

Equality Policy

Report by Director of Change Management and Resources and
Head of Human Resources

Summary: This report appends a draft Equality Policy for members' views, and updates members on the further actions needed to ensure that the Authority complies in full with the Equality Act.

Recommendations:

- (i) That the report be noted.
- (ii) That the Equality Policy, as appended to this report, be adopted.
- (iii) That the Code of Conduct for Members be reviewed and updated, and that a revised Code be considered by the Authority at its next meeting in May 2013.

1 Background

- 1.1 At its meeting in May 2011 the Broads Authority received a report updating members on the content and implications of the Equality Act 2010, setting out the position at that time in terms of the Authority's compliance with equality legislation and good practice, and recommending a series of actions to further enhance and document compliance with the new legislation.
- 1.2 Due to the shortage of resources and other pressing priorities, progress in this matter has been slower than anticipated. However in November 2012 the Authority held an Equality and Diversity workshop for members, facilitated by Birketts Solicitors, followed by a similar event for senior officers in December. Unfortunately attendance on the former was disappointing, with only five members able to attend, and so a further session on this subject will be provided to members at the next Broads Authority meeting in May 2013.

2 The Equality Act 2010

- 2.1 Members will be aware that the Equality Act received Royal Assent in April 2010. The Act is a major development in the area of discrimination law, bringing together all the previous discrimination legislation, such as the Equal Pay Act, Race Relations Act and Disability Discrimination Act, into one piece of legislation, and also strengthening the protections from discrimination.
- 2.2 The majority of the Act came into force in October 2010. This included the basic framework providing, as far as is possible, a single approach to

protection from direct and indirect discrimination, harassment and victimisation, based on nine protected characteristics.

2.3 The remainder of the Act came into force on 1 April 2011, although some provisions were not implemented in view of the Coalition Government's desire to ease burdens on local authorities. The legislation includes a new public sector duty which contains both general and specific duties and which builds on the existing equality duties. The general duty places a proactive legal requirement on public bodies to have regard, in the exercise of their functions, to the need to:

- eliminate discrimination, harassment, victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

2.4 The duty ensures that public bodies consider the needs of all individuals in their day to day activities. The Equality and Human Rights Commission (EHRC) has produced Codes of Practice on Employment and Equal Pay to accompany the Equality Act, and also a series of guides to explain how public bodies can meet the requirements of the Equality Duty. Although the Codes of Practice do not impose any legal obligations, a failure to follow them could result in an adverse finding in an employment tribunal.

3 Equality Policy

3.1 The draft Equality Policy is appended to this report, and has been updated to have regard to the requirements and duties placed on the Authority by the current legislation. The Policy is intended to assist the Authority in putting into practice its commitment to provide equality and avoid unlawful discrimination in all areas of employment and service provision.

3.2 The Policy applies to all individuals associated with the Authority as either a member, employee (current, prospective or previous) or volunteer. It provides guidance – primarily but not exclusively intended for officers – in complying with good practice when dealing with service users in person, through electronic means, over the telephone or in writing. It also sets out a process for dealing with complaints and disputes, which could result in disciplinary action being taken against staff in certain circumstances. This is backed up by the Code of Conduct for Employees.

3.3 However this remedy is not available for members, and the existing Code of Conduct for Members, adopted by the Authority in May 2012, makes no reference to the key principles enshrined in the legislation - that members should treat other persons equally and with respect, and should not engage in any forms of discrimination, harassment or victimisation against others (whether or not related to the protected characteristics). It is recommended

that this omission be corrected, and that a revised version of the Code be drawn up for consideration by the Authority at its next meeting.

- 3.4 The Policy proposes the establishment of an Equality Working Group to be responsible for progressing equalities issues, ensuring that the Authority complies with the requirements of the Equality Act and maintains its obligations under the Public Sector Equality Duty.
- 3.5 Although it is not considered necessary to have a member represented on the Working Group, it is anticipated that the Chair of the Working Group will liaise on a regular basis with the Lead Member on Equalities to keep them updated on progress and current developments.

