

# Positive action guidance

**Statement of intent**

Suffolk County Council aims to :

1. Represent the diverse communities it serves in its staff population
2. Remove any barriers and discrimination that may be faced by diverse groups in being appointed to roles within the organisation.
3. Proactively address under-representation, as much as possible.

This applies across all of the equality groups protected by the Equality Act.

Ideally, we would like the diversity to be not only at an organisational level, but within directorates, services, teams and at role level, including considering grades.

Much positive action work will focus on recruitment; however it is also possible and advisable to consider positive action in the context of existing staff. For instance, it can be applied to opportunities for development and promotion.

**Why undertake positive action?**

* We have duties in law, associated with the Equality Act and the [Public Sector Equality Duty.](https://www.gov.uk/government/publications/public-sector-equality-duty)
* Beyond that, we recognise the business benefits from having a diverse workforce, with all the different ideas, experiences and knowledge different people can bring.
* We want to widen our talent pools as far as possible, in order to benefit from the best possible candidates.
* We have a duty to serve all parts of our communities, and to ensure that we have the organisational knowledge to be able to do that. There is likely to be increased confidence in and engagement with our services, if people in our diverse communities can see themselves reflected amongst the staff that are serving them, and if diverse perspectives have been taken into account in terms of the way we deliver services, and in our organisational values and culture.

**Constraints**

We recognise that we are constrained to some extent by wider trends, in terms of the diversity within particular sectors, and sometimes real-life historical decisions made by different groups that lead them to different career paths (although these can also be the result of historical barriers or stereotypes, which can and should be broken down). Skills shortages in some sectors may also make positive action more challenging (but not impossible).

We know that we won’t be able to achieve absolute representation in every job, or in every team or service. We must be proportionate in our efforts to do so. Inevitably this will mean we will focus on different things at different times, and that we won’t be able to solve everything. It will also take time in some cases to make real differences to the demographics within some job roles, and we must be realistic about this. However, the constraints should not be taken as a reason not to do anything; they are a social and organisational challenge we can contribute to overcoming.

**Positive action: definition and examples**

(The following is adapted from guidance from the  [Equality and Human Rights Commission](https://www.equalityhumanrights.com/en/advice-and-guidance/employers-what-positive-action-workplace) and [Xpert HR](https://www.xperthr.co.uk/faq/what-positive-action-is-permitted-under-discrimination-legislation/103008/))

Positive action is about taking specific steps to improve equality in the workplace, and to address social and historical disadvantage faced by particular groups. It can be used to meet a group’s particular needs, to lessen a disadvantage they might experience or to increase their participation in a particular activity.

When we undertake positive action, we must be able to show that it is an appropriate way to achieve one of these aims, and that the steps being taken have been thought through.

Using positive action at work is voluntary, but advisable in the public sector, to help us comply with our legal responsibilities under the Public Sector Equality Duty.

### **Examples of positive action**

* placing job adverts in particular places to target particular groups;
* including statements in job adverts to encourage applications from under-represented groups, such as ‘We particularly welcome male applicants because they are under-represented in this role’;
* choosing images in job adverts that represent an under-represented group;
* offering training or internships to certain groups to aid their progress at work;
* offering shadowing or mentoring to particular groups;
* hosting an open day for, or reaching out to, under-represented groups to encourage them to get into a particular field;
* favouring a job candidate from an under-represented group, where two candidates are ‘as qualified as’ each other – in reality, however, tiebreak situations rarely arise.

**Limits of positive action (see also section on positive discrimination, below)**

An employer can encourage people from disadvantaged groups to apply for a job, and can provide training to help them, but the decision on who to select must be made on merit alone, except in circumstances where the candidates are "as qualified as" each other..

**Key principles of positive action, that must be considered every time**

* The employer must reasonably think that people with the protected characteristic suffer a disadvantage or are under-represented in that particular activity.
* Taking the positive action must be a proportionate means of enabling or encouraging people to overcome the disadvantage or to take part in the activity.
* Employers must not have a policy of treating people who share a characteristic more favourably; positive action should be considered on a case-by-case basis.

Put together, these actions mean **we must obtain data to support positive action initiatives**. Sometimes the corporate level data we have may suffice, such as that identified in our ethnicity or gender pay gap reports. Directorate Management Teams are also being provided with directorate-level reports, which present the different challenges, and different groups under-represented, in different areas. Ideally, we should be supporting this with data about the representation of different groups at a service, team or role level.

**We cannot undertake positive action for groups where there is no data to support action focussed on that group**. Ideally, we should be specific – for example, target *particular* ethnic groups who are under-represented, rather than *all* minority ethnic groups.

**Positive action is not positive discrimination**

**NB: we still appoint based on merit.** Positive action must not be confused with positive discrimination, which latter is usually unlawful in the UK, except in a few limited circumstances. In recruitment, positive action is about encouraging certain groups to apply for job, but then still making selection decisions based on merit. Positive discrimination in recruitment would involve making selection decisions where being in an under-represented group was weighted over merit.

