



# **EQUALITY AND DIVERSITY POLICY AND PROCEDURE FOR SCHOOLS / ACADEMIES**

This model policy will apply to both teaching and non-teaching staff working in Wiltshire Schools / Academies and has been agreed with the following recognised unions: ATL, NUT, NAHT, NASUWT, ASCL, Unison and GMB

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## **What is it?**

1. The Equality and Diversity procedure and policy details the schools approach to equality and diversity to ensure fair and lawful practices and procedures at all times throughout recruitment and employment. This policy is closely linked with the Dignity at Work policy and takes in to account changes under the Equality Act 2010.

## **Who does it apply to?**

2. This policy and procedure applies to all employees and prospective employees (job applicants and prospective job applicants) of Wootton Bassett Infants School.
3. The school is also committed to equality in relation to all workers, contractors, sub-contractors, consultants, agency workers, employees on secondment from other organisation, governors and volunteers and these groups are expected to adhere to the principles set out in this policy and procedure whilst undertaking work or tasks for the school.
4. The Equality Act 2010 also extends protection against unlawful discrimination to ex-employees. The school will be mindful of this in relation to matters concerning ex-employees including the provision of an employment reference.

## **When does the policy apply?**

5. This policy and procedure applies at all times including prior to employment, during the recruitment process, and throughout employment at the school / academy.

## **When does the policy not apply?**

6. There are no exemptions under this policy.

## **The Public Sector equality duty**

### **General equality duty**

7. It is a legal requirement under the Equality Act that all schools and academies are required in the exercise of their functions, to have due regard to the need to:
  - Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - Foster good relations between people who share a protected characteristic and those who do not.
8. These are often referred to as the **three aims** of the general equality duty.
9. The Equality Act explains that the second aim (advancing equality of opportunity) involves, in particular, having due regard to the need to:
  - Remove or minimise disadvantages
  - Take steps to meet different needs
  - Encourage participation where it is disproportionately low.

10. The Equality Act clarifies that meeting different needs includes (among other things) taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It explains that compliance with the general equality duty may involve treating some people more favourably than others.
11. To comply with the general equality duty, a school needs to have due regard to all three of its aims.

#### **What are the main points?**

12. The school is committed to employment policies, procedures and practices which do not discriminate unfairly or unlawfully against anyone and which promote equality and diversity for all and aim to ensure equality of outcome through equality impact assessment.
13. On coming in to force on the 1 October 2010 the Equality Act 2010 consolidated and harmonised much of the previous discrimination legislation (which has now been repealed) and introduced some new changes which have been built in to this policy and procedure as appropriate. Further details about the changes can be found in ACAS guide The Equality Act - What's new for employers? and in the guide to the equality and diversity policy and procedure as well as the guide to recruitment - Equality Act 2010 update. In brief the main areas of change following the implementation of the Equality Act 2010 are set out below:
  - identifies nine characteristics which are protected under the act from direct and indirect discrimination, harassment and victimisation in services and public functions, premises, work, education etc;
  - introduces the concept of discrimination arising from disability;
  - prevents employers asking questions relating to an employee's health by restricting when employers may ask any pre-employment health questions;
  - increases the powers of employment tribunals;
  - applies the definition of indirect discrimination to all protected characteristics;
  - extends protection to people who are associated with a person who has a protected characteristic or in circumstances where a person is discriminated against because they are perceived to have a protected characteristic;
  - makes provision for pay gap information relating to gender to be published (although this is not yet in force);
  - allows positive action in regards to recruitment and promotion.
14. The 'protected characteristics' which qualify for protection from discrimination under the act include:
  - Age
  - Disability
  - Gender reassignment
  - Marriage and civil partnership
  - Pregnancy and maternity
  - Race
  - Religion and belief
  - Sex

- Sexual orientation
15. This policy and procedure also sets out details of the different types of discrimination.
  16. This policy and procedure also provides details of:
    - how the school will apply this policy to other school employment policies and procedures
    - how the school will monitor this policy
    - the rights and responsibilities of everyone to whom the policy applies
    - what is acceptable and unacceptable behaviour at work
    - how to raise a concern or complaint
    - the procedure for dealing with breaches to the policy
  17. The following policy and procedure is also directly linked and forms part of this policy and procedure:
  18. Disability Support policy and procedure

### **Equality and Diversity policy statement**

19. The school believes in equality of opportunity throughout employment (including pay, training & development, recruitment and retention) and commits to developing policies, practices and procedures that promote equality and diversity and anti-discriminatory practices.
20. Employees of the school should understand and accept that there is a diverse workforce and that everyone has the right to be treated with dignity and respect and afforded equality of access to opportunities that are available within the working environment. By valuing diversity this means the school recognise and embrace that everyone has unique identities which will help to ensure that the school can provide the best services possible. These can include, but are not limited to race, gender, disability, age, sexual orientation, religion or belief, pregnancy and maternity, marriage or civil partnership or gender reassignment.
21. No employee will receive less favourable treatment or be disadvantaged by policies, procedures, conditions or requirements which cannot be shown to be justifiable. Recruitment processes will ensure that individuals are short listed, selected and promoted solely on the basis of their relevant merits and abilities.
22. The school justification of positive action includes guaranteeing an interview to all job applicants who declare a disability at the application stage who meet the essential requirements of the person specification and consider them on their abilities.

