

Individual Growth, Individual People'

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Newark Orchard School's Guidance on Equality and Diversity in Employment

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Guidance on Equality and Diversity

1. Introduction

- 1.1 The purpose of this guidance is to inform a school's equality policy by providing schools with:-
- a summary of the key issues relating to equality and diversity in employment matters
 - guidance on where to find more detailed information on specific employment related topics
 - information regarding the Nottinghamshire County Council's Equality policy, procedures and practices.
- 1.2 Schools have a number of responsibilities and duties required under employment legislation relating to equality and diversity. The Equality Act 2010 brings together and replaces previous anti-discrimination laws including the Race Relations Act 1976, the Sex Discrimination Act 1975 and the Disability Discrimination Act 1995. The Equality Act covers the same issues that were protected by existing equality legislation related to the following:
- age
 - disability
 - gender reassignment
 - race
 - religion or belief
 - sex
 - sexual orientation
 - marriage and civil partnership
 - pregnancy and maternity.
- 1.3 These are called '**protected characteristics**'. It is essential, that all schools are aware of the changes to legislation and their duty to avoid both discrimination in carrying out their delegated duties or direct employer responsibilities and to promote equality of opportunity for their staff.
- 1.4 In addition to their employer responsibilities, schools are also required by legislation to ensure that pupils, staff and others using school facilities are treated in a manner which is non-discriminatory and which promotes equality of opportunity. However, the focus of this document is specifically to provide information on employment related issues within a school.
- 1.5 Due to the complexities of this area of the law, governing bodies and other relevant corporate bodies are strongly advised to adopt this guidance document. If an academy or other school outside the control of Nottinghamshire County Council adopts this guidance, references to the council as employer will need to be replaced by the name of the employing body/trust. Should, exceptionally, the governing body of a school maintained by Nottinghamshire County Council seek to amend the recommended document, it will need to consult and negotiate any changes with the recognised trade unions and confirm any amendments to the local authority. Governing bodies are strongly recommended to seek advice from the HR Service in these circumstances.

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- 1.6 These procedures have been agreed with the Recognised Trade Unions through the Joint Consultative Panel process and meet legislative requirements. This guidance is recommended for adoption by all Nottinghamshire schools including, Community Schools, Voluntary Aided and Voluntary Controlled Schools, Academy Schools, Foundation and Trust Schools.

1. Nottinghamshire County Council Policy Statement

- 2.1 The County Council has a duty to act positively to create and promote access to services to all citizens, irrespective of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, ethnicity, religion or belief, sex, sexual orientation, cultural, social or economic background. The council is committed to providing services that are customer driven, prudent and efficient. It will be realistic, enthusiastic and ambitious and will treat the public and colleagues with fairness, respect and honesty.
- 2.2 Governing Bodies/Trusts are encouraged to adopt this as the basis of their own school's equal opportunities statement and give consideration as to how they will ensure its implementation. It is recommended that this statement is included in the staff handbook and any relevant school literature such as recruitment information and induction materials. Where schools already have an Equality Policy, governing bodies should review it in the light of the County Council policy statement and current legislation.

2. Managing Staff

- 2.1 Schools have a legal duty to ensure that no unlawful discrimination arises, either directly or indirectly, from the management of staff and the implementation of staffing procedures. The key areas are:-
 - Recruitment and Selection
 - Conditions of Employment
 - Pay
 - Opportunities for promotion
 - Appraisal/supported supervision
 - Provision of References
 - Training and other benefits
 - Discipline and Grievance
 - Dismissals
 - Requests to work flexibly or on a job share basis
 - Leave of absence
 - Attendance management
 - TUPE transfers
 - Staffing reductions
 - Termination of contracts

4. Responsibilities of Staff

4.1 All employees have a duty to support the management of the school by upholding the law in their dealings with and management of staff. Induction procedures, particularly for those staff with management responsibilities, should raise awareness of these responsibilities. The school has a number of policies in place to ensure that discrimination does not take place. All staff should be made aware of the policies and guidance which incorporates the full range of equalities legislation as it applies to the school. The following policies/areas are either available on the Schools Portal or in your school and are particularly relevant:-