4 Implementation

- 4.1 At the meeting in May 2011 it was agreed that the following actions be undertaken to positively enhance and document the Authority's compliance with the Equality Act:
- review and update the Equalities Policy;
 - carry out an Equal Pay audit;
 - collect data about staff and volunteers in order to be able to conduct an equality analysis of employment policies and practices; and
 - organise training for staff, and possibly also members.
- 4.2 All of these have been undertaken or are in hand and the focus now will be on ensuring that the Authority complies with the Equality Framework for Local Government, which sets out good practice in this area. The Policy sets a target of attaining Level 1 status by not later than 31 March 2014, and the Equality Working Group will be responsible for taking this work forward, which will involve an extensive assessment.
- 4.3 The Authority will also need to carry out an Equality Impact Assessment with regard to any significant decisions which are likely to impact on staff or service users. It may be helpful to add a standard paragraph to Broads Authority reports to provide evidence that equality issues have been taken into account in the decision making process.

5 External Environment

- 5.1 This report has focussed primarily on the internal environment, although members will be aware that much is being done to foster improved diversity in the Broads. One of the Strategic Objectives in the Broads Plan 2011 is to "enable a wider range of people, particularly those from 'hard to reach groups', to understand, experience and actively benefit from the resource of the Broads". In support of this the Authority has been actively promoting, in partnership with other bodies, the Forest Schools, Baseline on the Broads and Mosaic Projects, all of which contribute to this objective. Members have and will continue to receive updates on these projects, at Broads Authority meetings and through the Broads Bulletin and other means.

6 Summary

- 6.1 Although appointments are made strictly on merit and there is no evidence that discrimination, harassment or victimisation is present within the Authority, whether in its employment policies and practices or amongst other activities, there is more that the Authority could do to ensure that it complies in full with equality legislation and good practice. This Policy provides a framework for this work, which will be taken forward by the Equality Working Group.

Background papers: Equality Act 2010
<http://www.legislation.gov.uk/ukpga/2010/15/contents>

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Appendices: APPENDIX 1 - Draft Equality Policy



Human Resources Policy No. 1

Equality Policy

PART 1: INTRODUCTION

The Broads Authority is committed to providing equality and avoiding unlawful discrimination in the exercise of its functions and the provision of services. This Policy is intended to assist the organisation to put this commitment into practice in areas related to employment and service provision.

Examples of services which are provided to the public include the following:

- maintaining the rivers and broads and protecting the interests of navigation;
- undertaking conservation works;
- providing information and advice to members of the public;
- providing volunteering opportunities; and
- determining planning applications.

In addition to service users, the principles of non-discrimination as set out in this policy also apply to the way in which staff treat members, visitors or former or prospective staff members.

1 Scope

- 1.1 This policy applies to all individuals associated with the Broads Authority and covers members of the Authority as well as all individuals working at all levels and grades, including senior managers, officers, directors, employees, consultants, contractors, trainees, home workers, part-time and fixed-term employees, volunteers, casual workers and agency staff (collectively referred to as “staff” in this policy).

2 Key Principles

- The Authority will endeavour to ensure that all its staff work in an environment which is free of harassment and bullying and in which everyone is treated with dignity and respect.
- All staff and service users are provided with equality of opportunity through a fair and consistent approach to the application of rules, policies and procedures. Equality is concerned with managing differences and so it is recognised that sometimes this will mean treating people differently. This commitment is relevant to all we do, how we manage ourselves and how we deliver our services.

- The Authority will endeavour to treat all staff and service users with understanding, recognising, respecting and valuing differences.
- The Authority opposes all forms of unlawful discrimination because of a protected characteristic, or on the grounds of working patterns or trade union membership.
- The Authority will not tolerate harassment or bullying on these or any other grounds.
- All staff will be treated fairly and with respect. Selection for employment, promotion, training or any other benefit will be on the basis of aptitude and ability. All staff will be helped and encouraged to develop their full potential and the relevant talents and resources of the workforce will be fully utilised to maximise the effectiveness and efficiency of the organisation.

