

Report to:	Scrutiny Committee
Date:	28 June 2018
Title:	Joint Equality Monitoring Policy
Report of:	Business Planning and Performance
Ward(s):	All
Officer recommendation(s):	Scrutiny Committee is asked to consider and endorse the proposed Equality Monitoring Policy and make any relevant recommendations in relation to these for Cabinet to consider when it meets on 2 July 2018.
Reasons for recommendations:	An Equality Monitoring Policy is required to ensure the Council meets its legal duties under Equality Act 2010 and collects the information required to fulfil its Public Sector Equality Duty (PSED) whilst complying with the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.
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1 Introduction

- 1.1 The Joint Equality Monitoring Policy is required in order to underpin the council's approach to ensuring that full consideration of equality and fairness is given in the development, design and delivery of all services and policies and in the recruitment and development of staff.
- 1.2 Section 149 of the Equality Act 2010 imposes a legal duty, known as the Public Sector Duty (Equality Duty), on all public bodies, to consider the impact on equalities in all policy and decision making. The Equality Act 2010 requires all public bodies to promote equal opportunities on all protected discrimination grounds. The collection of data is required to demonstrate compliance.
- 1.3 The Public Sector Duty (Section 149 of the Equality Act 2010) requires a public authority, in the exercise of its functions, to:
- consider the need to eliminate unlawful (direct or indirect) discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
 - advance equality of opportunity between people who share a protected characteristic and those who do not share it; and

- foster good relations between people with a protected characteristic and those who do not share it.

1.4 The characteristics that are protected by the Equality Act 2010 are:

- Age
- Disability
- Gender reassignment
- Marriage or civil partnership (but only in respect of eliminating unlawful discrimination)
- Pregnancy and maternity
- Race - this includes ethnic or national origins, colour or nationality
- Religion or belief - this includes lack of belief
- Sex
- sexual orientation.

1.5 The collection and monitoring of information, which includes personal data, assists in setting the framework for the development of Equality and Fairness Objectives and Action Plans, as required under the public sector equality duty (2010), and for the day to day consideration of equality and fairness in council work. This data collection and processing needs to be done in compliance with the Equality Act 2010 and with current data protection legislation.

1.6 The Equality Act 2010: Technical Guidance on the Public Sector Equality Duty (PSED) published by the Equality and Human Rights Commission states that, in order to give proper consideration to the aims set out in the PSED general duty, a public authority will need to have 'sufficient evidence of the impact of its policies and practices are having, or are likely to have, on people with different protected characteristics.' The courts have made clear the need to collate relevant information in order to have evidence-based decision making and be able to demonstrate this. Adequate and accurate equality evidence, properly understood and analysed, is therefore regarded as essential for complying with the PSED.

1.7 Legislation governing the privacy of personal data has changed recently. The General Data Protection Regulation ('GDPR') came into force across the European Union on 25 May 2018, placing more emphasis on being accountable for and transparent about the processing of personal data. In the UK, GDPR will be supplemented by the Data Protection Act 2018 (when in force) which, among other provisions, repeals the Data Protection Act 1998. Consequently, the council's Equality Monitoring Policy (2012), which relies on the collection of personal data, needs updating.

1.8 Because the information collected to monitor equality and fairness includes personal data, the council's policy on this activity must comply with current data protection legislation, namely the GDPR and the Data Protection Act 1998 or 2018 (as applicable).

1.9 The GDPR sets out how personal information can be used by government, companies and other organisations and places a strong emphasis on being

accountable for and transparent about our lawful basis for processing data.

- 1.10 Given the requirement to update the 2012 Equality Monitoring Policy of Lewes District Council, the opportunity to develop an aligned policy covering the monitoring practices of equality data across both councils has arisen.
- 1.11 The Joint Equality Monitoring Policy sets the principles under which Lewes District Council and Eastbourne Borough Council, and relevant contractors delivering services on their behalf, will monitor the equality characteristics of staff and service users. The term 'services' covers internal services and functions (such as personnel), as well as services provided for businesses and residents (such as street cleaning).
- 1.12 Equality monitoring supports effective corporate planning and decision-making. It is used to scrutinise access to services; fairness of outcomes, and satisfaction and complaints and assists in the development and delivery of the council's Equality and Fairness Objectives and Action Plans, and with the day to day consideration of equality and fairness in council work. The data collected will be used in the 'functional' equality and fairness assessments carried out across services as set out in the council's Action Plans, and in the equality and fairness assessments completed to inform Members of the impact of their decisions.
- 1.13 The proposed Joint Equality Monitoring Policy will underpin the council's approach to the collection, processing and use of this data in compliance with GDPR and will assist the council in ensuring its recruitment, services, activities, policies and decision-making benefit all sectors of the community and specifically groups protected under the Equality Act 2010 who might otherwise be adversely affected by council decisions and activities.

