



EQUALITY & DIVERSITY POLICY

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Authority Guidelines on Staffing Procedures for Community, Voluntary Controlled and Community Special and Early Years Centres

This policy covers staff, pupils, governors, parents and the wider communities (including suppliers and contractors).

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1.1 1. Equality and Diversity Policy statement

The school is fully committed to the elimination of unlawful and unfair discrimination and values the differences that a diverse workforce brings to the school. The adoption of an equality and diversity policy enables the school to send out a strong message of commitment, both internally and externally.

The school will not discriminate because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (which includes colour, nationality and ethnic or national origins), religion or belief, sex or sexual orientation. It will not discriminate because of any other irrelevant factor and will build a culture that values meritocracy, openness, fairness and transparency.

In addition schools need to be aware of the requirements of other legislation relating to discrimination of employees:

- Part time workers
- Fixed term workers
- Trade union membership and activities

All employees are responsible for the promotion and advancement of this policy. Behaviour, actions or words that transgress the policy will not be tolerated and will be dealt with in line with the school's disciplinary policy.

The policy is applicable to all members of the school community namely staff, pupils, governors, parents and the wider communities (including suppliers and contractors), whether permanent or temporary. The policy applies to processes relating to employment and training.

There is no specific legal requirement that an employer must have an equal opportunities policy. However, having such a policy in place may assist in reducing the risk of unlawful discrimination occurring and is an essential part of a possible reasonable steps to defend a claim of unlawful discrimination.

The existence or absence of an equal opportunities policy could also be a matter that is taken into account by a tribunal in considering whether or not, in all the circumstances of a particular case, to make a finding of unlawful discrimination.

1.2 2. Legislative Background and Context

The **Equality Act 2010** defines direct discrimination as less favourable treatment because of a nine specified protected characteristics. The protected characteristics under the Equality Act 2010 are;

1.3 (i) Age

1.4

The Act protects employees from discrimination, harassment and victimisation because of age, either 'younger' or 'older' than a relevant and comparable employee. For example, if an organisation has a training policy excluding employees aged 60 or more from applying for courses then this is likely to be discriminatory. Or advertising for a post which requires at least 10 years' experience may be discriminatory for younger applicants.

1.5 (ii) Disability

A Disability is defined as "any physical or mental impairment which has a substantial and long term adverse effect on that person's ability to carry out normal day to day activities."

There is a requirement for employers to consider reasonable adjustments in order to accommodate the employee's disability.

The Act does not list the types of day to day activities which a disabled person must demonstrate that they cannot carry out.

1.6 (iii) Gender reassignment

The Act defines this as someone who proposes to, starts, or has completed a process to change his or her gender and is referred to as a 'transsexual'.

Previously, people reassigning their gender had to be under medical supervision to be covered, but this is no longer the case. For example, a male employee who decides to live as a woman, but has had no medical procedures, must not be harassed if using female toilet facilities.

It is discriminatory to treat a transsexual employee less favourably for being absent from work if they are due to undergo, are undergoing or have undergone gender reassignment. They must not be treated differently than others who are ill or injured.

Cross-dressers not regarded as transsexual as they do not intend to live permanently in the gender opposite to their sex at birth as cross-dressers, but if they are harassed because they are perceived to be transsexual or to have a particular sexual orientation, they may be in a position to claim discrimination under the relevant protected characteristics.

1.7 (iv) Marriage and civil partnership

The Act protects employees from direct discrimination, indirect discrimination and victimisation because of marriage or civil partnership, for example, an employee must not be ignored for promotion because they are in a civil partnership.

NB Couples in relationships not legally recognised are not protected.

There may be circumstances where harassment of an employee in a marriage or civil partnership amounts to discrimination because of their sex or sexual orientation, or it could be deemed to be sexual harassment.

An employee in a civil partnership may also have grounds to bring a claim of sexual orientation discrimination.

1.8 (v) Pregnancy and maternity

The Act protects an employee from one type of direct discrimination and victimisation because of their pregnancy, or for taking or seeking to take maternity leave, for example, an employer must not take into account pregnancy-related illness when considering sickness absence or employment decisions.

A woman who is pregnant or on maternity leave must not be treated unfavourably i.e. no need to show that she has been treated less favourably than a man, or a woman who was not pregnant or on maternity, just that she was in fact treated detrimentally because of pregnancy or maternity.