PART 2: LEGISLATIVE BACKGROUND

3 Legislation

- 3.1 The Equality Act 2010 replaces the previous anti-discrimination laws including, but not limited to, the Equal Pay Act 1970 and the Sex Discrimination Act 1975 with a single Act. It simplifies the law, removing inconsistencies and making it easier for people to understand and comply with it. It also strengthens the law, to help tackle discrimination and inequality.

4 Protected Characteristics

- 4.1 To qualify for rights concerned with discrimination or harassment under the Equality Act, a person must hold one of the protected characteristics as provided for under the Equality Act and as set out below:
- **Age**
Where “age” is referred to, it refers to a person belonging to a particular age group (e.g. ‘the over fifties’), to a particular age or to a range of ages (e.g. 18 - 30 year olds).
 - **Disability**
A person has a “disability” if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
 - **Gender Reassignment**
A person has the protected characteristic of “gender reassignment” if they are proposing to undergo, are undergoing or have 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.

- **Marriage and Civil Partnership**
 “Marriage” is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners and married couples have equal rights not to be unlawfully discriminated against.
- **Pregnancy and Maternity**
 “Pregnancy” is the condition of being pregnant or expecting a baby.
 “Maternity” refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.
- **Race**
 “Race” is defined as including colour, nationality (including citizenship), ethnic or national origins. There is no exhaustive definition of race and other factors might arguably be covered.
- **Religion and Belief**
 “Religion” means any religion, and a reference to religion includes a reference to a lack of religion. “Belief” means any religious or philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect a person’s life choices or the way they live for it to be included in the definition.
- **Sex**
 “Sex” refers to either a man or a woman (sex does not include gender reassignment or sexual orientation).
- **Sexual Orientation**
 “Sexual orientation” is defined as a person’s sexual attraction to persons of the same sex, persons of the opposite sex or to persons of either sex.

5 What is Unlawful?

5.1 There are various types of discrimination and other unlawful conduct set out in the Equality Act that apply to most (and in some cases all) of the protected characteristics. There is also protection against discrimination where someone is **perceived to** have one of the protected characteristics or where they are **associated** with someone who has a protected characteristic.

5.2 The types of discrimination are set out below:

- **Direct Discrimination**
 Occurs when a person treats another less favourably than they treat or would treat others because of a protected characteristic.
- **Indirect Discrimination**
 Occurs when an employer applies an apparently neutral provision, criterion or practice (which broadly speaking could be an act, decision or

policy) which puts workers sharing a protected characteristic at a particular disadvantage.

- **Harassment**

This includes unwanted conduct related to a protected characteristic which has the purpose or effect of violating someone's dignity or which creates an intimidating, hostile, degrading, humiliating or offensive environment for that person.

- **Victimisation**

Occurs when a person is subjected to a detriment because they have done a protected act (i.e. bringing a discrimination claim, complaining about harassment or becoming involved in another employee's discrimination complaint) or subjecting that person to a detriment because it is believed that they may do a protected act.

- **Failing to make Reasonable Adjustments**

A duty is imposed on employers to make reasonable adjustment to premises or working practices. This duty arises where a disabled person is put at a substantial disadvantage in comparison with those who are not disabled because of a provision, criterion or practice, a physical feature or but for the provision of an auxiliary aid.

- **Discrimination arising from Disability**

Occurs where a person is treated unfavourably because of something arising in consequence of a person's disability and that treatment cannot be shown to be a proportionate means of achieving a legitimate aim.

5.3 Some of the types of discrimination are concerned with 'less favourable treatment'.

5.4 To decide if an employer has treated a worker 'less favourably', a comparison must be made with how they have treated other workers or would have treated them in similar circumstances. If the employer's treatment of a worker puts the worker at a clear disadvantage compared with other workers, then it is more likely that the treatment will be less favourable: for example, where a job applicant is refused a job. Less favourable treatment could also involve being deprived of a choice or excluded from an opportunity.

