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Environment Overview and Scrutiny committee

Item 7

Animal Welfare Policy

DISCRIMINATION

The Council's Equality, Diversity and Inclusion Annual Position Statement 2023¹, at page 8, has as an objective, to:

“Build a culture of equality and inclusion into all the services, functions and projects we deliver.”

And to achieve this the Council will:

“Incorporate the need to assess and address equality issues into the Council's project methodology and democratic processes to ensure consideration of the needs of our customers is at the heart of what we do from the earliest stage of development, through to decision making and implementation.”

Reference is made to the Equality Act 2010 and the Public Sector Equality Duty.

However, The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights (“ECHR”), was opened for signature in Rome on 4 November 1950 and came into force on 3 September 1953.

The United Kingdom was one of the states that drafted the ECHR and ratified it in 1951.

The current version of the Convention can be found on the Council of Europe website at https://www.echr.coe.int/documents/d/echr/Convention_ENG

The text of Article 14 which deals with discrimination is worth setting out in full:

ARTICLE 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

¹ Equality, Diversity and Inclusion Annual Position Statement 2023, South Kesteven District Council (undated) Accessed at https://www.southkesteven.gov.uk/sites/default/files/2023-12/Equality%20Diversity%20and%20Inclusion%20Annual%20Position%20Statement%202023_0.pdf

Note that the text reads: “... without discrimination on ANY ground ... “ and then lists examples of those grounds – “such as ... *sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*”

The inclusive and not exclusive nature of this list is signalled by the use of “*such as*” and the inclusion of the words “*or other status*”.

Equality legislation in the UK (and elsewhere in Europe) explicitly protects groups of people with one or more of the “protected characteristics”, but the convention does, and has been held to protect, other categories or groups other than those listed explicitly in article 14.

The Guide on Article 14 published by the Council of Europe² at paragraphs 89 and 90 discuss the way the European Court of Human Rights (“ECHR”) has interpreted article 14 “extensively”. And at paragraphs 192 et seq. the guidance gives “Further examples of “other status””.

It is clear that a person’s status as an ex-offender could arguably be an “other status” that would give rise to protection from discrimination under Article 14.

However, protection for this group of persons also arises under the “protected characteristics” route. Given that a substantial majority of offenders and therefore ex-offenders are male (currently there are 84,006 male prisoners and 3,570 female prisoners)³, then any provision in a policy which affects ex-offenders and causes them a detriment when compared with the general population, will constitute an instance of indirect discrimination on the grounds of sex, which IS a protected characteristic.

Any provision which on the face of it applies equally to both men and women, but because of another factor (in this case the fact that the large majority of offenders and ex-offenders are male), results in a detriment to that section of the population, is indirect discrimination.

The Equality Impact Assessment at pages 75 to 78 of the papers for the meeting of the Environment Overview and Scrutiny committee 13 February 2024⁴ has failed to identify this clear instance of potential discrimination and hence any potential mitigation has not been considered. This is a clear failing.

NAMING OF THE POLICY

Page 33 of the papers shows the policy is currently titled:

Animal Licensing Policy 2023

However, elsewhere in the document reference is made to Animal Welfare Licensing Policy.

It could be suggested that the title “Animal Licensing Policy” is misleading – as there is no licensing of animals involved. It is the licensing of business owners who wish to provide for

² Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention, Council of Europe Updated 31 August 2022 Accessed at https://www.echr.coe.int/documents/d/echr/Guide_Art_14_Art_1_Protocol_12_ENG

³ Prisons data - Justice Data gov.uk Accessed 14 Feb 2024 Available at <https://data.justice.gov.uk/prisons>

⁴ Environment Overview and Scrutiny Committee papers, South Kesteven District Council 13 February 2024 Accessed at <https://moderngov.southkesteven.gov.uk/ieListDocuments.aspx?CId=630&MId=4490&Ver=4>

reward a service related to animals, and for which the law requires such a person to obtain a license before undertaking the activity. The intention of the legislation being to promote the welfare of animals.

Perhaps a better title for the policy and one which is used by other local authorities (see, for example Mid Sussex Animal Welfare Licensing Policy⁵ or East Lindsey Animal Welfare Licensing Policy⁶).

EXECUTIVE SUMMARY

The executive summary states that “Decisions ... will aim to promote the Corporate Objectives” but does not include any information or reference to what these Corporate Objectives are.

There is also no reference in the summary to the principles of the policy – animal welfare.

(NB The 3rd paragraph has punctuation errors in the last sentence – which should read: “... to ensure its continued accuracy but do not affect its direction or integrity, may be made in accordance with delegated authority.”)

Reference is made in the summary to the Council’s overarching Enforcement Policy but no details nor reference to this Policy are provided. Is this a reference to the General Enforcement section of the draft Enforcement Policies 2006 (found at <https://modern.gov.southkesteven.gov.uk/documents/s2975/ENV339%20Ap.pdf>) or some other document?