Examples of unlawful positive discrimination include setting quotas which must be met to fill posts with people from minority groups, and hiring people based on being in a particular minority or under-represented group, where there are other higher-scoring candidates.

The reason positive discrimination is unlawful is that the Equality Act protects people in the majority group in most cases equally – for example, White people are as protected as Black or Brown people under the race provisions of the Equality Act, straight or heterosexual people are as protected as people who are in a minority sexual orientation, etc.

There are some strands however where not all groups are protected by the Equality Act, because they are held to be warranting a different approach. These are the disability, pregnancy & maternity, and marriage & civil partnership strands. So, whilst a disabled person is covered by the disability protections, there is no protection from detrimental treatment on the grounds of not being disabled. Similarly, there are no protections from detrimental treatment on the grounds of not being pregnant or on maternity leave, or of being single.

The position in relation to positive action in favour of disabled people in particular is different because employers have a positive duty to make reasonable adjustments to compensate for disadvantages related to disability. Therefore, for example, it is both lawful and good practice for SCC to apply our commitment to shortlist disabled candidates who meet the minimum criteria for a job. If we did this on the basis of race or gender, we would be unlawfully discriminating.

There are a few cases where there are genuine occupational requirements for a person to be in a particular role. For example, people who are hiring a carer are allowed to specify a preference for that person to be of the same gender as the person to be cared for. Roles where this will apply will be few and far between within SCC – advice should be sought from HR before applying them.

Positive discrimination is also not good business sense: **we still want to hire based on merit, attracting and retaining the best talent from people of all backgrounds**. **Positive action is not intended to discourage or create any barriers to application for anybody not in an under-represented group**. Positive action simply helps us to remove barriers to widen out recruitment pools, from which we will still choose the best people.

**Ideas for positive action**

**NB**: HR Change Partners, HR Strategic Partners and HR Recruitment Advisors may be able to support you with the below work, so please do seek advice and guidance from us!

**Step 1: Identifying which roles to apply positive action to, and which groups to target**

1. As a first step, and to focus on roles which have the most impact, it may be beneficial to consider a) more senior roles and b) front-line roles where there may be particular benefit to having more diversity (for example, more male role models in practitioners working with children and young people).
2. Identify which groups are under-represented, using either the corporate or directorate-level data, or, preferably, an analysis of the particular team, service or role,. Managers will need HR assistance with this, as they will not have access to the information in order to do it themselves. It’s also important that we are using a consistent methodology across the organisation. HR have some guidance about how to conduct the analysis, and what representative statistics to use for comparison with the wider population.
3. Since positive action is not a legal requirement (although it helps us meet our legal requirements under the Equality Act and Public Sector Equality Duty), we are able to focus on particular groups. We already have commitments in our race equality action plan, ethnicity pay gap report, gender pay gap report and Disability Confident scheme to addressing under-representation in these areas, so these may be an initial focus. We also know from our workforce information that we need to attract more younger people in particular into our workforce, so that is another strand we may wish to prioritise.

So, if focussing on a few strands only, the starting point may be race (particular minority ethnic groups), sex (women or men), disability (disabled people) and age (younger people). This does not minimise our commitment to representing and removing barriers for all equality strands, across the board, and best practice will be to consider all the groups. Practically though, we need to start somewhere, and perhaps address different under-representation things in chunks, incrementally.

**Step 2: considering what types of positive action to use**

* The most basic type of positive action is a line in adverts saying, “*We particularly welcome applications from X group, who are currently under-represented in this role/ team/service/SCC*.”
* The wording and imagery in job adverts is also important, in terms of reaching out to, reflecting and attracting people from different groups.
* Further than that, we can start thinking about how to target the groups identified. This can be on social media, which can target some particular groups. It could be in terms of using particular publications, websites or job boards to promote the role.
* We need also to get more creative and proactive about reaching out to communities in Suffolk. We have a range of established charities and community groups with links to lots of people in minority or under-represented groups. We need to think about how to make best use of these resources to improve our reach.
* Public Health have an ‘Engaged Communities Forum’, which has links to over 100 local charities and community groups. There are also Community Engagement Officers in Public Health who have contact with particular communities in Suffolk. These are good resources we can use to help us promote roles.
* We could arrange open days, or a session to go and speak to a particular community, to promote either a particular role or service, or roles within SCC more generally. Many people in the wider community do not have a sense of the range of jobs and careers in SCC.
* We can make use of the connections with the SCC staff networks to promote roles also.
* For development opportunities where there are more applicants than places, positive action might be applying a weighted criteria for scoring applications, where one part of that score is weighted according to membership of groups who are under-represented, using the data available.
* *Challenge: what other ideas can you think of?*