### **Equalities and key school policies and procedures**

23. Details of equalities issues in relation to key school policies and procedures are set out below and specific details are also included in the relevant policies and procedures and associated guidance and toolkits which accompany these documents.

#### **Recruitment (including promotion)**

24. The school's recruitment policy and procedure together provides the headteacher / principal, governors and any other employees undertaking recruitment with a fair and equitable process for recruiting to vacancies at the school / academy. The school will follow the policy and procedure to ensure that appointments are based on:
  - candidates' ability to do the job (based on skills, experience and knowledge)
  - equality of opportunity

- current legislation
25. For those who apply for a post with the school as a prospective or existing employee, the recruitment policy and procedure contain the following measures to assist with equality:
- if they are a disabled candidate and have declared this on the application form, the school will guarantee an interview if they meet the essential criteria in the person specification;
  - Reasonable adjustments to ensure that barriers can be removed for candidates with protected characteristics who might otherwise be placed at a substantial disadvantage. This could be at any stage from application to attending the interview or considering adjustments for the post itself;
  - Positive action - may be used on an individual case by case basis to address under represented or disadvantaged groups.
26. In line with the Equality Act 2010 the school should not ask applicants questions about their health before they are made an offer as the preferred candidate
27. The school will ask a preferred candidate to complete a pre-employment health questionnaire once they have been offered work on a conditional or unconditional offer. The school should not unfairly discriminate against on the basis of the information provided in the health assessment and the Headteacher/recruiting person is responsible for making reasonable adjustments where appropriate.
28. For further specific information see the "*guide to recruitment - Equality Act 2010 update*".

### **Induction**

29. New starters at the school will be directed to a copy of this equality and diversity policy and procedure.

### **Terms and Conditions of work**

30. All employees at the school have a range of terms and conditions which should be applied fairly and equitably to you. These are set out in their statement of particulars and include pay, grade, hours of work, holiday entitlement other leave, sickness entitlement, notice periods, allowances etc.

### **Training and development**

31. Access to training and development will be related to the needs of the job, the available resources and by an assessment of the employee's needs. The headteacher will identify employee training needs in consultation with the employee. An employee is also able to make requests for training either through supervision, appraisal or informally.
32. Where appropriate, if the employee has a disability or another protected characteristic the Headteacher will consider reasonable training and development adjustments in relation to access and support to training. Training may be provided as a suitable adjustment in itself.
33. Where an employee has declared that they have a disability at any time during their employment the Headteacher (or relevant school manager) should ensure that there is a mechanism in place to discuss, at any time, but at least once a year, (with periodic reviews) what can be done to make sure that employees develop and use their abilities.

This discussion can take place as part of employee's annual performance appraisal. Further advice on reasonable adjustments may be sought via the school HR advisory team.

34. Positive action may be considered in relation to training on a case by case basis to address disadvantage or under-representation or to meet the particular needs of those who share a protected characteristic. See "guide to recruitment - Equality Act 2010 update".

#### **Key school / academy policies and procedures**

35. Written policies and procedures exist to ensure that there is a fair and equitable process for managing all key HR issues such as disciplinary, grievance, work performance, absences and circumstances which involve an employee leaving the school.
36. Key school employment policies and procedures which have been adopted and are the model ones recommended by Wiltshire Council have also been equality impact assessed which includes an assessment of the outcome and impact to reduce the potential for discrimination and highlight good practice.
37. The Headteacher should ensure that where they (or their delegated colleague or governor) are taking action via a formal procedure that:
- they are accompanied by a Education HR case adviser or another senior manager at any formal meetings where formal action may/may not be taken.
  - The employee is given the opportunity to be accompanied by a trade union representative or work colleague at any formal meetings (as appropriate to the policy).
  - they give consideration to the potential impact of protected characteristics in relation to operation of the policy and on final decisions, including making reasonable adjustments.
38. In relation to the sickness absence management policy and procedure for an employee who has a disability the Headteacher will need to take this in to account in terms of assessing the impact of the disability on overall absence levels and whether a reasonable adjustment would help with attendance. Advice from the Education HR advisory team should also be sought in these circumstances.
39. Disability provisions are also available under the absence management policy and procedure in relation to time off to attend appointments relating to the employee's disability.

