

LUTON BOROUGH COUNCIL

EQUALITY POLICY

REVISED MAY 2007

FOREWORD

Welcome to Luton Borough Council's Equality Policy 2007-2010. This document sets out the Council's commitments and priorities on equality issues and will inform its activities over the next three years.

We want Luton to be a place where no-one experiences discrimination or disadvantage because of race, nationality, ethnic or national origin, religion or belief, gender, marital status, sexuality, disability, age or any other unjustifiable reason. As a council we are committed to work to reduce disadvantages, discrimination, and inequality and to promote diversity in terms of the people we serve, our workforce, the partners we work with and the services we deliver.

We have legal duties relating to equality and we are determined to meet these. However, our aim is not just to meet our legal duties, but to make Luton a place where everyone matters and is treated as an equal citizen, in the light of their different needs. The Council has a strategic approach to tackling social exclusion and has brought together work around equalities, inclusion and cohesion, this approach has provided greater opportunities to work corporately and with partners towards a more equal cohesive and inclusive Luton.

We want everyone in Luton's residents and visitors to feel safe from harassment and to have access to high quality services designed to respond to their individual needs and we want our workforce to reflect the diversity of all sections of our community.

We have a responsibility to provide community leadership for the Council and will use this to promote equality and share ideas and good practice with our partners and other service providers.

The Council is committed to consulting the public, its service users, partners and other interested stakeholders as part of providing effective services that meet the needs of the people of Luton. By seeking your views and then acting on the results, the Council can ensure that its services better reflect your needs and aspirations.

The work described in this policy and strategy is part of our ongoing commitment to deliver on our equalities agenda and we will continue to work in partnership with all sections of the community, partners and local businesses to promote equality and community cohesion in Luton.

Cllr. Hazel Simmons, Leader, Luton Borough Council

Kevin Crompton - Chief Executive – Luton Borough Council

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1. THE PURPOSE OF THE EQUALITY POLICY

Luton Borough Council has a strong commitment to address equality and diversity issues in all areas of its work and influence. It has set itself ambitious equality and diversity targets. These targets will help to drive through real improvements in the quality of services to all Luton's people. It will also ensure that diversity is recognised as a real asset for those working for the council as well as the people who live in Luton.

The purpose of this policy is to:

- ▶ Provide all staff and members of the council, partner organisations and Luton residents with a clear statement of the council's strategic direction on one of its key priorities, to promote equality and diversity and eliminate discrimination in service delivery and employment.
- ▶ Make clear the council's commitments in fulfilling its legal obligations to achieve equality of opportunity in the areas of race, gender, disability, sexuality, religion or belief and age
- ▶ Enable all departments in the council to see how they contribute to the equality objectives
- ▶ Ensure that our equality objectives are consistently applied throughout the whole council
- ▶ Set out the main equality priorities for the next 3 years and explain how we will achieve them

Luton is a diverse multi-racial and multi-faith town. The council believes in the principles of social justice and the active promotion of genuine equal opportunity for all its citizens and has committed itself to mainstreaming equality in all aspects of its functions and activities.

In order to ensure this commitment becomes a reality, the council has made a number of commitments, which seek to eliminate unlawful and unfair discrimination, and promotes positive action to overcome the effects of past discrimination. This document outlines the council's approach to mainstreaming equal opportunities and the actions it intends to take to comply with the requirements of the new equality duties.

Furthermore, the council will ensure that all future policies and procedures are developed in line with the requirements of this document and that voluntary organisations, contractors and institutions acting on behalf of or as agents of the council do not practice unlawful acts of discrimination.

2. THE LUTON CONTEXT

Luton is one of the largest towns in South East England, with a population of 184,900 residents¹, and about 71,000 households. The population is projected to rise to 186,500 by 2011. The average age of residents is 34.9 years, compared to 38.7 in England and Wales², partly due to the students at Luton University, and also a high local birth rate. However, by 2011 there is forecast to be a 12.8% increase in the number of people aged 75 and over living in Luton³.

Luton's people come from a wide range of ethnic backgrounds. Approximately 28% are of Black and Minority Ethnic origin, with significant Pakistani/Kashmiri, Bangladeshi, Indian and African and Caribbean communities. Black and Minority Ethnic pupils over 5 years of age is currently 51% of Luton's school population based on the latest census data collected in May 2007. In recent years asylum seekers have augmented the diversity of the population, and there are now small communities of Albanian, Russian and Turkish speakers. 20% of the population were born outside the UK.

In 2001, 15.3% of Luton's residents said that they had a limiting long-term illness and 8.1% said that their general health was 'not good'. The most up to date figures (March 2005) shows that out of a total working age population of 114,500, 19,200 (16.7%) are disabled. This compares with the Regional average number of working age disabled people of 16%.

Luton is a major sub-regional employment centre with approximately 85,000 jobs⁴. Major employers include the airport, airlines, Luton-Dunstable hospital, Luton Borough Council, Luton University and the motor industry. Unemployment is high for the region, with higher unemployment in the inner wards of the borough, particularly among some minority ethnic groups. There are also pockets of unemployment in some peripheral estates.

Improving education and training are key priorities for the town, as residents have a comparatively low level of qualifications compared to other parts of the country (23% have the equivalent of NVQ3 or higher, and 31% have no qualifications, with 28.1% and 29.1% being the equivalent figures for England and Wales)⁵.

Luton is densely populated and a shortage of affordable housing remains a problem for Luton residents. The council has a housing stock of approximately 8,444 dwellings, and there are just over 7,000 applicants on the waiting list.

¹ Source: 2005 Mid Year Population Estimates, Office for National Statistics

² Source: 2001 Census of Population

³ Source: 'Population Estimates and Forecasts 2005' Bedfordshire County Council and Luton Borough Council

⁴ Source: Annual Business Inquiry 2004

⁵ Source: 2001 Census of Population

3. EQUAL OPPORTUNITY IN EMPLOYMENT

Luton Borough Council will ensure that all existing and potential employees receive equal consideration and is committed to the elimination of unlawful or unfair discrimination on the grounds of gender, race, disability, ethnic or national origin, nationality, sexuality, marital status, responsibility for dependants, religion, trade union activity and age.