6 What is Lawful?

- **Objective Justification**

In some cases, an employer that acts in an ostensibly discriminatory manner will avoid a finding of discrimination by showing that its actions were a **proportionate means of achieving a legitimate aim**. This is known as 'objective justification'. An employer can rely on the objective justification defence in respect of claims for indirect discrimination, direct age discrimination and discrimination arising from disability.

The question is whether, looked at objectively, the employer's actions actually contribute to the pursuit of the legitimate aim. The scope of a legitimate aim is potentially unlimited, although they must correspond to a 'real business need'. A tribunal will determine whether the action can be seen as justified and that the measures taken were 'reasonably necessary' in order to achieve the legitimate aim.

- **Positive Action**

This can apply where an employer reasonably thinks that persons with a particular protected characteristic are disadvantaged or have different needs, or that their participation in an activity is disproportionately low. In these circumstances the employer can take proportionate measures to enable or encourage persons with the relevant characteristic to overcome that disadvantage, to meet their needs, or to enable or encourage their increased participation.

This is not the same as 'positive discrimination', which is generally prohibited under the Equality Act.

However the Equality Act additionally allows an employer to treat a disabled person better, or **more favourably**, than a non-disabled person. This recognises the additional barriers to work that disabled people face.

Managers must ensure that all reasonable adjustments or supportive measures are considered to allow equality of access and opportunity regardless of any of the protected characteristics.

7 Examples where Equality needs to be considered in Employment

7.1 Both managers and the organisation need to think about equality in all circumstances, some of which are day to day issues, and some occasional issues. Typically these can include:

- **Day to day management of the team**
 - Deciding employee pay and benefits.
 - Providing training opportunities.
 - Setting a dress code.
 - Giving everyone fair access to the facilities at work.
 - Using positive action.
- **People starting and leaving**
 - Recruiting new people including advertising vacancies, conducting interviews and selecting the right person for the job and feeding back to unsuccessful candidates.
 - Promoting and developing people.
 - Managing dismissals, redundancy and retirement.
- **Other areas of employment**
 - Maternity, paternity and parental leave.

- Determining requests from employees to work flexibly.
- Making decisions on time off, e.g. annual leave and sick leave.

8 The Public Sector Equality Duty

8.1 The Public Sector Equality Duty places an obligation on public sector organisations, in exercising their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and those who do not.

8.2 These are often referred to collectively as the ‘general equality duty’, which is the overarching requirement or substance of the duty. This is supported ‘specific duties’ which are intended to help performance of the general equality duty.

8.3 The Duty ensures that public bodies consider the needs of all individuals in their day to day purpose. There is no explicit requirement to refer to the Equality Duty in recording the process of consideration, but it is good practice to do so. Keeping a record of how decisions are reached will help public bodies demonstrate that they considered the aims of the Equality Duty.

8.4 The Equality Act explains that the second aim (advancing equality of opportunity) involves, in particular, having due regard to the need to:

- remove or minimise disadvantages suffered by people due to their protected characteristics;
- take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people;
- encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

8.5 The Equality Act states that meeting different needs includes (among other things) taking steps to take account of disabled people’s disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It explains that compliance with the general equality duty may involve treating some people more favourably than others.

8.6 To comply with the general equality duty, a public authority needs to have due regard to all three of its aims. However organisations should not take actions which are unnecessary, inappropriate or disproportionate in the name of equality.

- 8.7 Detailed guidance is available at http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/essential_guide_update.doc

9 Equality Framework for Local Government

- 9.1 The Equality Framework for Local Government (EFLG) uses a wider definition of equality, which was originally set out in the Cabinet Office report 'Fairness and Freedom: The Final Report of the Equalities Review', and is based on the idea of equal life chances:

"An equal society protects and promotes equal, real freedom and opportunity to live in the way people value and would choose, so that everyone can flourish.

An equal society recognises people's different needs, situations and goals, and removes the barriers that limit what people can do and be".