#### **Policies which provide flexibility**

40. The school have a number of policies and procedures aimed at providing an employee with the opportunity to request flexibility at work which can also assist with improving access to the workplace. These are:
- Flexible retirement
  - Flexible working for parents and carers of adults
  - Career break scheme
41. For applications for flexibility the headteacher will take in to account circumstances where an employee makes an application in connection with someone associated with

the employee, who has a protected characteristic e.g. requesting reduced hours to care for a disabled parent or partner.

### **Equal pay**

42. The Equality Act 2010 states that men and women doing equal work, rated as equivalent or work of equal value are entitled to equal pay (unless there is a material factor which is not gender related that means that they should be paid differently) and that employers may wish to carry out a pay audit to ensure that men and women are getting equal pay. This part of the Equality Act makes provision for the publishing of data relating to pay in order to enable an objective assessment of the gender pay gap, although this has not yet (and may not) come into force.
43. In 2007, the council undertook a pay reform process which included support staff posts at this school, to ensure a robust system of job evaluation, ensuring all jobs are assessed objectively and paid fairly in relation to other jobs across the council and schools.

### **Workforce monitoring**

44. The Equality Act has clarified the general public sector and specific duties in relation to data collection and monitoring information.
45. All schools and academies are expected to:
  - collect and use enough workforce data and monitoring information to effectively meet the general equality duty.
  - publish some information about the impact of their employment functions on people with the different protected characteristics in order to demonstrate compliance with the general equality duty.
46. Diversity monitoring is not just the collection of statistical information, but an annual process of analysis and evaluation which informs policy developments and process changes. The monitoring and evaluation cycle should:
  - Highlight possible inequalities
  - Investigate their causes
  - Remove, mitigate or justify any discrimination or disadvantage
  - Develop appropriate positive action initiatives
  - Evaluate the effectiveness of any changes
47. The headteacher will produce an annual report on workforce equality and diversity information for the governors. This provides the opportunity for consideration of information in the context of the school's / academy's workforce planning and potential positive action in appropriate areas.
48. **For those school / academies with 150 or more employees the information on workforce monitoring must be published on their website.** Schools must do this annually by the 6 April each year. See guidance to "*The Equality Act 2010 - Departmental advice for school leaders, school staff and governing bodies in maintained schools and academies*". This document can be found at [www.gov.uk/government/publications](http://www.gov.uk/government/publications) and search for the document using reference DFE-00296-2013.
49. Further advice is provided in the "Guide for schools / academies on employee related workforce monitoring documentation to publish in accordance with the Equality Act 2010" that can be found on the school / academy HR online site



### **Setting and publishing Equality Objectives**

50. All schools must prepare and publish one or more equality objectives that it thinks it needs to achieve to further any of the aims of the general equality duty in relation to related information. Once done it should be reviewed and updated at least every four years after that date.
51. The objectives must be specific and measurable.
52. The equality objectives that a school publish as part of the requirement as detailed in the specific duties of the Equality Act will be clearly defined and measurable commitments. It makes sense if the objectives address key equality issues identified by the school / academy and are contained in the school's / academy's published equality information. By publishing the objectives, the school / academy is making public its priorities for equality.
53. The objectives will be agreed with the governing body and it would be good practice to include them in the school / academy development plan.
54. Further advice is provided in the "*Guide for schools / academies on employee related workforce monitoring documentation to publish in accordance with the Equality Act 2010*" that can be found on the school HR online site

### **Acceptable/unacceptable behaviour at work**

55. The school expects all employees to be familiar with and comply with the responsibilities and behaviours for employees identified under:
  - This equality and diversity policy and procedure (and directly linked procedures)
  - The dignity at work policy and procedure
  - The school's code of conduct
56. Unacceptable behaviour towards anyone including those with a protected characteristic includes some of the following examples:  
(this list is not exhaustive)
  - using offensive language
  - offensive jokes or inappropriate language
  - creating or contributing to a hostile working environment
  - bullying and harassment in any form
  - excluding or isolating a colleague(s)
  - inappropriate use of internet or electronic communication including social networking.
  - discrimination against a member of staff or the public on any grounds of sex, race, disability, age, religion or belief, sexual orientation, pregnancy and maternity; gender reassignment or marriage or civil partnership
  - behaviour or body language which demonstrates prejudice or ignorance
57. Unacceptable behaviour extends to all the types of discrimination outlined in this policy including:
  - discrimination by association where someone is associated with someone with a protected characteristic (e.g. a child, parent or partner)

- discrimination by perception where someone is perceived to have a protected characteristic but does not actually possess it.
- Harassment is also extended to protect those who witness harassment of others and find it offensive.
- Victimisation as set out below.