It is the intention of the council that its workforce, at all levels should reflect the composition of the Borough's population. To achieve this the council will take positive steps as appropriate to eliminate discrimination, reduce the effects of past discrimination and promote equality in employment.

3.1 EMPLOYMENT COMMITMENTS

The following sections outline the steps that the council will take to develop and implement good employment and personnel practices in pursuit of its Equal Opportunities Policy and in compliance with its legal obligations under the Sex Discrimination Act 1975(as amended 2007), Equal Pay Act 1970 (as amended 2004), Race Relations Act 1976 (as amended 2000), the Disability Discrimination Act 1995 and 2005, the Employment Equality (Sexuality) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003 and Age Discrimination Regulations 2006

Meeting the Specific Duties in Employment

3.2 Employment Monitoring

Monitoring is an essential and integral element of the Council's Equality Policy. The council has produced comprehensive Equality Record Keeping and Monitoring Guidance for both employment and service delivery. The responsibility for monitoring rests with the all departments and each department will be required to report on a regular basis to Scrutiny and the Executive Committees to enable the council to assess how the Policy is being applied. The monitoring guidelines have been revised to reflect the 2001 Census categories and the new categories on sexuality, religion, age and faith and belief.

3.3 Employment Duties

The council will monitor by equality categories the following:

Application for jobs

- job application rates
- selection success rates
- success rates at different stages of selection (i.e. initial shortlist, interview and assessment)

3.4 Working for the Authority

Representation by equality categories in the workforce to show:

- department, section, level, and type of work
- sex of employee
- pay and employment terms and conditions
- training application rates
- training nomination rates (those chosen for training)
- promotion nominations
- promotion applications and success rates
- success rates at different stages of the promotion process
- harassment and discrimination complaints
- grievances
- disciplinary proceedings and decisions made

3.5 Leavers by the following:

- dismissals
- resignations
- redundancies
- retirement
- underlying reasons for leaving

3.6 Advertising

All job advertisements will include the following statement:

‘Luton Borough Council welcomes applications from all sections of the community irrespective of race, gender, disability, sexuality, gender reassignment, religion and age’.

All departments within the council will take steps to ensure that:

- all sections of the community and the council’s workforce are fully informed of any job opportunities within the council and are encouraged to apply
- the criteria for selection and progression are determined solely on the basis of the requirements of the job
- people are selected and appointed solely on the basis of their relevant experience and abilities
- all members of the selection and interviewing panels are ‘fair selection’ trained and are able to demonstrate an understanding of the council’s equality and recruitment and selection policies
- strenuous efforts are made to have representative recruitment and selection panels
- the employment duty is properly monitored, assessed and reported to check progress and identify remedial actions as appropriate.

3.7 Training and Development

The Council will:

- provide relevant training required to implement this Equal Opportunities Policy
- ensure that all employees have equal access to training and development opportunities
- monitor all training and development opportunities by race, gender, disability and sexuality, age and belief
- evaluate all training provision, both internal and external, to ensure that it complies with this Equal Opportunities Policy
- provide development and training opportunities for under-represented groups to help them compete for jobs at all levels within the Council i.e. succession planning, management development training and mentoring.

3.8 Positive Action

- the council will take positive action to encourage women and black and minority ethnic groups to apply for jobs in areas of employment where they are under represented and will provide specific training for groups where appropriate in line with the provisions of the Race Relations Act 1976 and the Sex Discrimination Act 1975 .
- the council will set recruitment targets for workforce representation and senior management representation for black and minority groups, disabled people and women, following a detailed assessment of the local labour market information.
- the council will seek to develop a programme of measures to provide greater opportunities for people who need or wish to combine employment with other responsibilities.

3.9 Retention

- the council will endeavour to retain employees who become disabled or those with progressive disabilities. These employees will be counselled to ensure that alternative jobs or retraining opportunities are offered in accordance with the council's policies and procedures.
- retirement or dismissal on the grounds of ill health will only be considered as a last resort.

3.10 Dismissals and Redundancies

The council will ensure that:

- the redundancy policy includes criteria for selection for redundancy, which are non-discriminatory and monitor outcomes of dismissals and redundancies by the agreed equality categories.

- employees with responsibility of selecting other employees for redeployment, dismissal and redundancy do not discriminate in the process of selection on the grounds stated in the council's Equal Opportunities Policy.
- dismissal and redundancy decisions are not made on the basis of gender, race, disability, ethnic origin, nationality, sexuality, marital status, and responsibility for dependants, religion, trade union activity or age.

3.11 Disciplinary Action

- all acts of proven discrimination, victimisation and harassment as defined in this document and in the Policies and Procedures on Unfair Discrimination, Harassment and Bullying, which is perpetrated by an employee of the council against other employees, service users or members of the public, will result in disciplinary action. This will also apply to employees who attempt to induce other employees to discriminate, victimise or harass.
- failure to comply with or adhere to the Council's Equality Policy and Strategy will be treated as a disciplinary offence.

3.12 Grievance

- the council will treat seriously and take prompt action on any employee grievance concerning discrimination, victimisation, bullying or harassment
- the council will encourage the development of appropriate support systems and procedures for employees who wish to pursue such grievances

Any employee who considers that he/she has been subjected to discrimination, victimisation, bullying or harassment by another employee will have recourse to the council's policy and procedure on Unfair Discrimination, Harassment and Bullying.

