

# BISHOP'S CASTLE TOWN COUNCIL

## RECRUITMENT POLICY

### EQUALITY

The law on equality has been consolidated into the Equality Act 2010, which took effect on 1 October 2010.

The law prohibits discrimination on certain grounds. To discriminate against someone means to treat them less favourably, to harass or victimise them, or to subject them to a provision, criterion or practice which puts them at a disadvantage. This is unlawful if it is in certain grounds, known as "protected characteristics". These are:

- **Age**
- **Race** (including segregation)
- **Religion or belief**
- **Sex**
- **Sexual orientation**
- **Gender reassignment**, which is protection for transsexuals, including less favourable treatment because of an absence related to reassignment compared to absence because of sickness or injury etc
- **Disability**, which is a physical or mental impairment which has (or is likely to have) a substantial effect on a person's ability to carry out day to day activities for a period of a year or more. Certain medical conditions are a disability from the outset, such as cancer, Multiple Sclerosis and HIV. Protection from discrimination covers a person who has had a disability in the past.

There is no unfavourable treatment if the "discriminator" did not know or could not reasonably have known the person had a disability. More favourable treatment of disabled persons is not disability discrimination of non-disabled people.

As well as the usual forms of discrimination, the Act protects people from unjustified discrimination 'arising in consequence of' a disability, which is very broad.

There is also a duty on an employer to make reasonable adjustments where a "provision, criterion or practice" puts a disabled person at a substantial disadvantage compared to non-disabled persons. Then a duty arises on the employer to take such reasonable steps as are necessary to avoid the disadvantage: to remove, alter or provide means to avoid a physical feature; to provide an auxiliary aid or service; or to adjust a working pattern or role etc. The adjustment must be made at no charge to employee.

- **Pregnancy and maternity:** protection from discrimination applies during pregnancy from conception to the end of the maternity leave (either the two weeks compulsory maternity leave, Ordinary Maternity Leave or Additional Maternity Leave if the employee has the right to it). The protection is against discrimination because of pregnancy or maternity, or illness suffered as result of pregnancy; and discrimination because a woman is on maternity leave, or is exercising or seeking to exercise a right to take maternity leave. During pregnancy and maternity, discrimination cannot be sex discrimination. Discrimination on the grounds of pregnancy or maternity cannot be "justified".
- **Marriage and civil partnership:** it is unlawful to discriminate against a colleague or employee on the ground that they are married or in a civil partnership. As previously, there is no protection of single people.

## **Defences to claims of discrimination**

Certain types of discrimination (but not less favourable treatment) can be defended on the basis that they are “justified” as being a “proportionate means of achieving a legitimate aim”. This means that the employer has a business need which the otherwise discriminatory act is needed to fulfil (such as a rule that only male Prison Officers can hold certain posts as the role involves searching male prisoners, or offering a higher rate of pay to a highly-qualified and experienced individual). But the defence will only apply if there is no lesser measure the employer can put in place which is not discriminatory and which has the same impact in fulfilling the business need.

Employers are liable for the discriminatory acts of their employees done in the course of their duties. There is a defence available to employers, however, who can show that they took all reasonable steps to prevent the employee from carrying out the acts of discrimination. The reasonable measures will include equalities training, having clear Policies in place and consistent practices of disciplining employees for acts of discrimination etc.

## **Equal Pay**

A sex “equality clause” is to be read into a term under which an employee and a comparator of the opposite sex are employed where the two people are employed in equal work (like work, work rated as equivalent in a job evaluation study or work of equal value). This means the term relating to pay or other benefit is amended to ensure the male and female have the same rights and terms.

This does not apply if the person responsible for their pay shows the difference is because of a material factor not involving sex and is a proportionate means of achieving a legitimate aim.

A similar ‘sex equality rule’ is implied into pension schemes so that men and women are given equal terms.

And a ‘maternity equality clause’ takes effect during maternity leave so that a woman’s pay during maternity leave in certain circumstances is increased in line with those doing equal work who are not on maternity leave.

## **Those protected by equality laws**

Those protected are employees and job applicants as well as contract workers.

Discrimination and harassment is also unlawful if arises out of a relationship that used to exist. So former employees are also protected from discrimination, for example in terms of a job reference. Employers are under a duty to make reasonable adjustments for a former employee’s disability.