58. Further information on the Public Sector Equality Duty is available on the Equality and Human Rights Commission website.

### **Breaches to this policy**

59. All school prospective employees and actual employees are entitled to both be treated with dignity and respect and are expected to treat others with dignity and respect at all times (including outside of working hours in cases of misconduct - see code of conduct policy and procedure)
60. If an employee feels that they have been discriminated against or treated unfairly they should raise this under the dignity at work policy with the headteacher or the chair of governors if the matter concerns the headteacher. Redress over inappropriate behaviour or language can be sought through this policy which could include mediation. In relation to more serious contraventions the policy includes provisions for the matter to be treated in line with the disciplinary policy and procedure.
61. Prospective employees should raise concerns either with the headteacher or the person responsible for recruitment to the post for which they have applied for.
62. Where a prospective employee or actual employee, feel that they have been the subject of harassment by a third party (i.e. someone who is not directly employed by the school e.g. a member of the public, this should be reported to the headteacher who will take reasonably practicable steps to deal with the matter.

### **Types of discrimination and what do they mean**

63. The Equality Act has harmonised and strengthened discrimination legislation, the main aspects are defined below, but further detail and clarification is available from the Equality and Human Rights Commission.
64. **Direct discrimination** - Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have or because they associate with someone who has a protected characteristic.
65. Example: If an employer recruits a man rather than a woman because s/he assumes that women do not have the strength to do the job, this would be direct sex discrimination.
66. **Indirect discrimination** - Indirect discrimination can occur when you have a provision, criterion or practice in your organisation that applies to everyone but particularly disadvantages people who share a protected characteristic and you cannot objectively justify that practice. To justify imposing an apparently neutral policy that disadvantages those with a shared protected characteristic, it must be shown that applying the policy across the board is a proportionate means of achieving a legitimate aim.

67. Example: A manager holds all of his team meetings from 2.00 - 4.00 pm making it very difficult for many part time staff to attend. The majority of part time staff are women and therefore this practice is likely to be indirect sex discrimination as it is unlikely to be objectively justifiable. The manager may have a legitimate aim of holding team meetings at a time when most staff can attend but there are likely to be other ways of achieving that aim in a way that does not disproportionately disadvantage working mothers.
68. **Discrimination by association** - This is direct discrimination against someone because they associate with another person who possesses a protected characteristic.
69. Example: An employer refuses to appoint an employee because she is married to a Muslim, this would be direct religious or belief-related discrimination because of her association with her husband
70. **Perception discrimination** - This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic.
71. Example: Where an employer fails to shortlist an applicant on the basis that because of an Irish sounding name they must be Irish, even when they are not actually Irish.
72. **Harassment** - Harassment is "unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual". Employees will now be able to complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Employees are also protected from harassment because of perception and association.
73. A school is also potentially liable for harassment of their employees by people (third parties) who are not employees of the school, such as customers or clients. The school are required to take action where they are aware that harassment has taken place, and take reasonable steps to prevent it from happening again.
74. Example: An employee is subject to homophobic banter and name calling on the basis that he went to a public school. Even though his colleagues are aware that he is not gay, and he is aware that they know he is not gay this constitutes sexual orientation harassment and is unlawful under the Equality Act.
75. **Victimisation** - Victimisation occurs when an employee is treated badly because they have made or supported a complaint or raised a grievance under the Equality Act; or because they are suspected of doing so. An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint.
76. Example: A non disabled employee gives evidence on behalf of a disabled colleague at a disciplinary hearing against a manager and is subsequently relocated to a different team with no promotion prospect and less responsibility because of their action at the hearing. This would constitute victimisation under the act which is unlawful.

## **Roles and Responsibilities**

### **Headteacher responsibilities**

77. To ensure that all managers at the school follow and apply the requirements of the Equality Act by:
78. To ensure that all employees are managed fairly and consistently in line with the principles outlined within this policy and specifically:
79. To ensure that recruitment and selection is carried out in accordance with the current policy and guidance and to ensure that prospective employees are also treated fairly and consistently in line with the principles outlined within this policy.
80. To ensure that employees receive an appropriate and fully accessible induction including information about policies, practices and procedures when they start a new post and that they continue to be informed and updated about changes to these.
81. To apply all other employment related policies and procedures and terms and conditions of employment fairly and consistently.
82. To ensure that supervision, appraisal and learning development plans for employees take full account of the school's commitment to equality and diversity as set out in this policy and procedure.
83. To ensure that equality and diversity is fully integrated into any training and development that is commissioned and delivered for employees.
84. To ensure that there is a mechanism in place to discuss, at any time, but at least once a year, with a disabled employee what can be done to make sure that they can develop and use their abilities - this can be through the appraisal process or at a separate meeting.
85. When an employee declares their disability to ensure that reasonable adjustments are implemented to remove barriers for disabled staff (and employees with protected characteristics) which potentially put employees at a disadvantage to ensure that they can perform effectively and have equal access to progression in the school.
86. To make every effort when employees become disabled to enable them to stay in employment including redeployment where appropriate.
87. To give careful consideration to requests for flexible working arrangements including parental leave which enables staff to combine work and other responsibilities and to seek to agree these unless there are operational, financial or other legitimate reasons for not doing so under the relevant policy and procedures.
88. To challenge discrimination and unfair treatment in the workplace and ensure that it is dealt with appropriately and where necessary under the dignity at work/disciplinary policy and procedure.
89. To ensure that contractors, sub-contractors, consultants, agency workers, volunteers, governors and seconded employees from other organisations are also managed fairly and consistently in line with the principles outlined within this policy and are made aware of the equality and diversity policy and procedure and how they must and must not behave at the school while they are working for you.
90. To provide support to any employee who is the subject of unlawful or unacceptable discrimination in the course of his/her employment.