3.13 Equal Pay

Luton Borough Council supports the principles of equal opportunities in its employment policies and practices and is committed to ensuring that men and women receive fair and equal treatment in compliance with the Equal Pay Act. The council believes that it is good business practice to ensure that pay is awarded fairly and equitably and that each job within the council is established through

objective analysis of the job elements using a consistent scoring mechanism. Additionally the council will strive to ensure that its employment practices and arrangements are based on flexible arrangements that will support as far as is practical, specific needs and requirements of individual groups. The Council is currently in the process of formulating an Equal Pay Policy which will provide a proper corporate framework to fair and equal pay rather than taking limited action focused purely on avoiding discrimination under the Equal Pay Act.

Luton Borough Council will:

- work to achieve consistent good practice in terms of equal pay and flexible working practices across the council.
- establish grades/pay through a systematic job evaluation process
- encourage other local employers to adopt policies that support employees in achieving a work/life balance.

3.14 Reasonable Adjustment (DDA)

The protections against discrimination on grounds of disability are set out in the Disability Discrimination Act 1995 (DDA). The DDA recognises that some disabled people need practical help to enable them to get a job or to access services. The DDA introduced a duty to make "reasonable adjustments" to help overcome the practical effects of a disability. This duty distinguishes the DDA from the other anti-discrimination legislation, as indirect discrimination is not dealt with explicitly in the DDA, but addressed by the combined effect of the direct discrimination provisions and the duty to make reasonable adjustments.

The Council will:

- ensure consideration of reasonable adjustments at every stage of interview and employment.
- offer guaranteed interviews to disabled applicants who meet the essential criteria
- ensure that managers are trained in implementing the reasonable adjustment procedures

4. EQUAL OPPORTUNITY IN SERVICE DELIVERY

Luton Borough Council believes the diversity of the local community is a major strength, which helps to contribute to the social and economic prosperity of the Town. The council believes that all members of the community have a right to equality of opportunity and social justice in the way they are treated and the services they receive.

The council will ensure that no service user is subjected to discrimination in the delivery of any of the council's services. In addition it will promote equality, diversity and social inclusion amongst other public sector providers and partners in the services they provide.

Service Delivery Commitments

The council and all service departments will ensure that:

- service users receive equal treatment when accessing services
- services are responsive to the changing and diverse needs which exist within the community as a whole
- service users are made aware of their rights and entitlements when receiving services
- services, buildings and information systems are accessible to service users and members of the public and where required reasonable adjustments provided.
- disabled people are not treated less favourably for a reason related to their disability
- gypsies and Travellers are provided with appropriate services
- equality impact assessments are carried out for all services and resulting action plans monitored to ensure that there is no significant differences in satisfaction for all groups
- complaints about services are dealt with promptly
- we work in partnership with all sections of the community
- cultural, religious and language needs are recognised and considered in the provision of services
- service take-up monitored by equality categories to identify differential impact
- contracts and service level agreements contain terms requiring contractors to comply with their statutory equality obligations and the council's equality policies and practices.
- active participation and engagement in consultation arrangements
- information about council services and policies are provided in a variety of formats on request such as: large print, taped information or material translated into appropriate community languages.
- all departments' carryout equality self-assessment, scrutiny and audit of their functions against the Equality Standard for Local Government.

5. PROMOTING EQUALITY THROUGH CONTRACTS

Luton Borough Council aims to achieve a clear and consistent approach to equality in the delivery of all services. All organisations wishing to provide services on behalf of the council must be able to demonstrate that they will take all reasonably practical steps to promote equal access and equal treatment in employment and service delivery for all their employees, service users and agents.

Contractors used by the council are required to comply with this Policy as well as current legislation in providing contracted services and in the employment of staff. (see further guidance in the **Procurement Code of Practice - Workforce Matters & Equalities**).

The council is committed to meeting the requirements imposed by the Race, Disability and Gender Equality Duties in all contracting arrangements with external contractors who carry out works or provide goods or services on its behalf. There are also two distinguishing features in relation to disability equality, which officers need to be aware of:

1. disability equality will be of critical relevance to the form of goods or services purchased (i.e. the need to ensure that goods and services are provided in a way which is accessible to disabled users).
2. the Disability Discrimination Act (DDA) imposes no restrictions on positive discrimination in favour of disabled people, and of course at times requires different treatment in the form of reasonable adjustments.

Compliance with the three duties on all significant procurement projects will need to be demonstrated by all departments at the following stages:

- staff training on equality within the contracting arrangements
- planning a procurement project
- drafting the specification
- drafting contract conditions
- advertisement and selection
- invitation to tender
- awarding contracts
- contract management, monitoring and enforcement.

6. RESPONSIBILITY FOR POLICY IMPLEMENTATION

- 6.1 Achieving equality of opportunity require a strategic orientation of the organisation's structure and culture. The principal responsibility for achieving change lies with councillors and corporate directors.
- 6.2 The Chief Executive and Corporate Leadership Management Team will be responsible for overseeing the implementation of the policy and monitoring progress across the authority.
- 6.3 All corporate directors and employees with supervisory responsibilities will be responsible at departmental for staff training, implementation, monitoring and active promotion of this policy.
- 6.4 All council employees are responsible for implementing the requirements of this policy, which will form part of their conditions of service.
Failure to comply with or adhere to the Council's Equality Policy will be treated as gross misconduct under the Disciplinary Procedure similar in severity to breaches of the Councils Code of Conduct.

Responsibilities of all Council Employees

- 6.5 The council requires all its employees to behave in ways that promote equality and anti –discriminatory practices. This applies to the way they behave to members of the public in the delivery of services and to other employees in the course of their work.
- 6.6 Employees are required to access the training provided by the council to ensure that their practice promotes equality of opportunity for all and eliminates discrimination in all areas of activities. Employees are also expected to draw the attention of management to any alleged unlawful or unfair discriminatory acts or practices witnessed at work.
- 6.7 Should employees, through the course of their employment, be found to have caused or encouraged discrimination, this will be regarded as a particularly serious offence, rendering them liable to disciplinary action.
- 6.8 **Employees should not:**
 - discriminate against anyone
 - persuade another employee to discriminate
 - tolerate or condone discriminatory practices
 - harass or abuse other employees or members of the public - for any reason
 - tolerate discrimination from service users
- 6.9. This policy must be communicated all employees, job applicants, service users and contractors by the relevant managers through notice boards, circulars, contracts of employment, written notifications and training.