1.9 (vi) Race

The Act protects employees from discrimination, harassment and victimisation because of race, which may include four aspects:

- **Colour** – tends to overlap, particularly with the concepts of ‘ethnic origin’ and ‘national origin’, e.g. black and white.
- **Ethnic origin** – may include racial, religious and cultural factors which give a group of people a distinct social identity with a long and shared history, e.g. *Sikhs, Jews, Romany Gypsies and Irish Travellers*.
- **National origin** – birthplace, the geographical area and its history can be key factors, e.g. Welsh and English.
- **Nationality** – usually the recognised state of which the employee is a citizen, i.e. what is on their passport.

The Act does not cover more local or regional distinctions.

1.10 (vii) Religion or belief

The Act protects employees from discrimination, harassment and victimisation because of religion or belief.

Employees or job applicants are protected if they do not follow a certain religion or belief, or have **no religion or belief** (except potentially in faith schools). Religion has a clear

structure and belief system. Belief is any religious or philosophical belief. Denominations or sects within a religion can be considered a protected religion or religious belief.

A belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour, worthy of respect in a democratic society and does not conflict with the fundamental rights of others

1.11 (viii) Sex

The Equality Act protects both male and female employees from discrimination, harassment and victimisation because of sex (gender)

Employees are protected against sexual harassment, which is unwanted conduct that is of a sexual nature and/or relates to the protected characteristics of sex and/or gender reassignment. Examples may be either verbal or physical, and may include staring or leering, or a display of explicit material

1.12 (ix) Sexual Orientation

The Act protects employees from discrimination, harassment and victimisation because of their sexual orientation - bisexual, gay and lesbian. For example, an employer must ensure that an employee perceived to be bisexual (***whether they are or are not is irrelevant***) is not bullied by colleagues.

NB Heterosexuals are also covered by this Act

Indirect discrimination against individuals because they have a relevant protected characteristic is also covered, although pregnancy and maternity does not come under the indirect discrimination provisions in the Equality Act 2010.

In addition the following groups also have protection against less favourable treatment:

1.13 a) Part Time Workers

Part-time workers have the right not to be treated less favourably than a full time worker doing the same or similar work regarding the terms of employment (for example holiday entitlements and hourly pay rates should be pro rata).

Part-time workers have the right to request a written statement of reasons for any treatment which is less favourable than a comparable full time worker.

Part-time workers should be selected as a full time worker would be for promotion or redundancy.

1.14 b) Fixed term workers

Fixed term workers have the right not to be treated less favourably than a permanent staff doing the same or similar work regarding the terms of employment (for example holiday entitlements and hourly pay rates should be pro rata).

1.15 c) Trade union representatives

Where a union is recognised by the employer, trade union representatives and stewards are entitled by law to certain arrangements to assist them in doing their job as elected representatives. These include:

- Reasonable time off for undertaking trade union duties and for training.
- Facilities to help you do the job, including access to telephones, computers and email systems, use of notice boards, lockable filing facilities and in some cases use of dedicated office space.
- Access to information relevant to negotiations or change in the workplace.

(a) 3. Types of unlawful discrimination

(i) 3.1 Direct discrimination

This is where a person is treated less favourably than another because of a protected characteristic. An example of direct discrimination would be refusing to employ a woman because she is pregnant.

In limited circumstances, employers can directly discriminate against an individual for a reason related to any of the protected characteristics where there is an occupational requirement e.g. PE teacher of a specific gender, appointing a practicing catholic in catholic schools (see appendix a)

NB The occupational requirement must be crucial to the post and a proportionate means of achieving a legitimate aim.

(ii) 3.2 Indirect discrimination

This is where a provision, criterion or practice is applied that is discriminatory in relation to individuals who have a relevant protected characteristic (although it does not explicitly include pregnancy and maternity, which is covered by indirect sex discrimination) such that it would be to the detriment of people who share that protected characteristic compared with people who do not, and it cannot be shown to be a proportionate means of achieving a legitimate aim.

(iii) 3.3 Harassment

Is where there is unwanted conduct, related to one of the protected characteristics (other than marriage and civil partnership, and pregnancy and maternity) that has the purpose or effect of violating a person's dignity; or creating an intimidating, hostile, degrading,

humiliating or offensive environment. It does not matter whether or not this effect was intended by the person responsible for the conduct.

(iv) 3.4 Associative discrimination

Is where an individual is directly discriminated against or harassed for association with another individual who has a protected characteristic.

For example, a candidate who has been told she is getting a job is suddenly deselected after revealing she has a severely disabled child with complicated care arrangements. The withdrawal of the job offer could amount to discrimination because of her association with a disabled person (disability being a protected characteristic).

Discrimination by association does not apply to all protected characteristics. Marriage and civil partnership, and pregnancy and maternity are not covered by the legislation.