91. To take appropriate action in relation to complaints and concerns raised by employees and prospective employees about third party harassment.
92. To be mindful and take action to avoid all forms of discrimination as set out in this policy and procedure and to ensure that equal rights and opportunities are provided to all.
93. In relation to workforce monitoring, collect and use enough workforce data and monitoring information to effectively meet the general equality duty. Which includes publishing the workforce monitoring information where they have over 150 employees.
94. To publish one or more objectives that it thinks it needs to achieve to further any of the aims of the general equality duty. Once done it should be reviewed and updated at least every four years after that date.
95. Where objective(s) are set that these are consulted upon with the workforce and governors with final agreement by the governing body

### **Employee Responsibilities**

96. To treat colleagues, governors, pupils, volunteers, visitors, and members of the public with dignity and respect, in accordance with the principles set out in this policy and procedure, the dignity at work policy, and the code of conduct policy and specifically:
  - to embrace a culture which provides supportive and positive working relationships and behaviour which underpins the school's vision, values and belief.
  - to be mindful of and take action to avoid becoming involved in any form of discrimination as set out in this policy and procedure.
  - not to aid or collude in circumstances where colleagues, governors, pupils, volunteers, visitors and members of the public are treated in a manner which contravenes the policy and to report any such instances.
  - to make colleagues aware if their conduct or behaviour is inappropriate and to report this to the headteacher.
  - provide support to someone who is subject to such conduct or behaviour
  - to promote good community and workplace relations to foster and encourage an atmosphere of tolerance and support so that there is no place for behaviours which would negatively impact upon the community or school.

### **Frequently asked questions**

97. **There is regular 'work banter' which often includes mild swearing and derogatory language which I find offensive even though it is not directed at me, can anything be done about this?**

Yes, language or behaviour which one person finds acceptable may not be acceptable to another and if you are finding language or behaviour offensive you should raise this with your line manager. The relevant colleagues will be informed that the language used is unacceptable to work colleagues and therefore it should not be used. If the informal approach does not succeed formal action can be taken in accordance with the disciplinary policy and procedure. Additional support maybe required at the informal stage to raise awareness in the form of training or coaching in appropriate cases.

**98. What is expected from me in helping to provide a positive working environment and culture?**

Employees are expected to comply with the requirements of the dignity at work policy and procedure, and code of conduct policy and procedure to co-operate and support managers in addressing and taking appropriate action to improve areas of concern.

**99. If I witness offensive behaviour or language against another employee but this employee does not report it, am I expected to do anything?**

Yes, employees should speak to the person who has been the target of the abuse and advise them to report it to their line manager under the dignity at work policy. If they don't want to take the matter any further employees should report the incident to the Headteacher for them to follow up on.

Alternatively, if an employee is personally offended by the incident they have witnessed and it relates to a protected characteristic, they are able to raise the matter under the dignity at work policy and procedure themselves, even though they do not possess the characteristic themselves.

**100. Do I have to disclose my disability status?**

No, there is no legal requirement upon employees to disclose any protected characteristic but it does assist the school in understanding its workforce. By having this information the school can monitor the effectiveness of policies, procedures and identify where further support or positive action needs to be addressed. Employees will not be at any disadvantage for disclosing this information and in fact there are further rights and support available for disabled staff and any staff who have other protected characteristics.

**Relevant legislation**

101. The Equality Act 2010. This policy and procedure reflects the first parts of the implementation of the Equality Act in October 2010 and April 2011. A number of provisions from the Act are still subject to consideration by the Government Equalities Office (GEO)

102. The school will also have due regard to the relevant codes of employment practice issued by the Equality and Human Rights Commission.

103. Human Rights Act 1998

**Advice and guidance**

104. If an employee requires help in understanding this policy they should contact the headteacher or trade union representative if they are a member.

