

Item

EQUALITIES POLICY AND STRATEGY



To:

Councillor Anna Smith, Executive Councillor for Communities

Environment & Community Scrutiny Committee 04/10/2018

Report by:

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Wards affected:

Abbey, Arbury, Castle, Cherry Hinton, Coleridge, East Chesterton, King's Hedges, Market, Newnham, Petersfield, Queen Edith's, Romsey, Trumpington, West Chesterton

Key Decision

1. Executive Summary

- 1.1 The Council's Comprehensive Equalities and Diversity Policy sets out the Council's commitment to promoting equality and diversity, including through its role as an employer and a provider of services to the public. A revised and updated version of the policy is presented for approval at Appendix A.
- 1.2 The Council has developed a new Single Equality Scheme (Appendix C), which sets out how the organisation will challenge discrimination and promote equal opportunities in all aspects of its work over the next three years (2018-2021). It includes five strategic objectives that demonstrate how the organisation will meet the aims of the Public Sector Equality Duty. The Single Equality Scheme (SES) was developed based on the principles and policies set out in the Comprehensive Equalities and Diversity Policy.

2. Recommendations

The Executive Councillor is recommended to:

- 2.1 Approve the revised Comprehensive Equalities and Diversity Policy at Appendix A.
- 2.2 Approve the Single Equality Scheme 2018-2021 at Appendix C.

3. Comprehensive Equalities and Diversity Policy

- 3.1 The Council's Comprehensive Equalities and Diversity Policy was first approved in 2006. The revised version of the policy was approved at the Council's Strategy and Resources Committee on 11 October 2010, which reflected changes in the law introduced by the Equalities Act 2010. The revised Policy set out a number of key principles, including the following statement:

"We recognise nine main equality strands as recognised in UK law, giving all equal importance. These are: gender, gender reassignment; race and ethnicity; disability; sexual orientation; age; religion/belief, marriage and civil partnership, pregnancy and maternity".

- 3.2 At the Committee meeting on 11 October 2010, the Leader of the Council approved two amendments to the policy proposed at the meeting. These amendments were to add the following two commitments to the policy:

- *We will not exclude transgender people from positions which require a gender-appropriate candidate*
- *Transgender people will not be excluded from gender-appropriate single sex/sex segregated facilities operated by the council*

- 3.3 In recent months, the Council has received public challenge and criticism regarding aspects of the policy. The specific issues raised were:

- a) The policy uses the term "gender", whereas the Equality Act 2010 uses the term "sex". The policy is therefore not consistent with the law in this regard.

- b) The policy uses the term “transgender”, whereas the Equality Act 2010 uses the term “gender reassignment” or “transsexual”. The policy is therefore not consistent with the law in this regard.
- c) Where the policy lists “nine main equality strands as recognised in UK law”, it does not do so in the order that they appear in the Equality Act 2010.
- d) The two commitments relating to transgender people have had a negative impact on people with the protected characteristic of “sex”, especially women.
- e) The two commitments prevent the Council from using the “single-sex exemption” contained in the Equality Act 2010.

3.4 Officers have carried out an assessment of the impact of the two commitments in the policy regarding transgender people’s access to single-sex jobs and single-sex facilities since they were introduced in 2010. As part of this assessment, officers have spoken to the managers of all relevant services (including: Community Grants; Homelessness Grants; public toilets; toilets, showers and changing rooms in leisure facilities; single-sex sport sessions; and single-sex health and well-being sessions) to identify how the policy has been applied in practice, and whether there have been any complaints or issues raised regarding transgender people accessing single-sex services and facilities.

3.5 The service managers responsible for these services and facilities are not aware of any complaints being made or issues being raised regarding transgender people accessing them, or by transgender people not being allowed to access them (see Appendix B for further details on the assessment). It is possible that if service users did have any concerns, they may not have reported them, but it is impossible to assess whether this is the case.