7. EQUALITY PRIORITIES

- 7.1 The Council will work to reduce disadvantages, discrimination and inequalities and promote diversity in terms of the people we serve, our workforce, the partners we work with and the services we deliver.
- 7.2 One of the council's priorities is to reach level 5 of the Equality Standard by 2010. The Equality Standard will enable service areas to examine their priorities in relation to equality and the impact of the service on different sections of the community.
- 7.3 The following priorities have been identified for particular attention in order to progress smoothly through the different levels of the Equality Standard and meet the equality duties over the next three years as follows:

7.4 PRIORITIES

- review performance on the Equality Standard and prepare for assessment at Level 3
- ensure that all publicity materials are inclusive of all sections of Luton's communities
- further develop the links between equality, inclusion and community cohesion;
- communicate the mainstreaming agenda to staff and service users;
- continue to review progress on the equality schemes on age, disability, gender, LGB, race, religion and belief;
- further develop our arrangements on the monitoring and reporting of hate crimes/ incidents;
- improve the council's ranking within the Stonewall Equality Index;
- promote equality and diversity legislation and its implication;
- review the Equality Impact Assessment framework as appropriate
- promote compliance on the duties to promote race, gender and disability equality; and the equality regulations on sexual orientation, age and belief
- review equality training in compliance with the equality duties
- provide generic equality training to members, managers and employees.
- carry out equality impact assessments and evaluate impacts on the relevant groups.
- consult, key stakeholders, service users, employees and the community on their experiences of receiving services including gypsies and travellers.
- integrate equality into the performance management framework of the council, including setting equality objectives and targets within service plans.
- review and put in place effective equality monitoring systems across council services and contract monitoring.
- to review the corporate equality scheme as appropriate.
- to ensure compliance with the Employment Equality Regulations on sexuality, and religion or belief and the EU Employment Directive on age

8. EQUALITIES POLICY STATEMENT

Luton Borough Council recognises that its own employment and service delivery policies and practices can have a significant influence on the community at large and therefore intends to lead by example. The council is committed to developing programmes of action both in its employment practices and service provision and to ensuring that its equal opportunities policies are implemented and monitored. Everyone who works for the council will be expected to carry out their duties with due regard to this equal opportunities policy and strategy.

To achieve the goal 'of equality for all' the council will in carrying out its duties ensure:

- a) No discrimination on the grounds of age, disability or impairment, gender, HIV status, marital status, nationality, national origin, race, religious belief, responsibility for dependants, sexual orientation, gender re- assignment, trade union membership or any grounds which cannot be shown to be justifiable.
- b) That information on gender, ethnic origin, disability, sexuality, age, faith or belief of all those seeking services from or employment with the council will be collected where appropriate and monitored, to enable the council to assess whether its policies and procedures are having a positive impact;
- c) That contractors and other agencies who undertake work for and on behalf of the Council, give due regard to the Council's Equality Policy and Procurement Code of Practice on securing equality in contracts;
- d) That when allocating grants, the Council ensure recipient bodies clearly demonstrate their commitment to equal opportunities and provide evidence of implementation of such policies:
- e) That the council's workforce is consulted with regard to the promotion and development of the council's equal opportunities policies and objectives and is aware of their responsibilities to promote and implement the council's policies;
- f) That each department develops, reviews and monitors detailed equalities action plans to ensure that the council's policy is adhered to and, in particular, nominate an appropriate officer to co-ordinate equality issues;
- g) That information is provided accessible formats if required and arrangements put in place for all service users to access services as appropriate and
- i) All committees give formal consideration to equality, social inclusion and community cohesion implications within all reports presented for policy decisions and in particular the result of equality impact assessments.

9. EQUALITY LEGISLATION

The Council's Equality Policy and Strategy takes full account of all relevant legislation.

9.1 The Race Relations Act 1976 (as amended by the Race Relations Amendment Act 2000)

This Act places a general duty on public authorities to promote race equality. This duty means that, in everything we do, we should have due regard to the need to:

- eliminate unlawful racial discrimination;
- promote equality of opportunity; and
- promote good race relations between people of different racial groups.

The duty aims to make the promotion of race equality central to the way local authorities work.

9.2 Race Relations (Amendment) Act 2000 – Race Duty

The Race Relations (Amendment) Act 2000 gives the Council general and specific duties to promote race equality.

General Duty

Under the general duty the Council must:

- Eliminate unlawful racial discrimination
- Promote equality of opportunity
- Promote good relations between people of different racial groups.

Specific Duties

- Produce and publish a Race Equality Scheme, showing how it intends to fulfil its general and specific duties updated every 3 years;
- Set out which functions and policies, or proposed policies have been assessed as relevant to the general duty and its arrangements for:
- Assessing and consulting on the likely impact of proposed policies on the promotion of race equality;
- Monitoring policies for any adverse impact on the promotion of race equality;
- Publishing the results of assessments, consultation and monitoring;
- Ensuring public access to information and services which it provides and
- Training staff in connection with the general and specific duties and
- Meet the Employment Duty which requires the Council to monitor by racial groups:

1. Employees in post;
2. Applications for employment, training and promotion
3. Employees who receive training
4. Employees who benefit or suffer detriment as a result of its performance assessment procedures;
5. Employees that are involved in grievance procedures;
6. Employees that are the subject of disciplinary procedures or people that cease employment with the Council and
7. Publish annually the result of the employment monitoring

The Act also places specific duties on the Council as the local education authority. These duties relate to the employment monitoring of maintained schools and publication of this information every year. Schools and other bodies maintained by the Local Education Authority have to fulfil general and specific duties under the Act.