Employers also have a duty to take such reasonable steps as are necessary to prevent the third party from harassing an employee. The employer can, however, only be liable on the third occasion of harassment.

## **Recruitment: enquiries about health**

An employer must not ask and act on answers about the health of an applicant before offering work except where this is necessary for:

- establishing requirements or adjustments needed for an interview or assessment
- establishing the person’s ability to carry out a function intrinsic to the work
- monitoring diversity or
- checking the person has a disability which is required for the job

## **Contractual terms prohibiting discussions about pay**

Any term in a contract of employment which prevents or restricts people from discussing or disclosing details about pay is unenforceable if the purpose of the restriction is to deter an employee from finding out whether he/she may have a discrimination claim.

## **Dual discrimination protection**

From 6 April 2011, there will be a new concept of “combined discrimination”, which is discrimination because of a combination of two protected characteristics, known as “dual characteristics” such as sex and race. An employee can claim less favourable treatment than someone who does not share either characteristic. This does not apply to marriage and civil partnerships or pregnancy and maternity.

## **National Agreement on Pay and Conditions of Service (‘Green Book’) provisions**

The Green Book refers to Equality at Part 2, paragraph 1 as follows:

*“1.1 Employees will be afforded equal opportunities in employment irrespective of disability, gender, race, religion, age, sexuality, marital status, parental status, caring responsibilities and hours of work.*

*1.2 Local authorities will ensure that discriminatory practices are identified and removed and non-discriminatory practices introduced in all areas of employment including recruitment, training and promotion. Lawful positive action initiatives should be taken to achieve and maintain a representative workforce.*

*1.3 The National Council has agreed an Equal Opportunities Guide which is intended for use in all local authorities. The Guide is reproduced in Part 4 of this national agreement.”*

The NJC has specifically negotiated an Equal Opportunities Guide entitled “The Equality Standard for Local Authorities”. This was published before the Equality Act came into force in October 2010. It can be found at: <http://www.idea.gov.uk/idk/aio/6531086>.

## **LEGAL POSITION**

It is unlawful to discriminate against an individual on the following grounds:

- **age**
- **disability**
- **gender reassignment**
- **marriage and civil partnership**
- **pregnancy and maternity**
- **race**
- **religion or belief**
- **sex**
- **sexual orientation**

Under the Equality Act 2010 these are known as “protected characteristics”.

## **PURPOSE**

The purpose of this policy is to provide equal opportunities to all employees, irrespective of their characteristics (unless there are genuine occupational qualifications or objectively justified reasons for a different approach to be taken). We oppose all forms of unlawful and unfair discrimination whether it be direct or indirect discrimination, victimization or harassment on the grounds of any of the protected characteristics defined in the Equality Act 2010.

## **SCOPE**

All employees whether full-time, part-time, fixed term contract, agency workers or temporary staff, will be treated fairly and equally. Selection for employment, promotion, training, remuneration or any other benefit will be on the basis of

aptitude and ability. All employees will be helped and encouraged to develop their full potential and the talents and resources of the workforce will be fully utilised to maximise the efficiency of the council.

### **OUR COMMITMENT**

Every employee is entitled to a working environment that promotes dignity and respect to all. No form of intimidation, bullying or harassment will be tolerated. This is further defined in the Dignity at Work policy adopted by the council.

The commitment to equal opportunities in the workplace is good management practice and makes sound business sense as it seeks to utilise the talents available from the local community, representing Society as a whole.

Breaches of our equal opportunities policy will be regarded as serious misconduct and could lead to disciplinary proceedings. Employees are entitled to complain about discrimination or harassment or victimization through the council's Grievance procedure.

This policy is fully supported by all Members of the council and adopts the model contract as devised by the employee professional body in the local government sector (the Society of Local Council Clerks).

The policy will be monitored and reviewed annually/bi-annually. Other Personnel policies will be reviewed against the values stated in this main Equal Opportunities policy to ensure that the council strives to remain an Equal Opportunities employer.

**Uses of Policy** – Staff Handbook, Induction of staff and Members, decisions relating to Recruitment and Selection, Training and Development, Promotion, Remuneration, Retirement, cross-referenced to Grievance, disciplinary and Dignity at Work Policies.