- Recruitment and Selection Policy (including Job Evaluation)
- Attendance Management Procedure
- Appraisal policy
- Pay policy and Toolkit
- School Continuous Professional Development policy
- Discipline and Capability Procedures
- Grievance and Harassment Procedures
- Adoption Leave and Provisions
- Flexible Working Policy
- Job-sharing Policy
- Maternity, Parental and Paternity Leave
- School Induction Policy

5. Equality in a work context means:

- treating all employees equally and fairly in all aspects of their working life from their appointment through to the ending of their employment.
- not discriminating unlawfully, either directly or indirectly, against individuals or groups of employees on grounds that are not relevant to the work they are required to do.

6. Managing diversity

6.1 It is a responsibility for the governing body to ensure that all employees have the opportunity to maximise their potential and enhance their self-development and their contribution to the school. Managing diversity recognises that employees from different backgrounds can bring fresh ideas and perceptions, which can make the way work is done more efficient and contribute to the success of the school and the County Council. Managing diversity successfully will help the school to nurture creativity and innovation and improve school performance thereby contributing to better outcomes for pupils.

7. Protected Characteristics: Summary of Key Changes Equality Act 2016

7.1 Age: Abolition of the default retirement age at 65 came into effect on 1 April 2011. Age is the only protected characteristic that allows employers to justify direct discrimination if it meets a legitimate aim. The need to request to work beyond the age of 65 is no longer necessary, it is an automatic right unless the school can show that a refusal to work beyond this age can be objectively justified. For example, a physical or mental impairment that makes it unsafe for the employee to work in the school. Advice should be sought from the HR Service where these situations arise in the course of employment.

7.2 Disability: The Act changes the definition of 'disability' and identifies ways disabled people are protected from disability discrimination. Under the Act, a person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities which would include things like using a telephone, reading a book or using public transport.

7.3 As before, the Act puts a duty on employers to make reasonable adjustments in the workplace to help staff overcome disadvantage resulting from impairment (e.g. by implementing practical changes and/or providing assistive technologies to help visually impaired staff use computers effectively). This is a complex area and the school should seek advice from the HR Service when adjustments are required in the work place.

7.4 The Act limits the circumstances when it is permissible to ask health-related questions before offering an individual a job.

☐ It is only possible to ask health-related questions to help you to:

- Decide whether you need to make any reasonable adjustments for the person during the selection process.
- Decide whether an applicant can carry out a function that is essential to the job (e.g. the requirement to carry out heavy manual handling).
- Monitor diversity of job applicants.
- Take positive action to assist disabled people.

7.5 The Act includes a new protection from discrimination arising from disability. This states that it is unlawful to treat a disabled person unfavourably because of something connected with their disability where the employer is aware of their disability.

7.6 Gender Reassignment: The Act provides protection for transsexual people. A transsexual person is someone who proposes to, starts or has completed a process to change their physical sexual characteristics to match their gender identity. The Act no longer requires a person to be under medical supervision to be protected – so, for example, a woman who decides to live as a man but does not undergo any medical procedures would be covered.

7.7 Breastfeeding: The Act specifically clarifies that it is unlawful to discriminate against an employee because they are breastfeeding. This includes requiring employers to undertake a risk assessment and provide appropriate facilities to accommodate the needs of the individual employee.

8. Positive Action in Recruitment and Promotion.

8.1 The Act allows employers to take a protected characteristic into consideration when deciding who to recruit or promote. The employer must show that this is a proportionate means of achieving a legitimate aim e.g. to have more women in senior management where women are currently under-represented. However, the employer can only do this when the candidates have been assessed as being equally capable of doing the job.

9. There are six different types of discrimination:

(i) Direct discrimination: treating someone differently because of their protected characteristic.

(ii) Associative discrimination: direct discrimination against someone because they are associated with another person with a protected characteristic. This includes carers of disabled people and elderly relatives who can claim they were treated unfairly because of duties that they had to carry out at home relating to their care work.

(iii) Indirect discrimination: when you have a rule or policy that applies to everyone but disadvantages a person with a protected characteristic.