105. If, due to the nature of the query, it is not appropriate to contact the headteacher employees should contact the chair of governors.

106. The Headteacher/Chair of Governors should contact their Education HR advisor for support and guidance regarding this policy.

**For further advice**

107. There are a number of related policies and procedures that you should be aware of including:

- Disability support in the workplace policy and procedure
- Dignity at work policy and procedure

- Recruitment policy and procedure
- Code of Conduct
- Whistleblowing policy and procedure
- Grievance policy and procedure
- Sickness absence management policy and procedure
- Disciplinary policy and procedure
- Capability policy and procedure

### **Related Publications**

108. *The Equality Act 2010 - Departmental advice for school leaders, school staff and governing bodies in maintained schools and academies.* (This document can be found at [www.gov.uk/government/publications](http://www.gov.uk/government/publications) and search for the document using reference DFE-00296-2013).
109. ACAS guide *The Equality Act - What's new for employers?*
110. *The essential guide to the public sector equality duty*, published by the Equality and Human Rights Commission

# Schools guide to the equality and diversity policy and procedure

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1. This guide provides the school with additional information about the Equality Act which relate to particular aspects of the school's Equality and Diversity Policy and Procedure.
2. All employees are responsible for avoiding unlawful discrimination and the Headteacher and governing body are responsible for taking appropriate action where they become aware that this has taken place.

### **The Equality Act 2010**

3. This major piece of legislation came in to force on 1 October 2010 and harmonised and consolidated the previous equality legislation. Previous legislation such as the Sex Discrimination Act 1975, the Race Relations Act 1976, Disability Discrimination Act 1995 and the Equal Pay Act 1970 among others have been repealed.
4. Although the core provisions of the Equality Act 2010 came in to force in October 2010, provisions in relation to positive action in recruitment and promotion covered in this guide came in to force on 5 April 2011. These are voluntary provisions. The provisions on dual discrimination or the proposed requirement that employers publish data in relation to gender-related pay differences in the Equality Act will not be implemented for the time being.
5. Further information is available on equality and diversity at the school in:
  - Disability support in the workplace support policy and procedure
6. The Equality and Human Rights Commission has produced a number of codes of practice to accompany the Equality Act. Specifically for schools they have produced the "*technical guidance - Education and Schools*". All the codes have been produced to give clear guidance and ensure that the Act is consistently applied. They do not have the force of law but evidence of whether they have been followed can be relied upon in employment tribunal and is likely to have an impact on the tribunal's decision. The Equality and Human Rights Commission have also produced guidance on these duties for schools called "*Public sector equality duty guidance for schools*"

### **Protected characteristics**

7. The Act protects people from being treated less favourably because they have a protected characteristic. The protected characteristics in employment are:
  8. **Age** - Where this is referred to, it refers to a person of a particular age (e.g. 32 year olds) or belonging to a group defined by a range of ages (e.g. 18 - 30 year olds or 'middle-aged'). People of all ages (and falling within all age-ranges) are protected. However, different treatment because of age is not in itself unlawful if the treatment can be justified i.e. if you can demonstrate that, for example, offering particular training to people within a specified age-range is a proportionate means of meeting a legitimate aim.
  9. It may also, for example be proportionate and legitimate to address a disproportionate under-representation of younger employees in the workforce necessitating recruitment of younger people to provide for long-term continuity and to minimise the risk of a significant loss of essential skills and experience if too many retire over a short period of time. Age is the only protected characteristic where direct age discrimination may be allowable where it can be objectively justified. Schools are advised to seek HR or legal advice before taking any action or decision that might amount to direct age discrimination.
  10. For further information see the ACAS guidance on age discrimination within the equality section ([www.acas.org.uk](http://www.acas.org.uk))
  11. **Disability** - A person has a disability if s/he has a 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 continues to be a duty on schools to make reasonable adjustments for disabled employees to help them overcome a disadvantage resulting from such an impairment.
  12. Please refer to the disability support policy and procedure and supporting guides.