COMMENT ON OTHER PARTS OF THE REPORT AND draft POLICY

Paragraph 1.4 on page 36

The second sentence in this paragraph is difficult to understand.

“The purpose of animal licensing is to protect animals and ensure their health and wellbeing as well as providing protection for the public and users of those licensed within the terms of the relevant Acts and legislation.”

It is the “public and users” phrase that is problematic. What is a user of those licensed?

Paragraph 1.6 on page 36

Could the RSPCA and the RSPB have been consulted? Are there other animal welfare related bodies that could usefully have been consulted?

Paragraph 1.7 on page 37

Anyone wishing to apply for a licence is directed to the website www.southkesteven.gov.uk

However the search terms on the Council website could be improved

⁵ Animal Welfare Licensing Policy Mid Sussex District Council 2020 Available at <https://www.midsussex.gov.uk/media/4812/animal-welfare-policy-2020.pdf>

⁶ Animal Welfare East Lindsey District Council Available at <https://www.e-lindsey.gov.uk/article/9523/Animal-Welfare>

“Licence Application” does not return any useful links

“Animal licence application” returns no links

“Animal licence” returns one link to an Apply for it page – which does list “Animal boarding establishments licence”

Following that link “Animal boarding establishments licence” takes you to an online form which is headed BLACKBURN WITH DARWEN BOROUGH COUNCIL

It might be helpful if common search terms related to animal welfare and licensing took the user to the Animal Welfare licensing page at <https://www.southkesteven.gov.uk/business-trade-and-licensing/licensing/animal-welfare-licensing>

Paragraph 1.9 on page 37 lists legislation which should be read in conjunction with the policy, including Crime and Disorder Act 1998 which the policy says:

“Imposes a duty on every Local Authority to do all that it reasonably can to prevent crime and disorder in its decision-making process. The duty now extends to anti-social behaviour, substance misuse and behaviour adversely affecting the environment.”

A minor drafting point – preventing “crime and disorder in its decision-making process” may be better expressed as “preventing crime and disorder through its decision-making process” but see comment below.

The actual clause in the Act (s17(1)⁷) says:

“17 Duty to consider crime and disorder implications.

(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent,

(a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and

(b) the misuse of drugs, alcohol and other substances in its area; and

(c) re-offending in its area, and ...”

Note that it is a duty to “exercise its various functions with due regard to the likely effect” of the exercise of those functions on, and the need to do all that it reasonably can to prevent ...

There is also an obligation under section 6 on the responsible authorities for the creation of a strategy:

⁷ Crime and Disorder Act 1998 <https://www.legislation.gov.uk/ukpga/1998/37/section/17>

“6 Formulation and implementation of strategies.

(1) The responsible authorities for a local government area shall, in accordance with section 5, with subsection (1A), and with regulations made under subsection (2), formulate and implement—

(a) a strategy for the reduction of crime and disorder in the area (including anti-social and other behaviour adversely affecting the local environment); and

(b) a strategy for combatting the misuse of drugs, alcohol and other substances in the area; and

(c) a strategy for the reduction of re-offending in the area”

The European Convention on Human Rights and the UK legislation which makes most of the Convention articles directly applicable in the UK – the Human Rights Act 1998, are listed – however no discussion or mention of which articles are considered to be applicable to the activity of issuing licences for the various controlled activities.

It would be helpful if the articles considered to be most applicable were listed (including Article 14) along with the persons or classes of persons whose rights are being protected, ie applicants, the public, users of the licensed facilities.

Reference is made on page 38 to Disability and age discrimination legislation – but then a wider list of protected characteristics is given, and reference is made to “street trade licence terms”. It is not clear here what import that reference has. However, the wider, article 14 point about eliminating ALL discrimination is not addressed here.

Paragraph 2.1 on page 38 deals with government guidance, internal policies strategies and initiatives – but apart from one example does not really describe what these might be and does not provide a list of those that will be considered. In particular, no reference here is made to the various forms of statutory guidance issued by the Secretary of State and which the Council MUST have regard to.

There is a statement that “officers and/or committee may have to have regard to xyz when making licensing decisions.” It would be more transparent if there was a statement of those items that officers and/or committee MUST have regard to ie those that are statutory guidance, and those that the officers and/or committee may have regard to ie those situations where guidance has been provided but it is not statutory or mandatory guidance.

Paragraph 2.3 on page 38 addresses instances of non-compliance with other statutory requirements brought to the attention of the Council but does not clearly describe what this paragraph is dealing with.

It would be useful for officers to review the very few decisions (around 4 in the last 3 years) of the First-tier Tribunal (General Regulatory Chamber) with respect to the refusal to grant a licence for an animal welfare related activity. In the decisions of the Judge in each of those Tribunal cases the relevant law that is to be applied is set out and the factors that the Tribunal considers are relevant considerations when granting or refusing to grant a licence are

discussed. A review of the case law and the implications for licensing decisions of the Council would be useful at this point in the policy.