(iv) Harassment: behaviour deemed offensive by the recipient. Harassment is unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. Employees can claim they find something offensive even when it is not directed at them.

This is a particularly sensitive and difficult area of employee relations and employment law for which governing bodies can be held vicariously liable for the action of their employees. This means that governors acting on behalf of the Local Authority as the employer of staff in community schools (or in the case of voluntary aided schools, academies and foundation schools, as the contracted employer) must take steps to prohibit discriminatory behaviour by their employees. The Harassment Procedure defines the scope and effects of harassment. It also explains the legal responsibilities of schools, acting as or on behalf of the employer, to ensure that harassment and victimisation in the workplace do not occur. The Code of Practice: Complaints of harassment by school staff (Appendix 1 in the Harassment procedure) includes the informal and formal procedures for dealing with complaints of harassment.

(v) Victimisation: discrimination against someone because they made or supported a complaint under the Equality Act.

(vi) Discrimination by perception: direct discrimination against someone because others think they have a protected characteristic (even if they don't).

Discrimination by perception is discrimination against someone because he or she is wrongly perceived to have a certain protected characteristic, for example where an employer believes an employee is gay, or is of a particular race, and treats him or her less favourably as a result. This would be unlawful discrimination under the Equality Act 2010.

10. Public Sector Equality Duty

10.1 In addition to the general provisions of the Equality Act 2010, as a public body, governing bodies and trust boards have to comply with the Public Sector Equality Duty (section 149 of the Equality Act 2010) so that schools play their part in making society fairer. This is in two parts: 1) the general provisions and 2) specific duties.

10.2 Part 1: The General Public Sector Equality Duty - requires public bodies to consider the needs of all individuals in their day to day work – in shaping policy, delivering services and in relation to their own employees.

10.3 The general Equality Duty has three aims and requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it, and
- Foster good relations between people who share a protected characteristic and people who do not share it.

10.4 Having due regard means consciously thinking about the three aims of the Equality Duty as part of the process of decision-making. This means that

Head Teachers, Senior Leaders and Governors have to consider the equality impact on people with protected characteristics before a decision is made or new policy is implemented.

10.5 Schools are advised to use Equality Impact Assessments (EqIAs) to assess the impact of decisions or a change to school services/policy on groups and individuals with protected characteristics and to demonstrate this consideration of the Equality Duty.

10.6 Equality Impact Assessments are not specifically required by law, however they are considered to be the most effective way of showing compliance with the Duty. If equality impact assessments are carried out properly and inform the decision-making process, they become an integral part of everyday school business. Guidance on how to complete an Equality Impact Assessment is attached as Appendix 1. An Equality Impact Assessment Proforma is available as Appendix 2.

10.7 Under the Equality Act, the governing body/trust is the respondent in Employment Tribunals or court proceedings. This would include claims of discrimination by a school employee either on their own or, if the claim is related to several schools, jointly with the Local Authority. In sex, race and disability discrimination cases, the law sets no upper ceiling on the compensation that can be awarded to a successful claimant. Compliance with the legislation is therefore extremely important.

10.8 Part 2: Specific Equality duties

10.9 Each public authority is required to:

(i) Publish information to demonstrate compliance with the general equality duty. This requirement for schools commenced in April 2012 and publication is required at least annually. The publication must include information relating to people who share a protected characteristic who are:

- Employees of the school
- People affected by the school's policies and practices, this would include parents and pupils. The school should address these duties under the Act in other relevant policies and documentation. Schools with fewer than 150 employees are exempt from this requirement, however these schools will still need to ensure that they collect and use enough workforce information to effectively meet the general equality duty.

(ii) Each school must prepare and publish one or more objectives that it thinks it needs to achieve to further any of the aims of the general equality duty. The requirement came into force in April 2012 and must be repeated at least every 4 years after that. The objective(s) must be specific and measurable. It is expected that the school's objective(s) will be included in the objectives formulated to promote pupil achievement and development in the School Improvement Plan.