9.3 Disability Discrimination Act 1995

The Act gives new rights to people who have or have either a physical or mental impairment, which has a substantial and long term adverse effect on a person's ability to carry out normal day-to-day activities.

The Act gives disabled people new rights in the areas of:

- Employment
- Obtaining goods and services
- Buying or renting land or property

9.4 Disability Discrimination (Amendment) Act 2005 – Disability Duty

The Disability Discrimination Act 1995 amended by the Disability Discrimination Act 2005, places on the Council both general and specific duties to promote disability equality as follows:

General Duty

- Promote equality of opportunity between disabled persons and other persons
- Promote positive attitudes towards disabled persons;
- Eliminate unlawful discrimination
- Eliminate unlawful harassment
- Encourage participation by disabled persons in public life and
- Take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons. For example in the provision of Reasonable Adjustments as required by the 1995 Act.

Specific duties

Produce and publish a Disability Equality Scheme (DES), in which the Council must set out:

- How disabled people have been involved in drawing up the Scheme
- How the Council will assess the impact of its policies and activities on disabled people
- The steps the Council will take to improve outcomes for disabled people
- How the Council will gather and use evidence regarding the impact of its policies
- Update the Disability Equality Scheme every three years

The Council has a Disability Policy and a Disability Code of Practice and adherence to both is a condition of service for all staff. As part of promoting positive attitudes and the inclusion of disabled people in employment, the Council will ensure that equality of opportunity is explicit in all its employment policies and practices, from initial advertising of jobs, through the recruitment process, the selection process and ongoing employment.

GENDER EQUALITY DUTIES

9.5 Sex Discrimination Act (Amendment 2007) - Gender Duty

The gender equality duty comes into force in April 2007 and it requires public authorities to promote gender equality and eliminate sex discrimination. The duty places the legal responsibility on public authorities to demonstrate that they treat men and women fairly. The duty will affect policymaking, service delivery and employment.

General Duty

The duty to pay due regard to eliminating unlawful sex discrimination and promoting equality between women and men is known as the "general duty".

Specific Duties

The Equal Opportunities Commission wants to see specific duties that require authorities to:

- Identify gender equality goals and draw up an action plan showing the action it will take to implement them

- Consult employees and stakeholders as appropriate in setting gender equality goals and action plans.
- Publish gender equality goals and action plans.
- Monitor progress and publish annual reports on progress.
- Review the gender equality goals and actions every three years.
- Conduct and publish gender impact assessments for all major employment/policy/service developments;
- Take action to address the causes of the gender pay gap.
- Train staff in connection with the duties imposed by the Act.

EQUALITY REGULATIONS

9.6 Sex Discrimination (Gender Re-Assignment) Regulations 1999

Gender Reassignment

The Sex Discrimination (Gender Reassignment) Regulations came into force 1999. Gender Reassignment is the process, undertaken under medical supervision, to reassign a person's sex by changing physiological or other characteristics. It includes any part of this process.

The regulations, made under the European Communities Act, extend the Sex Discrimination Act 1975 to cover discrimination in employment and vocational training on grounds of gender reassignment. They give a wide definition to 'gender reassignment' that provides protection against discrimination by employers at all stages of the gender reassignment process, including where an individual indicates an intention to start gender reassignment.

There is no definition of when sex changes, or any test for when the process can be regarded as complete. This may create problems in determining the scope of genuine occupational qualifications exemptions. But the regulations do provide for leave of absence in the same way as for sickness or injury.

Luton Borough Council is as an employer committed to equality of opportunity and seeks to offer a working environment in which every individual can seek, obtain and continue employment without unfair discrimination, harassment, bullying, or victimisation. The Council's Policy and Procedure on Unfair Discrimination, Harassment and Bullying and its Equal Opportunities Policy, covers all groups including trans men and women.

9.7 Employment (Sexual Orientation) Regulations 2003

The Employment Equality (Sexual Orientation) Regulations 2003 makes it unlawful to discriminate in employment or training on grounds of sexual orientation and perceived orientation.

Sexual Orientation is defined as orientation towards:

- Persons of the same sex
- Persons of the opposite sex
- Persons of the same sex and of the opposite sex

The Regulations therefore cover gay men, lesbians, bisexuals and heterosexuals. This regulation does not cover discrimination on the ground of gender reassignment. Transsexuals are covered under the SDA 1975, which makes it unlawful to discriminate against a person who intends to undergo, is undergoing or has undergone gender reassignment.

The legislation means employers now risk legal claims from staff who:

- Have been treated less favourably than others in for example recruitment, promotion, training or dismissal, because they are gay or someone has assumed they are gay or because they associate with gay people.
- Are disadvantaged as a group by workforce practice and policy because of their sexual orientation
- Have been offended either intentionally or unwittingly by homophobic actions or comments.

9.8 Age Discrimination Regulations 2006

In October 2006, legislation outlawing age discrimination in employment and vocational training came into force. The legislation prohibits direct or indirect discrimination, harassment and victimisation as a based on age.

- The regulations cover employment and vocational training. This includes access to help and guidance, recruitment, promotion, development, termination, perks and pay.
- The regulations cover people of all ages, both old and young.
- All employers, providers of vocational training, trade unions, professional associations, employer organisations and trustees, and managers of occupational pension schemes will have new obligations to consider.
- Goods, facilities and services are not included in these regulations.
- Upper age limits for unfair dismissal and redundancy will be removed.
- A national default retirement age of 65 will be introduced making compulsory retirement below age 65 unlawful (unless objectively justified).
- All employees will have the 'right to request' to work beyond the default retirement age of 65 and all employers will have a 'duty to consider' requests from employees to work beyond 65.