(v) 3.5 Perceptive discrimination

Is where an individual is directly discriminated against or harassed based on a perception that he/she has a particular protected characteristic when he/she does not, in fact, have that protected characteristic (other than marriage and civil partnership, and pregnancy and maternity).

(vi) 3.6 Victimization

Occurs where an employee is subjected to a detriment, such as being denied a training opportunity or a promotion because he/she made or supported a complaint or raised a grievance under the Equality Act 2010, or because he/she is suspected of doing so. However, an employee is not protected from victimisation if he/she acted maliciously or made or supported an untrue complaint. There is no longer a need for a complainant to compare his/her treatment with someone who has not made or supported a complaint under the Equality Act 2010. For example, if a blind employee raises a grievance that the employer is not complying with its duty to make reasonable adjustments, and is then systematically excluded from all meetings, such behaviour could amount to victimisation.

(vii) 3.7 Failure to make reasonable adjustments

Is where a physical feature or a provision, criterion or practice puts a disabled person at a substantial disadvantage compared with someone who does not have that protected characteristic and the employer has failed to make reasonable adjustments to enable the disabled person to overcome the disadvantage.

It is unlawful to fail to make reasonable adjustments to overcome barriers to using services caused by disability. The duty to make reasonable adjustments includes the removal, adaptation or alteration of physical features, if the physical features make it impossible or unreasonably difficult for disabled people to make use of services. In addition, service providers have an obligation to think ahead and address any barriers that may impede disabled people from accessing a service.

(viii) 3.8 Vicarious Liability

Employers are responsible for the discriminatory actions of their employees where such actions have been carried out during the course of their duties. The only defence for employers is to show that they have done everything reasonably practicable to prevent an employee committing an unlawful act.

In practice, courts and tribunals have regarded the following as 'reasonable steps':

- Publishing a comprehensive equality and diversity policy.
- Clearly communicating the policy to all staff.
- Providing awareness training on the potential for, and implications of, discrimination.

(ix) 3.9 Statutory Equality Duties for schools

These duties impose broad obligations on schools to;

- Eliminate discrimination and harassment
- Incorporate a Gender Equality Scheme into the school's Equality & Diversity Policy Statement
- Have due regard to the promotion of equality of opportunity
- Promote positive attitudes
- Encourage participation by minority and under-representative groups in public life
- Take steps to take account of people's specific needs
- Conduct Impact Assessments

(b) 4. Roles and Responsibilities in addressing equality and diversity issues

(i) 4.1 Governing Body

- (i) Ensures that the school complies with the Equality Legislation
- (ii) Ensures that the Equality and Diversity Policy and its related procedures and strategies are implemented.
- (iii) Ensures that the Governing Body monitors all relevant equality data relating to the strategic management of the school e.g. pay progression

(ii) 4.2 Headteacher

- (i) Effectively implements the Equality and Diversity Policy and its related procedures and strategies
- (ii) Ensures all staff are aware of their responsibilities and are given appropriate training and support
- (iii) Takes appropriate action in any cases of discrimination
- (iv) Ensures all reported incidents of discrimination are appropriately recorded and dealt with, in line with the policy.

(iii) 4.3 Staff

- (i) Promote equality and diversity in the workplace
- (ii) Report incidents of discrimination to the appropriate person, in line with the policy.
- (iii) Can be held personally liable as well as, or instead of, the organisation for any act of unlawful discrimination.

NB Staff who commit serious acts of harassment may be guilty of a criminal offence. Acts of discrimination, harassment, bullying or victimisation against employees or customers are disciplinary offences and will be dealt with under the organisation's disciplinary procedure. Discrimination, harassment, bullying or victimisation may constitute gross misconduct and could lead to dismissal without notice.

(iv) 4.4 Professional Associations/Trade Unions

- Trade Unions are available to advise and support their members involved in a complaint.
- Promote equality and diversity in their work
- Attend relevant meetings

(v) 4.5 Wider School Community

(Including volunteers, agency staff, visitors and contractors)

☑ Be aware of and comply with, the school's Equality and Diversity Policy

(c) 5. Equality and Diversity issues in employment

(i) 5.1 Introduction

The school will avoid unlawful discrimination in all aspects of employment including recruitment, promotion, opportunities for training, pay and benefits, discipline and selection for redundancy.

(ii) 5.2 Recruitment and Selection

Person and job specifications will be limited to those requirements that are necessary for the effective performance of the job. Candidates for employment or promotion will be assessed objectively against the requirements for the job, taking account of any reasonable adjustments that may be required for candidates with a disability. Disability and personal or home commitments will not form the basis of employment decisions except where necessary.