13. **Gender reassignment** - The process of transitioning from one gender to another. The Act provides protection for a transsexual person who proposes to, starts or has completed a process to change his or her gender and the previous requirement to have commenced the medical procedure is no longer applicable.
14. For further information see ACAS guidance on gender identity within the equality section ([www.acas.org.uk](http://www.acas.org.uk))
15. **Marriage and civil partnership** - Marriage is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners must be treated the same as married couples on a wide range of legal matters. Discrimination on the grounds of marriage or civil partnership is unlawful.
16. For further information see ACAS guidance on civil partnerships within the equality section ([www.acas.org.uk](http://www.acas.org.uk))
17. **Pregnancy and maternity** - Pregnancy is the condition of being pregnant. Maternity refers to any statutory maternity leave entitlement after the birth.
18. **Race** - This refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.
19. For further information see ACAS guidance on race discrimination within the equality section ([www.acas.org.uk](http://www.acas.org.uk))
20. **Religion and belief** - Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should have a clear structure and belief system which affects life choices or the way someone lives for it to be included in the definition. A political belief, for example would not be protected but case-law has shown that someone with a strong conviction for conservation practicing an eco-friendly lifestyle amounted to a philosophical belief capable of being protected under discrimination law.
21. **Sex** - both men and women are protected under the Act.
22. For further information see ACAS guidance on sex discrimination within the equality section ([www.acas.org.uk](http://www.acas.org.uk))
23. **Sexual orientation** - Heterosexual, homosexual (gay/lesbian) and bisexual people are protected under the Act.
24. For further information see ACAS guidance on sex orientation within the equality section ([www.acas.org.uk](http://www.acas.org.uk))

#### **Key points in relation to the types of discrimination**

##### Direct discrimination

25. You must not treat a person differently and in a way which is less favourable just because that person has a protected characteristic. Direct discrimination cannot be justified (save only in relation to age and only then if it can be shown that treating someone less favourably because of their age is a proportionate means of achieving a legitimate end). Please take HR or legal advice before taking any action or decision that might amount to direct age discrimination.
26. For example:

- A manager does not interview a job applicant because of the applicant's ethnic background.
- An employer says in a job advert 'this job is unsuitable for disabled people'.

#### Indirect discrimination

27. You must not follow a practice or policy or procedure that results in a less favourable outcome for people with a protected characteristic unless you can show that what you have done, or intend to do, is objectively justified.
28. For example: A manager only allows employees who work full-time to apply for promotion. This has a worse impact on women, who are more likely to work part-time. Unless the manager can objectively justify the requirement to work full-time, this is very likely to be indirect discrimination because of sex.

#### Discrimination arising from disability

29. A school must not treat a disabled person unfavourably for a reason connected to their disability where they cannot show that what they are doing is objectively justified. For example, a requirement may be objectively justified if it can be shown that a particular role requires a particular ability and reasonable adjustments have been explored. This only applies if you know or could reasonably have been expected to know that the person is a disabled person.
30. For example: A manager insists that all employees have to be in the office by 9am or face disciplinary action. An employee has a mobility impairment that makes travelling in the rush hour difficult. Unless the manager can objectively justify the requirement to be in at that time, this may be discrimination arising from disability, because the disabled person would be treated unfavourably (being disciplined) for something connected to their disability (the inability to travel in the rush hour). This may also be a failure to make reasonable adjustments.
31. In addition, schools should make sure that disabled people have the same access as non disabled people in relation to everything that is involved in obtaining and doing a job. This may involve schools making reasonable adjustments where appropriate.
32. For example: A manager usually gives employees a written copy of their draft annual appraisal and gives them a morning to read the draft and to send any comments back to them. The manager arranges for an employee with severe dyslexia to meet them instead and talk through the draft and provide comments. This is likely to be a reasonable adjustment for the manager to make.

#### **Association**

33. You must not treat a person less favourably than someone else because they are associated with a person who has a protected characteristic.
34. For example: A manager selects a person for redundancy not because they meet the selection criteria, but simply because they have a disabled child and the manager believes they may need more time off to care for their child than other colleagues.

#### **Perception**

35. A school / academy must not unlawfully discriminate against someone in any way because you think that they have a protected characteristic. It applies even if the person does not actually possess that characteristic.

36. For example:

37. A manager incorrectly thinks one of their workers is gay. They tell them they must change their clothes in a dusty stock room rather than in the communal changing area. This is likely to be discrimination because of sexual orientation based on the manager's perception, even though the worker is not gay (if the worker is gay, it would almost certainly be direct discrimination).

#### **Victimisation**

38. A school must not treat a person badly or victimise them because they have complained about discrimination or helped someone else complain or have done anything to uphold their own or someone else's equality law rights.

#### **Harassment**

39. A school must not undermine, humiliate or create an intimidating or hostile environment for someone because of their protected characteristic.

40. For example:

41. A transsexual woman is subjected to offensive 'banter' at work, relating to her gender reassignment. This creates a hostile and offensive atmosphere for her, and would amount to harassment.

42. Schools are also responsible for taking action to protect employees from harassment from third parties. The school should intervene and report this type of behaviour, ensure the matter is investigated and take action where required.

43. There may be lawful objective justification for indirect discrimination against employees who share a certain protected characteristic where a school can demonstrate a proportionate means of achieving a legitimate aim. But arguing that it's more expensive not to discriminate is unlikely to be considered a valid justification. It must be a proportionate measure too, meaning that the discriminatory impact should be significantly outweighed by the importance and benefits of the aim. There should also be no reasonable, less discriminatory alternative.