Exemptions

As with other anti-discrimination strands, the age regulations include a GOR exception so that if there is a determining requirement to employ someone of a particular age or age group, then direct and possibly indirect discrimination is permissible (but not harassment or victimisation). If genuine, then a GOR is likely to be 'objectively justifiable' so its inclusion in the regulations is probably superfluous in any event and there are very few instances where a GOR will apply. The obvious example is in the employment of actors, but even here employers will need to be careful not to draw the requirement too narrowly.

Positive action

Although positive discrimination is not lawful (e.g. employing someone because of their age), it will be open to employers and training providers to take 'positive action' which aims to prevent or compensate for disadvantages suffered by people of a particular age or age group. For example, if an employer has an ageing workforce, it may be legitimate to place vacancy adverts in a magazine more likely to be read by younger people. It would perhaps be unwise to only advertise here, but provided appointments were made on merit, then seeking a greater number of applications from younger people would be a legitimate aim.

9.9 The Employment Equality (religion or belief) Regulation 2003

The Employment Equality (religion or belief) Regulation 2003 came into force on 2nd December 2003 and mirrors existing legislation preventing:

- Direct discrimination
- Indirect discrimination
- Victimisation
- Harassment

The Regulations states that "religion or beliefs" means any religion, religious beliefs or similar philosophical belief. When deciding what is a religion or belief, a tribunal may consider a number of factors, for example, collective worship, clear belief system, profound belief affecting way of life or view of the world. Whilst it appear that discrimination on the grounds of political opinion, such as membership of the labour party, is not included in this definition, some political/philosophical beliefs may be similar to religious beliefs, for example, pacifism and followers of the green animal rights and anti abortion movement (for further information see the Council's Equality Policy and Strategy).

Some religions require their followers to pray at specific times during the day and employees may therefore request access to an appropriate quiet place to undertake their religious observance. Employers are not required to provide a prayer room, however, consideration should be given to providing a quiet room, but its use should not cause problems for other employees or the organisation.

Exemptions

The regulations do provide a specific defence to claims of direct discrimination in circumstances where being of a particular religion or belief is a 'genuine and determining' occupational requirement for the job. To rely on this defence, an employer must be able to establish that the alleged occupational requirement is proportionate in the particular case.

Example: A recognised Church of England school may be able to insist that all of its teachers are practising Christians, thereby rejecting applications from candidates of any other religion. If challenged, the school would have to establish that one of the aims of the school was to actively promote the Christian religion amongst its pupils - and that this aim could only be achieved by employing practising Christians to teach in the school.

The meaning of 'genuine' and 'determining'

The occupational requirement must be genuine and determining, and be proportionate in the case in question.

It will be necessary to consider the requirements of the job very closely. Religious discrimination is only likely to be lawful in cases of those involved in religious services, whose job involves teaching or promoting religion. Jobs that are ancillary to the religion are unlikely to be covered.

The defence would not succeed, for example, in a claim by a Christian rejected for a secretarial post in a Muslim school. There is probably no occupational requirement for secretarial staff, cleaners or other support staff not responsible for the teaching or welfare of pupils to be of a particular religion.

The 'specific' or 'religious organisations' defence

There is a further defence against discrimination claims based on the occupational requirement for the job. This is known as the 'specific' or 'religious organisations' genuine occupation requirement defence.

It applies where: an employer has an ethos based on religion or belief, and having regard to that ethos and the nature of the employment or the context in which it is carried out, being of a particular religion or belief is a genuine occupational requirement for the job.

This would apply to spiritual posts in churches, mosques, synagogues and temples but it is unclear whether it would extend as far as a Roman Catholic nursing home, halal butchers or Christian youth groups.

As with the general defence, in order to rely on it, an employer would have to establish that it was proportionate to apply the occupational requirement in a particular case. This is likely to involve dealing with the potential adverse impacts of employing a person of a different religion and the damage this could have to the religious ethos or the organisation.

The religious organisations 'genuine occupational requirement' is broader, in that being of a particular religion or belief only has to be a requirement, not a determining requirement (i.e. decisive) as with the general one. This will make it easier for religious organisations to discriminate on the grounds of religion.

Positive Action

A final point of interest about these regulations is the right of employers to encourage applications from and provide training to under-represented groups. This will entitle an employer to take positive action to attract employees from a particular religious group if they are under-represented in the organisation.

Placing advertisements in mosques, aimed at encouraging applications from Muslims would not be an act of unlawful discrimination.

Giving preference to minority groups, for example by recruiting a Jewish candidate rather than a Christian one because the organisation already employs many Christians but no Jews, will however amount to discrimination against majority groups. This goes beyond the realms of positive action and amounts to direct discrimination.

10.GLOSSARY OF TERMS

Equal Opportunity Policy

Is the term used to describe a programme of action designed to ensure that discrimination is avoided in an organisation's structure, in its treatment of employees, in its service provision and in its decision-making.

An Equal Society

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

Definition of a racial group

A racial group is any group defined by reference to colour, race, nationality, including citizenship - or ethnic or national origins. A person can be a member of more than one racial group.

Definition of racism

"Racism in general terms consists of conduct or words or practices which advantage or disadvantage people because of their colour, culture or ethnic origin. In its more subtle form it is as damaging as in its overt form."
(Macpherson Report)

Institutionalised racism

"Institutionalised racism consists of the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racial stereotyping which disadvantage minority ethnic people." (Macpherson Report 1999)

One of the key points to come out of this report was that a 'colour blind' approach towards race equality, i.e. applying the same rules to everyone regardless of race, was failing to address the disadvantages suffered by ethnic minorities.

Racist incident

"A racist incident is any incident which is perceived to be racist by the victim or any other person." (Macpherson Report)

Unlawful Racial Discrimination

The Race Relations Act 1976 makes it unlawful to discriminate against a person directly or indirectly, in the field of employment.