2 Proposal

- 2.1 Scrutiny Committee is asked to consider and endorse the proposed Equality Monitoring Policy set out at Appendix A and to make any relevant recommendations in relation to these for Cabinet to consider when it meets on 2 July 2018.
- 2.2 The introductory text explains that the Policy has been written with reference to the Equality Act 2010, GDPR and the Data Protection Act 2018. It emphasises that the GDPR places a strong emphasis on being accountable for and transparent about our lawful basis for processing data.
- 2.3 Sections 2 and 3 set out the principles of equality data collection, including the general presumption in favour of equality monitoring, but giving guidance on when equality data should not be collected.
- 2.4 Section 4 deals with the format of monitoring questions and section 5 covers confidentiality and data protection.
- 2.5 Section 6 provides guidelines on how equality data is to be used and explains that a review of the equality monitoring data collected and analysed will be included within Functional Equality and Fairness Reviews to be carried out as

part of the development of new strategies, policies and/or services and as part of an agreed programme of functional reviews.

2.6 Responsibility for ensuring appropriate collection, processing and use of equality data within their service areas rests with the Heads of Services.

2.7 Appendix 1 – Core Text and Questions provides a standardised text to be used in the collection of all equality monitoring data. Appendix 2 – Options for Additional Text is for use only where there is a service need to collect data on one or more additional protected characteristics.

3 Outcome expected and performance management

3.1 The expected outcomes of the proposed policy are that employment and other policies and practices comply with equal treatment laws, equal access to services and opportunities provided by the council for all residents and increased fairness, inclusion and participation in activities.

3.2 The policy and its appendices will provide officers with clear guidelines to ensure that the council's policies and practices comply with equality legislation and data protection regulations. The principles set out in the policy will allow officers to make a judgement about when they should and should not collect data, what data is appropriate to collect and how this should be processed and used.

4 Consultation

4.1 The council consulted in 2018 both on the Joint Equality and Fairness Policy and on its Equality Objectives 2018 to 2021. Given this earlier consultation and that the proposed Policy has been drafted to comply with changes in legislation, it has not been considered appropriate to conduct a separate consultation exercise.

5 Corporate plan and council policies

5.1 The proposed policy will cover all council functions ensuring the recruitment and development of staff and services to all our customers are fair and inclusive.

6 Business case and alternative option(s) considered

6.1 The proposed policy will ensure the council complies with its legal duties. The policy has been drafted in response to changes in legislation and with reference to GDPR, the Data Protection Act 2018 and the Equality Act: Technical Guidance on the PSED. Alternative options have not been considered.

7 Financial appraisal

7.1 Equality monitoring was established following the introduction of the Equality Act 2010 and has, since then, been a regular activity carried out by service teams as part of their ongoing service improvement. The new policy updates and clarifies the principles and processes for equality monitoring but does not introduce any new area of work. There are therefore no direct costs arising from the proposed

policy.

8 Legal implications

- 8.1 The implications of recent changes to data protection law are specified in the body of the report. The privacy of individuals whose personal data are collected and analysed for equality and monitoring purposes must be respected. This is achieved by processes that adhere to current data protection legislation.

Lawyer consulted 24 May 2018

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9 Risk management implications

- 9.1 The following risks will arise if the recommendations are not implemented:

- Failure to comply with statutory obligations under the Equality Act 2010 and
- Increased risk of incurring vicarious liability for acts of discrimination, harassment or victimisation in the event of litigation
- Failure to comply with statutory obligations under the Data Protection Act 2017 and GDPR.

10 Equality analysis

- 10.1 An Equality and Fairness Analysis has been completed for the proposed policy and is available from the report author. No actions have been identified.

- 10.2 The Analysis sets out the differences between equality monitoring data which may be collected as 'standard'; additional equality monitoring data which may be collected where there is a service need for this; and data which should not be collected, namely on gender reassignment. The Analysis states that the draft policy has been developed with reference to the Equality Act 2010: Technical Guidance to the Public Sector Equality Duty.

11 Appendices

- Appendix A – Draft Joint Equality Monitoring Policy

12 Background papers

The background papers used in compiling this report were as follows:

- Joint Equality Monitoring Policy – Equality and Fairness Analysis
- Joint Equality and Fairness Policy
- Equality Objectives
- [Equality Act: Technical Guidance to the Public Sector Equality Duty : England](#)
- Information Commissioners Office (ICO). Guide to the General Data Protection Regulation (GDPR). <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

- European Commission. European handbook on equality data (2016 revision). http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54849