44. There's no objective justification defence for cases of direct discrimination - except on the basis of age.

45. A school would need to provide real evidence to support any claim of objective justification. Assertion alone is unlikely to be sufficient and each case must be considered on its individual merits. Schools / academies should seek further advice from their Education HR case adviser.

#### **Exceptions**

46. Sometimes there are situations where equality law applies differently. The few exceptions which are allowable include:

- direct age discrimination which can be objectively justified (this is likely only in rare cases)
- health and safety considerations in relation to pregnancy and maternity (to comply with health and safety laws)
- the use of voluntary positive action (see guide to recruitment - Equality Act 2010 update)

- treating disabled people better than non-disabled people (e.g. making reasonable adjustments or provisions under the double tick symbol award)

47. Except in the case of accepted practice under the double tick symbol award,(where a school has been awarded this) schools are advised to seek advice from their Education HR case adviser before seeking to use an exception.

#### **Common pre-conceptions to avoid**

48. It is essential that schools guard against discrimination on the basis of possible pre-conceptions or stereo-types linked to individuals from groups with protected characteristics.

49. For example, assuming certain groups of people:

- have a lack of commitment to work.
- have outside interests that would interfere with work.
- possess poor physical/mental ability.
- produce an anticipated unfavourable reaction among other staff and members of the public.
- are unsuitable for the job because of a feeling that certain types of work are only suitable for a man/woman, married/single etc.
- possess limited career intentions.
- are unwilling to undertake training.
- have limitations imposed by traditional female or racial interests and experiences.

50. For further information about the types of discrimination and the protected groups it applies to please refer to the ACAS guide - The Equality Act - what is new for employers.

#### **Reasonable adjustments**

51. The duty to make reasonable adjustments aims to make sure that a disabled person has the same access to everything that is involved in obtaining and doing a job as a non-disabled person, as far as is reasonable.

52. When the duty arises, schools are under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles a disabled worker or job applicant faces.

53. A school may also be responsible or have joint responsibility with another agency/employer for making reasonable adjustments for other people who are performing work at their school. This includes agency staff, contractors, sub contractors and seconded staff.

54. Further information on reasonable adjustments is set out in the disability support in the workplace policy and procedure. Advice can also be sought from your Education HR case Adviser.

#### **Employment exceptions for schools with a religious character**

55. There are some specific exceptions to the religion or belief provisions of the Equality Act for employment by schools designated as having a religious character.

56. For the purposes of legislation, these schools fall into two broad categories - Voluntary Aided (VA) is one category and Voluntary Controlled (VC) and Foundation schools together form the other. VA schools have more autonomy than VC/foundation schools, especially in terms of employment. Academies with a religious character generally operate under conditions which mirror those in VA schools.

57. All of the situations described here are provided for by existing legislation which has not been changed by the Equality Act.

58. Refer to "*The Equality Act 2010 - Departmental advice for school leaders, school staff and governing bodies in maintained schools and academies*". This document can be found at [www.gov.uk/government/publications](http://www.gov.uk/government/publications) and search for the document using reference DFE-00296-2013

### **Public Sector Equality Duty**

59. Under the Equality Act 2010, Schedule 19 schools have further legal obligations under the new Equality duty. There are general duties which came in to force on 5 April 2011 and specific duties which are designed to help schools meet the general duties.
60. The general duty requires public bodies (which includes schools) to have due regard, in terms of exercising their functions to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the act.
  - Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - Foster good relations between people who share a protected characteristic and those who do not.
61. For schools who adopt the model HR policies and procedures that Wiltshire Council provide these have been Equality Impact Assessed (EIA) to identify opportunities to promote equality and mitigate any negative or adverse impacts on particular groups. This demonstrates due regard in respect of these HR policies and procedures. Where a school implements a non Wiltshire council HR policy or procedure they will be responsible for demonstrating due regard.
62. The general equality duty therefore requires schools to consider how they could positively contribute to the advancement of equality and good relations. It requires equality considerations to be reflected into the design of policies and the provision of education and for these to be kept under review. The general duty is not prescriptive about the approach a school should take in relation to this.
63. The specific duties apply to schools and require them to publish sufficient information to demonstrate that they have complied with the general equality duty across their functions for service users and employees, where the school employs more than 150 employees. The school will also need to demonstrate the effect policies and practices have on people who share a protected characteristic and the extent to which these policies and practices further the aims of the general equality duty.
64. For further guidance on the type of workforce monitoring information to publish please refer to the document "*Guide for schools / academies on employee related workforce monitoring documentation to publish in accordance with the Equality Act 2010*"
65. Further information on the Public Sector Equality Duty is available on the Equality and Human Rights Commission website ([www.equalityhumanrights.com](http://www.equalityhumanrights.com))