Direct discrimination is defined as treating a person, on racial grounds, less favourably than others are or would be treated in the same or similar circumstances.

Indirect racial discrimination

Consists of applying in any circumstances covered by the Act a requirement or condition, which, although applied equally to persons of all racial groups, is such that a considerably smaller proportion of a particular racial group can comply with it and it, cannot be shown to be justifiable on other than racial grounds.

Possible examples are:

A rule about clothing or uniforms which disproportionately disadvantages a racial group cannot be justified

An employer who requires higher language standards than are needed for safe and effective performance of the job

Positive action (race)

Opportunities for employees to develop their potential through encouragement, training and careful assessments are all part of good employment practice.

Where members of particular racial groups have been underrepresented over the previous twelve months in particular work, employers are allowed under the Act to encourage them to take advantage of opportunities for doing that work and to provide training to enable them to attain the skills needed for it.

Section 7(3) of the Employment Act 1989 and Section 37 and 38 of the Race Relations Act allows employers to provide positive action training as long as one of the following conditions are met:

- There were no worker of the relevant racial group at the establishment in question, or
- The proportion of members of the racial group doing the work in question was small in relation to the proportion of persons of that racial group in the total workforce at the establishment, or
- The proportion was small in relation to the proportion of persons in that racial group in the population of the catchment area for recruitment to that establishment – S.38(2)

If one of the above conditions are met, the employer is entitled to afford only those employees who are of a particular racial group access to facilities for training for the work in question or as far as recruitment is concerned, may encourage members of a particular racial group to apply for specific posts.

CRE Code of Practice suggests – placing adverts in BME press; using employment agencies in areas where BME groups are concentrated; aiming recruitment /training schemes at BME school-leavers; encouraging BME employees to apply for promotion/transfer opportunities and providing special training for promotion or skill training for employees of these groups.

Positive Action (gender)

The term '**positive action**' refers to a variety of measures designed to counteract the effects of past discrimination and to help eliminate sex stereotyping. Under this broad definition positive action may include initiatives such as the introduction of non-discriminatory selection procedures, training programmes or policies aimed at preventing sexual harassment. However, the term also applies specifically to two provisions of the SDA - Ss47 and Ss48.

The SDA permits special single-sex training initiatives either to equip people to work in jobs more often carried out by members of the opposite sex, or to return to work after a period at home looking after children or other dependants. The SDA also permits special encouragement to women only, or to men only, to apply for jobs more usually done by members of the opposite sex. Positive action under ss47 and 48 can be targeted at either women or men, but because in practice most initiatives aim to redress previous discrimination against women, we refer here to positive action for women.

POSITIVE ACTION TRAINING

The SDA defines training as including any form of vocational training education or instruction. Positive action in training is lawful, provided certain criteria are met:

Section 47(1) of the SDA (1975) amended by the SDA 1986 allows:

- women only, or men only, access to facilities for training which would help to fit them for that work, **or**
- encouragement to women only, or men only, to take advantage of opportunities for doing that work, where it reasonably appears to that person that at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in question doing that work in Great Britain, or the number of persons of that sex doing the work in Great Britain was comparatively small".

Section 47(2) concerns the need for positive action where there are local skills shortages or in connection with -
affording persons who are of the sex in question, and who appear likely take up that work in that area, access to facilities for training which would help to fit them for that work, or
encouraging persons of that sex to take advantage of opportunities in the area for doing that work".

Section 47(3) makes specific reference to positive action training for people who have had a career break for domestic or family reasons:

GOR/GOQ does not form part of positive action

Genuine occupational qualifications /requirements (GOQ/ GOR) on grounds of sex

In certain limited circumstances it is lawful to discriminate in recruitment, training, promotion and transfer in a job for which the sex of the worker is a genuine occupational qualification (GOQ). Section 7 of the SDA provides an exception to the requirements of the Act and allows a job to be restricted to one sex where the sex of the worker is a genuine occupational qualification. A GOQ exists when the essential nature of the job, or particular duties attached to the job, call for a member of one sex.

GOQs are interpreted very narrowly by the courts since it is a derogation from the principle of equal treatment, and can *only* be claimed where the work:

- is restricted to one sex for reasons of physiology or authenticity in dramatic performance or other entertainment
- is restricted to one sex to preserve privacy and decency
- is in a private home and would lead to physical or social contact with or knowledge of intimate details of someone living there
- requires living in single sex accommodation
- is in a single sex establishment
- requires the promotion of personal welfare or educational services
- is outside the UK
- requires the employment of married couples.

Genuine occupational qualifications /requirements (GOQ/ GOR) on racial grounds

Section 5 of the RRA provides that it is lawful for an employer to discriminate on racial grounds, in respect of certain defined types of job, where being of a particular racial group is a 'genuine occupational qualification' (GOQ) for the job. This GOQ exception sits alongside a new exception, introduced by the 2003 Regulations contained in S, 4A RRA, which is based on the concept of a 'genuine occupational requirement' (GOR)

It is important to note that as a result of the amendment to Section 5 of the RRA, the employer can now only rely on the GOQ exception in cases where S, 4 A does not apply (i.e. on the grounds of colour and or nationality). Under S.5 it is lawful for employers to discriminate on grounds of colour and nationality where being of a particular racial group is a GOQ for the job. This discrimination can only be done in the following ways:

1. in recruiting arrangements and in refusing to employ an applicant who does not belong to the requisite racial group- S.5 (1) (a)
2. in refusing opportunities for promotion or transfer to, or training for, the job in question – S. 5 (1) (b).

There are only four kinds of employment in respect of which it can be argued that being of a certain racial group is a GOQ. These are: **dramatic performances; models; public restaurants (for reasons of authenticity) and personal welfare services** (where it may be argued that the service can most effectively be provided by a person of that racial group).