Discrimination after employment may also be unlawful, e.g. refusing to give a reference for a reason related to one of the protected characteristics.

(iii) 5.2 Employment Practices

The school will consider any possible indirectly discriminatory effect of its standard working practices, including the number of hours to be worked, the times at which these are to be worked and the place at which work is to be done, when considering requests for variations to these standard working practices and will refuse such requests only if the school considers it has good reasons, unrelated to any protected characteristic, for doing so. The school will comply with its obligations in relation to statutory requests for contract variations. The school will also make reasonable adjustments to its standard working practices to overcome barriers caused by disability

(iv) 5.3 Access to training opportunities

The school will ensure that access to training and development opportunities is provided to all existing and new employees and others engaged to work at the school, in line with this policy, E.G. a wheelchair user should not be denied access to training due to access issues at the training venue.

It is important to ensure all employees have the same access to training, including part time workers and older employees, for example.

5.3.1 Training and development on the application of equal opportunities The school will provide appropriate development opportunities for senior leaders, governors and others likely to be involved in recruitment or other decision making where equal opportunities issues are likely to arise.

The school will provide appropriate development opportunities for all existing and new employees and others engaged to work at the school to help them understand their rights and responsibilities under the dignity at work policy and what they can do to help create a working environment free of bullying and harassment. The school will provide additional training to managers to enable them to deal more effectively with complaints of bullying and harassment.

(v) 5.4 Equal Opportunities Monitoring

(A) 5.4.1 Monitoring Requirements

The school will monitor all categories outlined in section 2 (where possible) the composition of the existing workforce and of applicants for jobs (including promotion), and the number of people with disabilities within these groups, and will consider and take any appropriate action to address any problems that may be identified as a result of the monitoring process.

(B) 5.4.2 Equality Impact Assessment

The school is committed to an ongoing programme of equality impact assessments on existing new policies and practice to remove any potential disadvantage to another. Copy of Equality Impact Assessment form in Appendix 2.

(d) 6. Equality and diversity in the Wider Community

(Including pupils, parents/carers, visitors and suppliers and contractors)

Staff should not discriminate against or harass a member of the public in the provision of services or goods. The school will not discriminate unlawfully against 'customers' using or seeking to use goods, facilities or services provided by the school.

Staff should report any bullying, harassment or victimisation by parents/carers, visitors and suppliers and contractors or others to the appropriate person who will take appropriate action.

(e) 7. Dealing with Dignity at work concerns

The School has a separate dignity at work policy concerning issues of bullying and harassment on any ground, and how complaints of this type will be dealt with.

EMPLOYMENT EQUALITY (RELIGION AND BELIEF)
REGULATIONS 2003

The following has been supplied by the Diocese of Shrewsbury Education Service in respect of Catholic Voluntary Aided Schools.

The above Regulations do not diminish the rights of a Governing Body in a Voluntary Aided School under 60(5) School Standards and Framework Act 1998 to give preference, in connection with the appointment, remuneration or promotion of teachers at the school, to persons:

- (i) whose religious opinions are in accordance with the tenets of the religion or religious denomination of the school, or
- (ii) who attend religious worship in accordance with those tenets, or
- (iii) who give, or are willing to give, religious education at the school in accordance with those tenets.

Similarly, regard may continue to be had, in accordance with Section 60(5)(b), in connection with the termination of the employment of any teacher at the school, to any conduct on his/her part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination of the school.

Further there are circumstances in which it is a genuine occupational requirement in Catholic schools that a post be filled by a Catholic and the Regulations make specific provision for those employers who have an ethos based on religion or belief. Catholic Voluntary Aided schools fall within this definition. Regulation 7(3) states:

“This paragraph applies where an employer has an ethos based on religion or belief and, having regard to that ethos and to the nature of the employment or the context in which it is carried out

- (a) being of a particular religion or belief is a genuine occupational requirement for the job;
- (b) it is appropriate 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 circumstances it is reasonable for him not to be satisfied, that the person meets it”.

The categories of posts in a Catholic school or College for which it is a genuine occupational requirement that the postholder be Catholic include Leadership Group posts, Religious Education posts, Chaplaincy posts and roles with a strong pastoral and spiritual element.

Whilst this legislation originally defined the preferential status that Governing Bodies in Catholic schools may accord to teaching staff, the Education and Inspections Act has now extended this to all staff in Catholic Voluntary Aided schools. The rationale for this is that the distinction between the roles of qualified teachers and those who carry out other functions in Catholic schools has been blurred by workforce reform