

COMPREHENSIVE EQUALITIES AND DIVERSITY POLICY

To:

Councillor Anna Smith, Executive Councillor for Communities

Environment & Community Scrutiny Committee 17/01/2019

Report by:

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Wards affected:

All

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 was presented for approval at the Environment and Communities Scrutiny Committee on 4 October 2018. This report provides feedback from consultation carried out related to the impacts of the changes, and identifies how the Policy will be applied in practice at service level.

2. Recommendations

The Executive Councillor is recommended to:

- 2.1 Approve the recommended actions related to implementing the Comprehensive Equalities and Diversity Policy arising from the consultation on the Policy.

3. Background

- 3.1. The Council's Comprehensive Equalities and Diversity policy ('the Policy') sets out its commitment to promoting equality and diversity, including through its role as an employer and a provider of services to the public. The Council's Policy was first approved in 2006. The Executive Councillor for Communities approved a revised and updated version of the policy at the Environment and Communities Scrutiny Committee meeting on 4 October 2018.
- 3.2 Following independent legal advice, changes were made to the wording of the Policy to ensure that it is consistent with the Equality Act 2010. In the revised Policy, the term 'gender' was replaced with the term 'sex' and the term 'transgender' was replaced with 'the protected characteristic of gender reassignment'. This was because the terms 'sex' and 'gender reassignment' are defined in the Equality Act 2010, whereas 'gender' and 'transgender' are not.
- 3.3 Gender reassignment, for the purposes of the Equality Act 2010, 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 Act defines gender reassignment as meaning the same thing as a "transsexual person".
- 3.4 The revised policy also introduced the following commitment:

"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 services and employment exceptions as a proportionate means to achieve a legitimate aim in line with the Equality Act 2010."
- 3.5 This commitment replaced two previous separate commitments in the Policy, which were approved as part of a revised Policy at Strategy and Resources Scrutiny Committee in October 2010:

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

- 3.6 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.
- 3.7 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”.
- 3.8 The previous commitments in the Policy, as set out at 3.2 above, committed the Council to never applying this exception. The independent legal advice stated that this was unlawful, as it fettered the Council’s discretion to apply the exceptions which exist in the Equality Act 2010, and that the Council needed to reference the ‘services and employment exceptions’ in the Policy.
- 3.9 The revised wording in the Policy set out at 3.4 above includes a reference to ‘the services and employment exceptions’. In line with the Equality Act 2010, the Council would only apply these exceptions in “exceptional circumstances” and where this is a “proportionate means of achieving a legitimate aim”.

4. Consultation process

4.1 The Council carried out a consultation on the Policy from October 2018 and to November 2018. The purpose of the consultation was to consider impacts of the changes to the Policy on people in Cambridge and to inform practical implementation of it. The methods of the consultation were as follows:

- Inviting the 24 organisations that responded to the consultation in June 2018 on the Council's new Single Equality Scheme (2018-2021) to provide feedback on the impacts of the changes in the Policy. The Council received responses from eight organisations: Cambridge Rape Crisis, Cambridge Women's Aid, Cambridgeshire County Council, Cambridgeshire Older People's Enterprise, The Encompass Network, The Kite Trust, Lifecraft, and St. John the Evangelist Church.
- Publishing a public consultation survey on the Council's website from 18 October 2018 to 16 November 2018. The Council received 275 responses to the survey. The majority of respondents (58%) came from a postcode from the Cambridgeshire area.
- Consulting members of the Council's Equalities Panel at a meeting on 19 November 2018.
- Consulting Council staff through a consultation meeting held on 13 November 2018, which was open to any interested member of staff. The meeting was attended by ten staff members.

5. Consultation findings

5.1 Overall, the findings from the consultation did not identify any specific adverse impacts related to the changes in the wording of the Policy. However, those who took part in the consultation expressed that communications providing further clarity around how we will implement the Policy in practice would be helpful. Consultees especially felt unclear about:

- How the Council will apply the Policy in relation to existing single-sex services and facilities to avoid discrimination against women and girls and/or transsexual people.