3.6 Since 2010 the Council has not used the legal clause¹ enabling it to recruit a person of a particular sex to a role where there is a ‘Genuine Occupational Requirement’. As a result, there have been no instances since 2010 when the commitment in the policy regarding access to “gender appropriate” positions for transgender people could have been applied. Therefore, no impact has been identified from this commitment.

¹ Schedule 9, Paragraph 1 of the Equality Act 2010

3.7 The Council has sought legal advice, including Counsel’s opinion, regarding the legality of the wording and provisions in the policy. The key issues from this advice are summarised in paragraphs 3.7 to 3.16 below.

Terminology

3.8 The legal advice is that the use of the term “gender” in the Council’s policy is not compliant with the Equality Act 2010. We have been advised to substitute references to “gender” with “sex”. The Government recently defined “sex” as being assigned to a person by medical practitioners at birth based on physical characteristics, whereas “gender” refers to socially constructed characteristics².

3.9 The legal advice is that the use of the term “transgender” in the Council’s policy is not compliant with the Equality Act 2010. We have been advised to substitute references to “gender” with “sex” and references to “transgender” with “person with the protected characteristic of gender reassignment” or “transsexual person” because these are the terms defined by the Equality Act 2010. Section 7 of the Equalities Act defines the protected characteristic of gender reassignment as follows:

(1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.

(2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

3.10 Gender reassignment, for the purposes of the Act, does not refer to a medical process. It is a personal process (that is, moving away from the sex to which a person was assigned at birth to that person’s preferred or acquired gender). The explanatory notes to Equality Act 2010 provide the following illustrative example:

² Definitions provided in the glossary attached to the Government’s recent consultation document on proposed amendments to the Gender Recognition Act 2004

“A person who was born physically female decides to spend the rest of her life as a man. He starts and continues to live as a man. He decides not to seek medical advice as he successfully ‘passes’ as a man without the need for any medical intervention. He would have the protected characteristic of gender reassignment for the purposes of the Act.”

Single Sex Exemption

- 3.11 The Equality Act 2010 permits service providers to provide separate services for women and men, or to provide services exclusively for one sex, provided certain strict conditions are met.
- 3.12 Where a service is being lawfully provided on a separate-sex or single-sex basis, the Equality Act requires that in general the service provider should allow transsexual people to access that service according to their acquired gender.
- 3.13 However, the Act includes an exception to this requirement that permits the service provider, in exceptional cases, to provide a different service to a transsexual person, or exclude a transsexual person from the service altogether. The Explanatory Notes to the Equality Act 2010 state that excluding transsexual people from separate-sex or single-sex services needs to be a “proportionate means of achieving a legitimate aim” and has to be “objectively justified”.
- 3.14 The Explanatory Notes to the Equality Act 2010 give the following example of a situation where excluding people with the protected characteristic of gender reassignment would be lawful:
- “A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful.”*
- 3.15 By way of contrast, it would not be lawful if the council did not allow a transsexual person to attend a community facility because other people who used that facility felt uncomfortable. This would be direct discrimination because of gender reassignment.

- 3.16 Under public law the Council must not fetter its discretion to apply exceptions within the Equality Act 2010. Our legal advice says that the two commitments as presently drafted amount to an inflexible policy, which prevents the Council from exercising its discretion to apply exceptions in the Equality Act 2010, and are therefore unlawful. This is because we do not refer to the exceptions in the wording of the policy.
- 3.17 However, the Council is not obliged to apply exceptions to exclude transsexual people in any particular case. The Act anticipates that these exceptions should only be applied in exceptional circumstances. The Council could also not apply a blanket policy to provide separate services for transsexual people or exclude transsexual people from particular services. We would need to do so on a case-by-case basis and carefully consider the implications of doing so.
- 3.18 Ordinarily, action taken by the Council in respect of its employees is regulated by the private law of contract or employment law rather than public law. However, the commitment in the policy not to “exclude transgender people from positions which require a gender-appropriate candidate” is contained in a general policy adopted by the Council under statutory powers. Therefore the issues are also subject to public law which means similar principles to those above apply in relation to the Council as an employer.