SAFEGUARDING

Paragraph 6 on page 41

Whilst Safeguarding is of itself an important function of the Council the question of how the monitoring and enforcement of safeguarding principles should be addressed in an Animal Welfare Licensing policy needs to be considered.

Referring back to the case law on Animal Welfare Licensing decision at Tribunal level, there is little in that case law to support a decision to refuse to grant a licence based on safeguarding concerns, unless that safeguarding concern relates to the way that an activity will be carried out and the possible risk to children “of that activity”.

The case law does not seem to support a contention that issues relating to an individual where there may be safeguarding concerns are appropriate to be dealt with by considering the refusal to grant a licence for the activity on those grounds alone.

In paragraph 6.3 on page 41 the Council have included requirements in relation to children and vulnerable persons, however, a Tribunal will only enforce the requirements found in the legislation applicable to the activity for which a licence is being sought, no more and no less. Requiring any additional policy or procedure that is not specifically required by the relevant legislation could lay the Council open to legal challenge.

CRIMINAL CONVICTIONS ETC

The same comments apply with some force to paragraph 7 on page 41.

A Tribunal is highly unlikely to uphold a decision by a Council to refuse to grant a licence solely on the basis of an applicant’s criminal history. For all the reasons set out at the start of this note, such a blanket policy statement is prima-facie discriminatory and can not be supported.

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 regulation 4(7) says:

“In considering whether the licence conditions will be met, a local authority must take account of the applicant’s conduct as the operator of the licensable activity to which the application for the grant or renewal relates, whether the applicant is a fit and proper person to be the operator of that activity and any other relevant circumstances.”

Note that the focus of this enquiry is whether the licence conditions will be met.

And in deciding whether the licence conditions will be met, it is the applicants conduct as the operator of the licensable activity that is being assessed, and whether that person is a “fit and proper person” to be the operator of that activity. The Council can take in to account “any other relevant circumstances” but the case law makes it clear that these must be relevant to the ability of the applicant to abide by the licence conditions.

It has been suggested that the matters listed in paragraph 7.5 on page 42 could give rise to a suspension of a licence pending the outcome of whatever inquiry is ongoing in relation to one of the items in this list, but again, a review of the Tribunal decisions would suggest that, with the possible exception of being convicted of a criminal offence which renders the applicant unable

to hold a licence under the relevant animal welfare legislation, the other matters would not, of themselves, be sufficient for a Judge at Tribunal to hold that any suspension was necessary, proportionate and reasonable in the circumstances.

There must be clear evidence of a breach of the licence terms which is not capable of remedy or has not been remedied within a reasonable time before action as drastic as suspending a licence could be justified.

Other comments

Paragraph 11 on page 62

The policy title “Animal Welfare Licensing Policy” has been used here.

Paragraph 18 on page 64

This lists the principles of the Policy. Could this paragraph be inserted in the Executive Summary?

Page 71 Bottom of the page

The objections to clauses 7.3 and 7.5 were raised at the consultation stage, but the observations were rejected.

Equality Impact Assessment on page 76

Sex – it was not identified in the assessment that the policy would have a disproportionate effect on ex-offenders who are predominantly male and would thus give rise to an instance on indirect sex discrimination

Page 77

As the impact was not identified – there is no log of any mitigation proposed in the Action Log

Page 78

Consultation was had with an Equity Ally – who failed to pick up the indirectly discriminatory aspect of the draft policy. What training is required to remedy this oversight?

It is noted that the author of the draft policy also carried out the initial Equality Impact Assessment. This is not recommended practice.

The author of a policy who will also be the person implementing the policy can not be expected to also critically evaluate the policy they have written to identify any potential equality impacts. This should have been identified by the line manager and the conflict of interest identified and dealt with (there is no criticism intended of the policy author here. It is a management / Monitoring Officer function to identify the process failure and to remedy this.

COOPERATION WITH OTHER COUNCILS

Finally I would recommend a review of other Council’s developing policies to identify examples of best practice, clear wording and explanations, and equally drafting to avoid.

As it is clear that some Councils have used the same source material (as several passages are identical), perhaps the Local Government Association could co-ordinate a grouping of Licensing Officers (or is there some trade or regulatory body for Licensing Officers that could do this) to discuss and develop Policy and Procedures, Forms and other guidance that could be jointly developed and shared?

Peter C. Bell

14 February 2024

References

Treaty / Convention

European Convention on Human Rights

https://www.echr.coe.int/documents/d/echr/Convention_ENG

Statutes

Crime and Disorder Act 1998 <https://www.legislation.gov.uk/ukpga/1998/37/section/17>

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

Other documents

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