and taking appropriate action to improve areas of concern.

**74. If I witness offensive behaviour or language against another employee but this employee does not report it, am I expected to do anything?**

Yes, you should speak to the person who has been the target of the abuse and advise them to report it to their line manager under the dignity at work policy. If they don't want to take the matter any further you should report the incident to an appropriate senior manager for them to follow up on.

Alternatively, if you have been personally offended by the incident you have witnessed and it relates to a protected characteristic, you are able to raise the matter under the dignity at work policy and procedure yourself, even though you do not possess the characteristic yourself.

**75. Do I have to disclose my disability status?**

No, there is no legal requirement upon you to disclose any protected characteristic but it does assist the council in understanding its workforce. By having this information we can monitor the effectiveness of our policies, procedures and identify where further support or positive action needs to be addressed. You will not be at any disadvantage for disclosing this information and in fact there are further rights and support available for disabled staff and any staff who have other protected characteristics.

**76. Does Wiltshire Council support staff forums for staff with protected characteristics?**

Yes, there is a Staff Disability Forum and a Black and Minority Ethnic (BME) Staff Forum which both meet regularly for support and to have a valuable consultative role in policy development and other employment related issues.

The Forums exist to:



- provide mutual support for disabled/BME staff
- help inform all staff about equality and diversity issues and help raise awareness
- advise and work with management on how to improve the quality of working life for disabled/BME staff
- recognise and share achievements/ contribute a powerful voice for all

<http://thewire.wiltshire.council/equality-and-diversity-staff-disability-forum.htm>

<http://thewire.wiltshire.council/index/equality-and-diversity/staff-support/equality-and-diversity-black-and-minority-ethnic-staff-forum.htm>

**77. Does my manager have to let me attend the BME staff forum?**

Managers should allow and encourage relevant employees to attend the staff forums whenever possible, subject to service delivery requirements. It is a good idea to inform your manager of the dates of the forums with as much notice as possible; these dates are published via the Wire.

**Equality Impact Assessment**

This policy has been Equality Impact Assessed (link to EIA for policy) to identify opportunities to promote equality and mitigate any negative or adverse impacts on particular groups.

**Relevant legislation**

The Equality Act 2010. This policy and procedure reflects the first part of the implementation of the Equality Act. A number of provisions from the Act are still subject to consideration by the Government Equalities Office (GEO).

The council will also have due regard to the relevant codes of employment practice issued by the Equality and Human Rights Commission.

**Advice and guidance**

If you require help in understanding this policy you should contact your line manager or trade union representative if you are a member.

If, due to the nature of your query, it is not appropriate to contact your line manager you should contact your head of service who will nominate an appropriate manager or colleague to help you.

**For further advice**

There are a number of related policies and procedures that you should be aware of including:

- Disability and support policy and procedure
- Religious practices and beliefs policy and procedure
- Dignity at work policy and procedure
- Recruitment and retention policy and procedure
- Code of conduct
- Whistleblowing policy and procedure
- Grievance policy and procedure
- Absence management policy and procedure
- Disciplinary policy and procedure
- Improving work performance policy and procedure
- Computer e-mail and internet policy

For further information please speak to your supervisor, manager, service director or contact a member of your human resources advisory team.

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