- How the Council would interpret the meaning of terms such as “exceptional circumstances” when considering whether to apply the exceptions in the Equality Act 2010.

5.2 91% of respondents who engaged in the public consultation survey shared that they felt the changes to our Policy would have some sort of impact on people living in, working in or visiting Cambridge. However, when asked to identify any specific adverse impact impacts from the changes in the Policy, most consultees expressed broader concerns. The main concerns raised by respondents related to:

- How Cambridge City Council will make sure the “safety”, “privacy” and “dignity” of women and girls is protected in the Policy’s implementation.
- Uncertainty around how the Council would implement the new commitment in the Policy, especially related to public toilets, but also related to the influence the Council has over other organisations in the city.
- Confusion related to the meaning of terminology used in the revised Policy, including “exceptional circumstances”, and the difference between “gender” and “sex”.

5.3 There were very few responses to the survey regarding how the Policy impacts on transgender people’s rights. The key issues raised were:

- concerns that the wording of the previous Policy was more inclusive for transgender people
- the wording of the new provision could be interpreted as meaning that the Council no longer is as supportive of transgender people. Some people felt that this might lead transgender people to be concerned about their safety in using single-sex facilities, as they may be challenged in doing so by other members of the public.

5.4 Many comments from the public consultation related to things that are not permitted under the Equality Act 2010. The Council cannot change the wording of its Policy in response to these comments, as this would make it unlawful. These particular comments are similar to wider viewpoints that have been shared as part of the national debate related

to the government's proposed changes to the Gender Recognition Act 2004 (which underwent public consultation from July to October 2018).

5.5 The feedback from the eight organisations that provided responses to the consultation included a number of common themes:

- A request for greater clarity in how the Council will protect against discrimination of one equality group over another in identifying exceptional circumstances.
- The importance of consulting with women and transgender people who would be affected by any changes to particular facilities and services about how the Council can best ensure their safety.
- A lack of clarity on how the Council will continue to protect rights of transgender people more broadly, including gender fluid and non-binary people, as well as people under the protected characteristic of gender reassignment.

5.6 Members of the Equalities Panel acknowledged the complexity of the legal position related to when exceptions would be applicable. Related to this point, in the staff consultation Council officers argued there needs to be clearer guidance for our staff undertaking day-to-day running of single sex-services and facilities around how to handle queries and complaints from the public related to the exceptions.

5.7 Members of the Equalities Panel asked for greater clarity in how the Council defines what would trigger it to consider whether to apply the exceptions. There was acknowledgement that as services evolve the Council will not always be able to foresee exceptional circumstances that might arise. At the same time, it was expressed that the Council needs to be careful not to discriminate against individuals and to aim to proactively (as opposed to retrospectively) apply exceptions where this is proportionate and legitimate.

6. Application/implementation of the policy to single sex-services delivered by the Council

6.1 The consultation with the public, stakeholders, staff and members of the Equalities Panel identified a need to provide clarity on how the amended

Policy applies in practice to single-sex facilities and services that are provided by the Council. The Council's proposed approach to applying the commitment that was approved on 4 October 2018 to current facilities and services is set out below.

- 6.2 The Council's overall approach is based on ensuring that people with protected characteristics have the opportunity to access facilities and sessions that meet their needs, and to do so safely. In general, the Council provides universal services, but it also provides single-sex services (or services to meet needs of people with other specific protected characteristics) where there is an identifiable need. In meeting the needs of one protected characteristic, the Council will consider whether we are over-riding the needs of other protected characteristics and prevent or mitigate this as far as possible.
- 6.3 Below we confirm what the revised Policy means for our current single-sex facilities and services.
- 6.4 Cambridge City Council cannot provide a definitive answer on what would represent "exceptional circumstances" to require the application of the exceptions or a "proportionate means of achieving a legitimate aim", as the Act requires the Council to consider matters on a "case-by-case basis". Due to how intersectionality of protected characteristics relates to individuals, circumstances will vary considerably in each case.