Section 4A, RRA applies in respect of discrimination on the grounds of race or ethnic or national origins. S.4 A provides that an employer is entitled to discriminate on grounds of race or ethnic or national origins in circumstances where, having regard to the nature of the employment or the context in which it is carried out;

- being of a particular race or of a particular ethnic or national origins is a genuine and determining occupational requirement – S.4A(2)(a); and
- it is proportionate to apply that requirement in the particular case – S.4A(2)(b); and
- either
 - the person to whom that requirement is applied does not meet it- S.4.A(2) c (ii)

These provisions cover recruitment; promotion; transfer; training and dismissal.

Genuine occupational requirements (GOR) on grounds of sexual orientation

An employer will be able to rely on a general GOR provided the following criteria are satisfied and having regard to the nature of the employment or the context in which it is carried out:-

- being of a particular sexual orientation is a genuine and determining occupational requirement ;
- it is proportionate to apply that requirement in the particular case and
- either – (i)the person to whom that requirement is applied does not meet it or (ii) the employer is not satisfied and in all the circumstances it is reasonable for him not to be satisfied, that the person meets it.

Regulation 7, allows employers to treat job applicants differently on the ground of sexual orientation:

- in the arrangements made for the purpose of determining who should be offered employment, or
 - by refusing to offer or deliberately not offering employment
- where being of a particular sexual orientation is a genuine occupational requirement (GOR) for the post in question.
GOR exception can also be used in relation to promotion, transfer, training or dismissal for posts to which the GOR applies.

NOTE: It will be more difficult for an employer to demonstrate a GOR under S.4A than it was to demonstrate a GOQ under S.5.because the GOR must be 'determining' as well as 'genuine' and 'proportionate' to apply the requirement in the case in question.

The advice from ACAS is that GORs should be identified at the beginning of the recruitment , training or promotion process and should clearly indicate that a GOR applies and reiterated throughout the selection process.

Reasonable adjustments

A reasonable adjustment is any action that is taken to overcome disadvantages experienced by a disabled person resulting from their disability.

Disadvantages may be caused by 'physical features' or by 'arrangements' and employers are required to take such steps as it is reasonable for them to have to take in all the circumstances that prevent that disadvantage.

The duty to make reasonable adjustments apply to all areas of employment including terms and conditions of service, interview and induction arrangements, and the offering or refusal of opportunity for training promotion, transfer, benefits or dismissal.

Equality record keeping and monitoring

Equality Record Keeping and Monitoring is the processes we use to collect, store and analyse data about people's ethnic background, gender, sexuality and disability to assist us in monitoring fair and effective service delivery. We will use the monitoring information to:

- Highlight possible inequalities
- Investigate the underlying causes; and
- Remove any unfairness or disadvantage

Monitoring is also a requirement under the Race Relations (Amendment) Act 2000, Disability Discrimination Act 1995, and Sex Discrimination Act 1975.

Valuing diversity

There are three main strategies:

- using a common equal opportunities framework to address the needs of vulnerable people
- the process of achieving service delivery is planned and systematic
- promotion of fairness and equality is mainstream not peripheral; it is the responsibility of all managers and service providers

Gender reassignment

This is a process undertaken under medical supervision for the purpose of reassigning a person's sex, through changing the physiological or other characteristics of sex; it includes any part of such a process.

The Gender Reassignment Regulations covers discrimination in employment and vocational training on the grounds of gender reassignment.

Social exclusion

This can be said to have three dimensions:

- economic exclusion - from work and effective labour market participation
- social exclusion - from social welfare rights and from social and cultural facilities
- political exclusion - isolation from representation, involvement in decision-making and playing a role as a citizen

Equality Standard

The Equality Standard for local Government is a tool to enable local authorities to mainstream gender, race and disability into policy and practice at all levels.

The Standard was developed by the three equality commissions (Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission) and the Employer's Organisation. The Standard provides a common framework for mainstreaming equality and can be used to address all areas of disadvantage. Through a system of five levels, which covers all aspects of policymaking, service delivery and employment, the Equality Standard aims to help authorities develop a systematic approach to equality issues.

Victimisation.

Victimisation occurs when a person treats another less favourably than other persons would be treated because that person has

- Brought proceedings under a relevant Act or accessed any appropriate Council Policy
- Given evidence or information in connection with such proceedings
- Done anything else under the Act/ Policy: or
- Alleged that a person has contravened the above.

Victimisation also occurs where the discriminator treats a person less favourably because he/she believes or suspects that the individual has done or intends to do any of the above things.

Harassment

ACAS defines harassment “in general terms “ as “unwanted conduct, affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.”

Racial Harassment

Racial harassment includes any unwanted conduct and/or behaviour (which is racially motivated) which has the purpose or effect of violating the employees dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

A racial group is defined by reference to race, ethnic or national origins, colour and nationality.

Sexual Harassment

Sexual harassment is “any unwanted verbal or physical advance, of a sexual nature, sexually explicit derogatory statement or sexually discriminatory remark made by someone in the workplace which is offensive to the employee involved, which causes the employee to feel threatened, humiliated, patronised or harassed or which interferes with the employee’s job performance, undermines job security or creates a threatening or intimidating working environment”.

Disability Harassment

Disability harassment includes any unwanted verbal or physical abuse and/or behaviour (which is disability related), which is offensive to the employee, involved, which causes the employee to feel threatened, humiliated, patronised or harassed or which causes a threatening or intimidating working environment.

Lesbian, Gay, Bisexual and Transgendered Harassment

Lesbian, gay, bisexual and Transgendered harassment includes any unwanted verbal or physical abuse/ advance of a sexual nature, sexually explicit derogatory statement or reference made to Sexual orientation and/ or behaviour which is offensive to the employee involved, which causes the employee to feel threatened, humiliated, patronised or harassed or which interferes with the employees job performance, undermines job security or causes a threatening or intimidating work environment.

Lesbian, Gay, Bisexual and Transgender harassment can also be suffered and inflicted by people of the same sexual orientation.