- 9.2 The Framework is based around five performance areas:

- Knowing your communities and equality mapping.
- Place shaping, leadership, partnership and organisational commitment.
- Community engagement and satisfaction.
- Responsive services and customer care.
- A modern and diverse workforce.

- 9.3 In addition, it has three levels of achievement, namely:

- Level 1 – Developing.
- Level 2 – Achieving.
- Level 3 - Excellent.

- 9.4 The level of achievement is measured by a comprehensive self assessment tool which is evidence based and forms an action plan.

- 9.5 The Local Government Association offers a peer challenge equality award. This is a peer led assessment when organisations can be accredited as 'Achieving Equality' (Level 2) or 'Equality Excellence' (Level 3). This results in a certificate and accreditation seal. Attainment of 'Developing Equality' (Level 1) is by self assessment alone without the need for external assessment.

- 9.6 The Authority will undertake a comprehensive self assessment against the Developing Equality criteria which will be carried out by the Equality Working Group. The Authority's target is to attain Level 1 status by not later than 31 March 2014.

PART 3: IMPLEMENTATION

10 Equality Working Group

- 10.1 The Authority will establish an Equality Working Group which will be responsible for progressing equalities issues and ensuring that the Authority complies with the requirements of the Equality Act and maintains its obligations under the Public Sector Equality Duty. The Group will be responsible for undertaking a self assessment of the Authority's equality policies and practices, initially with a view to meeting Level 1 of the Equality Framework for Local Government.
- 10.2 The membership and Terms of Reference will be determined by the Management Team, with an expectation that the Group will comprise representatives from across the organisation, including a volunteer, and in particular from the main service provision areas.
- 10.3 The Working Group will be responsible for ensuring that appropriate training and guidance is provided to members and employees of the Authority in respect of all matters relating to equality, including any changes to legislation which are likely to impact on the Authority's policies and working practices.

11 Service Provision

- 11.1 The Authority will provide all service users with equality of opportunity through a fair and consistent approach to the application of rules, policies and procedures, and will treat them with understanding, recognising, respecting and valuing differences.
- 11.2 Members and staff of the Authority, or anyone working or officially associated with the Authority must not, on the grounds of a protected characteristic:
- refuse to serve/deal with individuals or take them on as a client;
 - stop serving or working for individuals if they still serve or work for other customers or clients who do not have the same protected characteristic in the same circumstances;
 - provide a service of a lower quality or to a lower standard than they would usually provide the service;
 - provide a service with less favourable terms than they would usually offer;
 - or
 - put individuals at any other disadvantage.
- 11.3 Customers or clients can still be advised about the standards of behaviour expected - for example, behaving with respect towards your staff and to other customers.
- 11.4 If standards of behaviour for customers or clients are set which put people with a particular protected characteristic at a substantial disadvantage compared to those people who do not have that characteristic, this must be objectively justified or it could constitute indirect discrimination.

- 11.5 If standards of behaviour are set, which put disabled persons at a disadvantage compared to others, reasonable adjustments to the standards should be made. Failure to do so could mean the Authority is liable to a claim for failure to make reasonable adjustments.

12 Guidance for Staff

- 12.1 The appendix sets out guidance for staff on the implementation of this policy, with regard to the following:

- Buildings or Areas where Services are delivered.
- Websites.
- Telephone Access.
- Written Information.

13 Dealing with Complaints and Disputes

- 13.1 If a customer, client or service user believes that the Authority, or a person acting on behalf of the Authority, has unlawfully discriminated against them, harassed or victimised them, on the grounds of a protected characteristic, in the provision of goods, facilities or services or in the exercise of any public functions, they may:
- complain directly to the officer or other individual concerned;
 - submit a formal complaint directly to the Authority;
 - approach a third person or other organisation to take up the matter on their behalf (alternative dispute resolution); or
 - make a claim in Court.
- 13.2 If the Authority or an officer of the Authority receives a complaint regarding any service provision in any form (including verbal or written), they must bring it to the attention of their line manager or Director, or in their absence the Head of HR, as soon as reasonably possible. The Head of HR and appropriate Director, or a person appointed by the Director, will seek to establish the facts insofar as this is possible, to make an initial assessment about whether the alleged action(s) are likely to amount to unlawful discrimination, harassment or victimisation, and determine whether a formal investigation is required. If this is considered to be appropriate, the Chief Executive, in consultation with the Head of HR and Director, will appoint a suitable person to carry out the investigation. If the complaint concerns an employee, the appropriate HR procedures will be followed to protect the position of the individual and the organisation.
- 13.3 The Equality Working Group will be responsible for monitoring complaints and any trends.