Proposed changes to the Council’s policy

- 3.19 In light of the legal advice received by the Council, it is recommended that the following changes should be made to the Council’s Comprehensive Equalities and Diversity Policy:
- a) The word “gender” should be replaced with “sex” in the statement on page 1 of the policy.
 - b) The two commitments relating to transgender people should be replaced with the following sentence in the list of key principles on page 1 of the policy:
We will recognise and treat people with the protected characteristic of gender reassignment according to the gender in which they present unless it is necessary, in exceptional circumstances, to use

the single sex exemption as a proportionate means to achieve a legitimate aim in line with the Equality Act 2010

- 3.20 It could be argued that there is no need to include the sentence at 3.17 b) above, because it is a statement of what the underpinning legislation says. However, in the context of current public debate and challenge, it would be helpful to clarify what the Council's position is in the policy. Not confirming that we understand the rights of transsexual people might suggest or imply that the Council has made a deliberate decision to change its policy to not allowing people with this protected characteristic to access single-sex roles, services and spaces. This would not be the case, and, as outlined above, it would be illegal for the Council to do so.
- 3.21 Not mentioning the single sex exemption at all, may imply we would never use that part of the Act in the exceptional circumstances that might require it. It would be unlawful for the Council to fetter its discretion in this way. Given the current public debate and challenge, the Council needs to be clear about its position on this.
- 3.22 A revised version of the policy is presented at Appendix A for approval by the Executive Councillor, which includes the amendments proposed at 3.19 above. We have also updated the policy in light of changes since 2010 to the Council's structures and processes relating to our work in promoting equality and tackling discrimination as an employer and provider of services. Changes made to the policy at Appendix A are shown via tracked changes. In particular we have:
- Updated the section on pages 3-5 on our employment practices. Our intention has been to provide more concrete indications of the steps we take as an employer to promote equality and diversity
 - Updated the section on how we are organised on page 6 to reflect changes in internal officer equality groups since 2010.
 - Updated the section on how we deliver to reflect the current events that the Council marks.
 - Updated the section on page 8 on the equalities legislation that applies to the Council

3.23 All relevant live corporate equalities documents will be amended to refer to the protected characteristics defined in the Equality Act 2010. Where necessary this will include replacing the word 'gender' with 'sex' and the word 'transgender' with 'gender reassignment'. The protected characteristics will also be listed in alphabetical order in these documents, as in the Equality Act 2010, so as not to appear to be prioritising one protected characteristic over another. The Equality Impact Assessment template has already been amended and the revised version will be used for Committee reports in the October cycle.

4. Single Equality Scheme 2018-21

4.1 Whilst the Comprehensive Equalities and Diversity Policy sets out our overarching commitments as an employer and a provider of services to the public, the Single Equality Scheme sets out our priorities for the next three years. We have produced a new scheme every three years since 2009. The new single Equality Scheme for 2018-2021 is presented at Appendix C for approval by the Executive Councillor.

4.2 The Single Equality Scheme 2018-21 carries forward the 5 objectives from the Single Equality Scheme for 2015-2018. The objectives are:

1. To further increase our understanding of the needs of Cambridge's growing and increasingly diverse communities so that we can target our services effectively.
2. To continue to work to improve access to and take-up of Council services from all residents and communities.
3. To work towards a situation where all residents have equal access to public activities and spaces in Cambridge and are able to participate fully in the community.
4. To tackle discrimination, harassment and victimisation and ensure that people from different backgrounds living in the city continue to get on well together.
5. To ensure that the City Council's employment and procurement policies and practices are non-discriminatory and to work towards a more representative workforce within the City Council.

4.3 The key changes that have been made to the Single Equality Scheme for 2018-2021 compared to the previous scheme for 2015-2018 are:

- Including information on the key issues experienced by equality groups in Cambridge. These issues were identified through consulting with partners, undertaking a literature review, using local statistics we hold and using information from community needs assessments carried out in 2013 and 2015.
- Differentiating between ongoing 'business-as-usual' actions/ areas of work undertaken by services, and new areas of work or actions where specific outcomes will be identifiable and that we are held to account for.
- Identifying stronger links between our Anti-Poverty Strategy 2017-20 and our equality and diversity work.