Council-run facilities and services where the exceptions would not currently be applied

- 6.5 There are some single-sex services that are delivered by the Council where in implementing our revised Policy, access for transsexual people will remain the same as before the revisions were made. These are:
- public toilets (20 facilities)
 - toilets in community centres
 - single-sex sports sessions for women or men, which currently includes Swim and Tone swimming session for women, Return to Fitness sessions for men, Street Games women's netball nights and Let's Go Girls sessions.

- 6.6 There are single sex toilets in all of the public toilet facilities provided by the Council, and in nine facilities gender neutral toilets are available as well (e.g. Drummer Street, Mill Road and Victoria Road). The law requires that transsexual people are able to choose the facilities of their acquired gender. In order to meet the needs of transsexual people and women, there is currently no evidence that it would be proportionate or legitimate to apply the services exception to these services.
- 6.7 Some respondents to the public consultation survey were concerned about safety of women and girls using the same toilets as transsexual people who might have male physiology. National research has identified that transsexual people are less safe in using men's toilet facilities than women's. However, the Council does not have evidence from CCTV, the Police or complaints made to Council Officers that safety of anyone using our public toilets is an issue.
- 6.8 Some respondents expressed concerns regarding the privacy of women and girls when using public toilet facilities. However, the existing toilet facilities provided by the Council provide privacy for people using toilets. In all our facilities, including the men's toilets where there are also urinals in communal space, there are cubicles available for going to the toilet in privacy.
- 6.9 The Council also provides some single-sex sport sessions that are open to either women or men as set out at 6.3 above. The sports sessions are not specifically directed at people who may be vulnerable and do not require physical contact. No safety concerns have been identified for transsexual women and women to take part in the women's sessions, and transsexual men and men to take part in the men's sessions. Therefore, our policy to enable transsexual people to take part in sessions according to their acquired gender will remain the same.

Leisure facilities run by a third party to which the exceptions would not currently be applied

- 6.10 These facilities are toilets, showers and changing rooms in leisure facilities where transsexual people will continue to be able to use facilities of the gender they identify as. For toilets, there are female and male options but there are cubicles available in each for people requiring

more privacy. No concerns have been raised by service users regarding safety of people using the toilets.

- 6.11 In changing rooms and showers there are a range of options for women, men and transsexual people in using the facilities (including options for people wanting greater privacy for whatever reason). Therefore, all single-sex facilities would continue to be available for transsexual men and transsexual women to use according to their acquired gender, regardless of other options onsite.
- 6.12 Most changing rooms offer cubicles which provide privacy for people when changing (e.g. swimming changing rooms at Parkside Pools and Abbey Pools). Abbey and Parkside pools also offer the option of gender neutral changing villages with cubicles. Even in facilities where changing rooms are open plan (e.g. Kings Hedges Learner Pool, Cherry Hinton Village Centre, Abbey and Parkside gyms) options are available for people wanting more privacy. Options are to use changing rooms elsewhere in the venue that consist of cubicles, or to use the self-contained disabled changing rooms. (For the facilities with open plan female and male changing rooms, disabled changing rooms do not require a radar key for access in case individuals want private space).
- 6.13 Showers are single-sex facilities and all showers available for women offer cubicles for privacy, but showers for men are currently open plan in four venues. These venues are the Abbey Leisure Complex, Cherry Hinton Village Leisure Centre, Kings Hedges Learner Pool, and Parkside Pools. In these venues, we will undertake an audit to look into the feasibility, related to costs and space, of introducing options of cubicle showers for men and transsexual men wanting greater privacy.

Services where the Council needs to carry out further assessment in order to explore the purpose of their provision

- 6.14 Services where the Council needs to carry out further assessment in order to explore the purpose of their provision are for the Abbey Pool women's swimming sessions (which the Council commissions in part) and the Women's Health and Wellbeing sessions (which the Council provides). For these services, separate equality impact assessments

are needed to identify how they meet needs of different protected characteristics. This is because the nature of these sessions has changed over time, so their original purpose may no longer apply. The two EqlAs are necessary before understanding how the Policy would be applicable to the services.