14 Equality Impact Assessments

- 14.1 An Equality Impact Assessment should be carried out when planning, changing or commissioning services, and also for understanding the effects of the Authority's activities on different people. There should be a genuine consideration of equality; case law informs that it should be a comprehensive, detailed and objective assessment. An Equality Impact Assessment evidences that considerations to equality have been made; it should be produced at the time and not afterwards as this will not achieve compliance with the equality duty.
- 14.2 Members of staff will be provided with training as appropriate to assist them in carrying out Equality Impact Assessments. It will also be necessary to review all policies and procedures to ensure that equalities issues are properly addressed, to consider the impacts of any changes/developments in policies or service provisions and to add equalities issues as a standing item on meeting agendas where appropriate.
- 14.3 The Equality Working Group will be responsible for taking this work forward.

15 Equality Monitoring

- 15.1 The Equality Working Group will undertake periodic reviews and data analysis to identify the effectiveness of this policy and identify where equality within the organisation can be improved.

16 Review

- 16.1 This policy has been approved by the Management Team and by the Broads Authority. It will be reviewed and if necessary updated on a regular basis, at least annually, and any significant changes will be brought to the attention of the Management Team. Responsibility for ensuring that regular reviews are carried out lies with the Head of HR, in consultation with the Equality Working Group.

Last Reviewed: March 2013

Last Updated: March 2013

Guidance for Staff

Buildings or Areas where Services are delivered

If services are delivered at a particular place or places, such as a building or an open air venue, the Authority must ensure that customers, service users or guests with a protected characteristic are not unlawfully discriminated against, harassed or victimised in accessing the premises and that reasonable adjustments are made for disabled people. It is not acceptable to wait until a disabled person wants to use the services; prior consideration must be given to the adjustments which might be appropriate for people with a range of impairments.

Considerations should be made on every aspect of the building or other premises, including:

- how people enter;
- how they find their way around;
- what signs are provided;
- how people communicate with staff;
- the information provided;
- queuing systems, if you have them;
- reception desks and counters; and
- accessible toilet facilities.

The way staff behave and assist disabled customers/service users can make a big difference to how accessible disabled people find and regard the service.

Websites

Where services are provided through a website, the organisation is known to be an Information Society Service Provider (ISSP). As an ISSP, the Authority has a duty to ensure:

- that no discriminatory advertisements or other information appears on its website (whatever the advertisement is for);
- that requests are not permitted for the placing of information which unlawfully discriminates against people because of a protected characteristic in using a service; and
- that reasonable adjustments are made to ensure the website is accessible to disabled people.

Telephone Access

When telephone information is provided as part of a service, there must be no discrimination against, harassment or victimisation of people because of a protected characteristic in:

- what is said when a call is answered; or
- the way the service is provided.

When telephone services are provided, reasonable adjustments must be made for disabled people who would otherwise face a barrier to accessing the service, including providing the service in a different way. Prior consideration must be given to the adjustments which might be appropriate for people with a range of impairments, rather than waiting until a disabled person wants to use the services.

Written Information

When written information is provided as part of a service, the Authority will not discriminate against, harass or victimise people because of a protected characteristic in:

- what the information itself says; or
- the way it is provided.

Prior consideration must be given to the adjustments which might be appropriate for a range of impairments, including providing it in alternative formats, such as Braille, on CD, or electronically. It is not acceptable to wait until a disabled person wants to use the services before deciding what adjustments are required.