4.4 The new SES contains actions which relate to all the protected characteristics identified in the Equality Act 2010. However, the Strategy includes additional actions to address a number of key issues identified through the consultation and review of available evidence. These are:

a) *Ensuring that our frontline services support people with mental health issues in the best possible way*

Some actions identified in the Strategy relating to this issue are to:

- Sign up to the Stop Suicide campaign and develop an action plan for the Council to help ensure people who are at risk of suicide that come into contact with Council services get support they need.
- Continue to provide a trusted single point of contact for people who need additional support from our customer contact centre because of mental health issues. Continue to help these service users to seek support they may need from other agencies through signposting or (with service users' permission) making referrals.

(b) *Helping to tackle discrimination experienced by Gypsies and Travellers, and encouraging them to get support they need from public services.*

Some actions identified in the strategy related to this issue are to:

- Identify further opportunities for collaborative working with Cambridgeshire County Council's Traveller Liaison Officer in order to better support Travellers who set-up temporary sites in the city, and Travellers who are high priority need for social housing.
- Procure Gypsy, Roma and Traveller cultural awareness training for our frontline staff that will in part be run by Travellers. This will help staff learn about experiences of discrimination and barriers from accessing public services that are faced by Gypsies and Travellers.

(c) *Helping to tackle loneliness experienced by older people, people with mental health issues and people in new communities.*

Some actions identified in the strategy related to this are to:

- Continue to use the Community Chest, consisting of developer contributions, to provide small pots of funding (up to £250) to help kick-start community projects in and around new communities that support them to develop social networks and reduce social isolation.
- Explore the feasibility of letting hard-to-let sheltered housing units to students at reduced rents with the requirement that they undertake 30 hours volunteer work per month to support older tenants with support needs, including helping to combat social isolation.

4.5 There are also two key actions in the strategy for 2018/19, related to the protected characteristics of sex and gender reassignment. These will both require long-term commitment and policy development.

- We have signed up to the Domestic Abuse Housing Alliance (DAHA). Women experience domestic abuse more often than men and research indicates that where it happens this is with much more intensity. We will be reviewing the Council's domestic abuse policies and procedures with a view to developing a joint framework for local housing providers to consider adopting. We will also develop guidelines for the Council's approach to known perpetrators of domestic abuse and perpetrators excluded from their homes.
- We intend to sign up the live version of the Safer Spaces campaign being led by Encompass Network. The Council is already signed up to the pilot project with 6 other local organisations, to create welcoming, inclusive and safe spaces for lesbian, gay, bisexual,

transgender and queer/ questioning (LGBTQ) people in Cambridge. We will work with the Encompass Network to develop further actions we can undertake to ensure our services are as welcoming, accessible and inclusive for LBTQ people as possible and to raise awareness of staff policies we have that support LGBTQ people.

5. Implications

(a) Financial Implications

No financial implications have been identified related to the Comprehensive Equalities and Diversity Policy or the Single Equality Scheme. Equalities has been mainstreamed across all Council services so actions that form part of the Single Equality Scheme will primarily be delivered through existing service budgets and will not require additional resources.

(b) Staffing Implications

The revised Comprehensive Equalities and Diversity Policy policy will be promoted to managers and staff in all Council services through internal communications channels. Where required, training and guidance will be provided for relevant Council service managers and staff on how the policy should be applied to any single-sex services and facilities that they are responsible for.

As set out in this report, the Council will only apply the single-sex exemption to exclude transsexual people from a particular service or facility in exceptional circumstances. If the Council receives any public requests in future for it to apply the single sex exemption, these requests will be considered on a case-by-case basis. The relevant Head of Service and the Council's Equality and Anti-poverty Officer will carry out a thorough assessment of all the potential impacts of applying the exemption, taking into account all available evidence. This assessment will consider whether applying the exemption would be a proportionate means of achieving a legitimate aim, as defined in the Equality Act 2010. The final decision on whether to apply the exemption would be taken by the Chief Executive or a Strategic Director.