Sessions and facilities grant funded/ supported in other ways by the Council to which the Policy would not be applicable to

6.15 For services and activities run by third Parties that the Council supports (but does not commission to run on its behalf), the Council's Comprehensive Equalities and Diversity is not applicable. The Council requires the third parties to meet obligations under the Equality Act 2010, including related to the services and employment exceptions, and other relevant applicable legal obligations. These services include those funded by Cambridge City Council's community grants and Homelessness Grants. The following other services, which are sports sessions that the Council supports, also fall under this category:

- Girls' PE sessions
- Man V Fat football sessions
- Proactive for men recovering from prostate cancer
- Community sports clubs – Using the leisure facilities that we commission a third party to run. Only one sports team at a time will be able to use the facilities and this sports team will be the key-holder responsible for their usage.

7. Implications

(a) Financial Implications

The application of the Policy will primarily be delivered through existing service budgets and will not require additional resources. The cost of additional works required to add cubicles into men's shower areas following the audit as identified in 6.13 are anticipated to be able to be covered within existing maintenance funds from the Recreational Service area budgets in 2019/20.

(b) Staffing Implications

The revised Comprehensive Equalities and Diversity 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.

The Council has signed up to the Safer Spaces scheme, led by Encompass Network, which aims to create welcoming, inclusive and safe spaces for lesbian, gay, bisexual, transgender and queer/ questioning (LGBTQ) people in Cambridge. As part of the scheme, we are committing to:

- Provide Safer Spaces training for managers on how to identify, prevent and tackle discrimination in the workplace that is aimed at LGBT people at the February 2019 Managers' Forum,
- , Introduce new starters to Safer Spaces, and our approach to applying our Policy set out in section 6 of this report, in equality and diversity induction training from February 2019 onwards.
- Develop workplace guidance to support transgender people at Cambridge City Council who are transitioning to another gender by September 2019

We currently do not have any job roles where we have identified a Genuine Occupational Requirement to apply the employment exception and do not anticipate having any in the future at the time of producing this report.

However, if an "exceptional circumstance" were to arise in future that would lead us to consider applying the employment exception, the decision would be informed by an Equality Impact Assessment of the service in question.

As set out in this report, the Council will only apply the services and employment exceptions in exceptional circumstances. 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 them, taking into account all available evidence. This assessment will consider whether applying the exceptions 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.

(c) Equality and Poverty Implications

Please find Equality Impact Assessment attached. The main equality impacts relate to gender reassignment, sex and religion.

(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.

(f) Community Safety Implications

In implementing the Policy, the Council will ensure that people with protected characteristics have the opportunity to access facilities and sessions safely that meet their needs.

The Council has also signed up to Safer Spaces, a project run by The Encompass Network, to help lesbian, gay, bisexual and transgender people to access services and facilities that are safe, welcoming and inclusive.

In the consultation, respondents identified concerns related to vulnerable women's safety, especially women who have experienced domestic abuse and/or sexual violence. The Council's Single Equality Scheme 2018 to 2021 contains a number of actions to help promote safety of women and girls.

8. Communication considerations

The content of this report will be communicated to residents through the media using a news release, through the Council website, and on Twitter. In communicating the content of this report, given that this was a concern raised in the consultation on the Policy, the Council shall aim to ensure that it communicates its intention that people with protected characteristics have the opportunity to access facilities and sessions that meet their needs, and to do so safely.

9. Background papers

Background papers used in the preparation of this report: Equalities Policy and Strategy 4 October 2018 Environment and Communities Scrutiny Committee paper and appendices.

10. Appendices

- (a) Comprehensive Equalities and Diversity Policy
- (b) Equality Impact Assessment for Comprehensive Equalities and Diversity Policy

11. Inspection of papers

To inspect the background papers or if you have a query on the report please contact Helen Crowther, Equality and Anti-Poverty Officer, tel: 01223 - 457046, email: helen.crowther@cambridge.gov.uk.