

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PERSONNEL COMMITTEE

Agenda Item No.

meeting date: WEDNESDAY, 10 NOVEMBER 2010
title: EQUALITY ACT 2010
submitted by: HR MANAGER
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1. PURPOSE

1.1 To update Members on the provisions of the new Equality Act.

1.2 Relevance to the Council's ambitions:

- Council Ambitions: As staff are the Council's biggest resource the achievement of all the Council's ambitions is dependent on a diverse, dedicated and committed workforce.
- Community Objectives: see above.
- Corporate Priorities: See above.
- Other considerations: None.

2. BACKGROUND

2.1 The Equality Act 2010 provides a new cross-cutting legislative framework to protect the rights of individuals and advance equality of opportunity for all; to update, simplify and strengthen the previous legislation; and to deliver a simple, modern and accessible framework of discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

2.2 The Act has two main purposes – to bring together and simplify all of the existing discrimination law, and to strengthen the law to support progress on equality.

2.3 The Equality Act contains a range of new rights, powers and obligations to help the drive towards equality and has now become law.

2.4 The new legal requirements in the Equality Act will come into force at different times. The Government is considering how the different provisions will be commenced so that the Act is implemented in an effective and proportionate way. The first elements of the Act began to take effect from 1st October this year 2010 and are set out below.

3. ISSUES

3.1 It is unlawful to discriminate against an individual because of *any* of the protected characteristics in the Equality Act 2010

The nine protected characteristics under the Equality Act are:

- Disability
- Gender Reassignment*
- Pregnancy & Maternity*
- Marriage and Civil Partnership*
- Race (including ethnicity and national origin)
- Religion or Belief
- Sex
- Sexual Orientation

* New - the Act also widens the scope of protection for individuals with these protected characteristics.

3.2 There are some details which employers will need to be aware of and which may impact on how policies are put into practice. These include:

- Associative discrimination will now apply for all practical purposes to all the discrimination strands. This means protection is extended to protect people who are associated with someone that has a protected characteristic, for example; this protects spouses, partners, parents and carers who look after a disabled person or older relative from discrimination.
- Perceptive discrimination will now apply for all practical purposes to all the discrimination strands.
- Indirect discrimination will now additionally apply to disability and gender reassignment.
- Under the Act, harassment now applies for practical purposes to all protected characteristics and extends to third party harassment:
 - employees can complain of harassment even if they don't possess the protected characteristic or the harassment is not directed at them; and
 - employers can be potentially liable for harassment of their staff by non-employees (for example, customers). This will only apply if harassment has occurred on at least two earlier occasions and the employer knows it has taken place and has not taken reasonably practical steps to prevent it happening again.
- It will be unlawful for employers to ask pre-employment medical questions (health or disability related) of prospective employees at application or interview stages of recruitment. This includes asking about someone's sickness absence record. However, questions on medical matters will still be permitted for equality monitoring, compliance with disability discrimination requirements and for genuine job-related reasons (i.e. whether a person can carry out an intrinsic or absolutely fundamental function of the job with reasonable adjustments in place), or to take positive action. We are currently working with our Occupational Health providers to review our existing medical questionnaire.
- Employment tribunals' powers will be extended so that they can make recommendations which benefit the wider workforce. For example, a tribunal

might specify that an employer needs to undertake certain training of all staff on equal opportunities. This power does not apply to equal pay cases.

- The definition of gender reassignment has been changed and the requirement for medical supervision to be protected is no longer needed.
- There is clearer protection for breastfeeding and new mothers (within the first 26 weeks). It is a manager's duty to ensure that they consider and provide appropriate opportunity and facilities for a breastfeeding mother. This also extends to customers, wherever possible the Council should provide facilities to members of the public to meet the needs of breastfeeding mothers when using Council premises. We do not currently have any such provision within the Council.
- The Act introduces a new concept of "discrimination arising from disability" which is prohibited. Discrimination arising from a disability is discrimination because of the effect of a disability, rather than on grounds of the disability itself.
- Allowing hypothetical comparators for direct gender pay discrimination.
- The Equality and Human Rights Commission (EHRC) have produced a draft Code of Practice on Employment, which is currently awaiting Government approval.
- We will review our existing processes against the Guidance and make any necessary changes.

4. RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources: None.
- Technical, Environmental and Legal: the Council has a legal duty to ensure that staff are not discriminated against in the workplace and failure to comply with the legislation could result in action being taken against the Council.
- Political: There are no political implications.
- Reputation: None.

5. **RECOMMENDED THAT COMMITTEE**

5.1 Note the report.

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For further information please ask for Michelle Smith, ext 4402