As equalities has been mainstreamed across all Council services, the activities and actions identified in the strategic action plan for Single Equality Scheme SES will primarily be delivered as part of the core responsibilities of staff within the relevant services.

(c) Equality and Poverty Implications

We have undertaken an Equality Impact Assessment related to changes to the Comprehensive Equalities and Diversity Policy. This assessment can be found at Appendix B.

No Equality Impact Assessment (EqIA) has been carried out for the Single Equality Scheme. The Single Equality Scheme 2018 -21 will form the framework for the City Council's work to challenge discrimination and promote equal opportunities over the next three years. Services have undertaken their own EqIAs related to specific actions identified in the strategy. It also includes a range of evidence on issues faced by different protected characteristics in Cambridge City, so it will provide a useful resource for the completion of EqIAs for other projects and policies.

In developing our new Single Equality Scheme 2018-21, a key priority was to identify links between our Anti-Poverty Strategy 2017-20 and our equality and diversity work.

(d) Environmental Implications

There are no environmental implications

(e) Procurement Implications

The City Council has taken steps to ensure that equalities considerations are embedded in its procurement processes. We have produced a guide on implementing The Public Services (Social Value) Act (2012) into our procurement processes for staff to use. This ensures that a key part of our assessment process in procuring contracts is to consider economic, social and environmental benefits suppliers can bring to Cambridge. In the Single Equality Scheme 2018-21, we have committed to identifying further opportunities to maximise social value through the Public Services (Social Value) Act 2012.

(f) Community Safety Implications

The strategic action plan incorporated in the Single Equality Scheme 2018-2021 includes a number of actions that will have a number of positive impacts on community safety and cohesion in Cambridge. This includes actions related to:

- Making improvements to lighting on our Council estates
- Designing and undertaking a project to provide Safeguarding advice and/or training to door staff at licensed premises, including encouraging initiatives that reduce anti-social night-time activities of licensed operations
- Undertaking targeted activities to reduce the risk to all taxi passengers
- Continuing to deliver actions to reduce domestic violence and abuse towards women, as set out in the action plan associated with the Council's White Ribbon status
- Improving public safety and raising concerns of people with protected characteristics in our role as members of the Community Safety Partnership
- Replace our CCTV system with new High Definition cameras that are low-light capable
- Working with the Domestic Abuse Housing Alliance
- Providing an outreach service to women who have experienced domestic abuse in the City
- Tackling hate crime through continuing to work with Cambridgeshire Police and in running the Racial Harassment Service
- Ensuring that people at risk of radicalisation and extremism receive the joined up support they need, as part of the Prevent Duty

(g) Communications

The content of this report will be communicated to residents through the media using a news release, through the Council website, and on Twitter.

6. Consultation and communication considerations

- 6.1 We have not consulted on the changes proposed to the Comprehensive Equalities and Diversity Policy at 3.17 above because they reflect what the Council is required to do by law.
- 6.2 In accordance with the principles of the Cambridgeshire Compact, consultation on the draft Single Equality Scheme took place with voluntary and community sector partners and public sector partners, and Equalities Panel members. The details of the consultation process and key issues raised by stakeholders who participated are summarised in Appendix D. The finalised version of the SES attached at Appendix C has been updated to reflect those suggestions that can be incorporated. The stakeholders who took part in the consultation all agreed that the areas we have identified as priorities (as explained at 5.2) for the Single Equality Scheme 2018-2021 are broadly the correct ones.

8. Background papers

No background papers were used in the preparation of this report

9. Appendices

- Appendix A – Comprehensive Equalities and Diversity Policy
- Appendix B – Equality Impact Assessment for Comprehensive Equalities and Diversity Policy
- Appendix C – Single Equality Scheme 2018 to 2021
- Appendix D – Issues raised through the Single Equality Scheme 2018-21 consultation

10. Inspection of papers

If you have a query on the report please contact Helen Crowther, Equality and Anti-Poverty Officer, tel: 01223 - 457046, email:

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