11. Definitions

11.1 The Act makes it unlawful on the grounds of the protected characteristics to:

- Discriminate directly against anyone and to treat them less favourably than others because of their protected characteristic or with someone with whom they associate;
- Discriminate indirectly - to apply a criterion, provision or practice which disadvantages people of a particular protected characteristic, unless it can be objectively justified. This can occur where there is a policy, practice or procedure which applies to all employees but particularly disadvantages individuals with a protected characteristic;
- Subject someone to harassment, when unwanted conduct related to a protected characteristic has the purpose or effect of violating an individual's

dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual;

- Victimise someone because they have made or intend to make a complaint or allegation on the grounds of a protected characteristic.

11.2 For the purposes of this Guidance and in line with government guidelines our use of the term 'sex' refers to biological aspects of an individual which are determined by their anatomy, which is assigned at birth and generally referred to as female or male. 'Gender' can be defined as a social construct relating to behaviours and attributes that are based on labels of masculinity and femininity.

12. Equal pay

12.1 Men and women doing equal work and work rated as of equal value are entitled to equal pay. The legislation states that employers may wish to carry out a pay audit to ensure that men and women are getting equal pay according to the Equality Act 2010. It is for this reason that schools must have the following policies and procedures in place:

- A robust and effective job evaluation scheme which is continually monitored.
- An effective Appraisal policy which meets the legislative requirements and linked to pay progression.
- A Pay Policy.

12.2 All employers, including governing bodies and academy trusts must give men and women equal treatment in the terms and conditions of their employment contract if they are employed on:

- 'like work' - work that is the same or broadly similar
- work rated as equivalent under a job evaluation
- work found to be of equal value

12.3 A woman is employed on 'like work' with a man if her work is of the same or a broadly similar nature. It is for the employer to show that there is a genuine reason for any difference in pay, which is not based on the sex of an individual. Employees are also entitled to know how their pay is made up and there should be a clear audit trail in schools which sets out how decisions on pay are made and how any additional allowances are calculated. This should be clearly set out in the school pay policy.

12.4 Schools are advised to undertake an Equality Impact Assessment to evaluate the impact upon how it makes decisions on progression pay awards in line with the pay policy. Schools are therefore strongly advised to record what steps they undertake to avoid discrimination before and at the time that they develop policy and take decisions, and monitor the effectiveness of those steps in eliminating discrimination. Governing bodies should also keep these processes under review on a continuing (annual) basis. (Please see further guidance on Equality Impact Assessments in Appendix 1).

12.5 The implementation of job evaluation (JE) for all support staff in schools is the means by which governing bodies address any potential inequalities in the school support staff workforce. It is clearly important that the governing body ensure that any new and changed jobs are therefore assessed within this process effectively.

13. Sex discrimination

13.1 It is unlawful to discriminate against school employees because they are a man or woman.

13.2 There are a number of policies in place, for example the recruitment and selection policy, job share policy and flexible working policy to ensure that schools are able to meet their legal obligations and which also help them attract and retain the best staff.

14. Sexual Orientation Discrimination

14.1 Under the Equality Act 2010 it is unlawful to discriminate against workers because of their sexual orientation.

14.2 Sexual orientation is a person's emotional, romantic and/or sexual attraction to another person. This can include the following definitions:

- Orientation towards people of the same sex (lesbians and gay men)
- Orientation towards people of the opposite sex (heterosexual)
- Orientation towards people of the same sex and the opposite sex (bisexual)

14.3 The Act also applies to all employment and vocational training and includes recruitment, terms and conditions, promotions, transfers, and dismissals.

15. Civil partnerships and The Marriage (Same Sex Couples) Act, 2013

15.1 The Act, which applies to England and Wales:

- allows same sex couples to marry in civil ceremonies
- allows same sex couples to marry in religious ceremonies, where the religious organisation has 'opted in' to conduct such ceremonies and the minister of religion agrees
- protects those religious organisations and their representatives who don't wish to conduct marriages of same sex couples from successful legal challenge
- enables civil partners to convert their partnership to a marriage, if they wish
- enables married individuals to change their legal gender without having to end their marriage.

16. Age discrimination

16.1 The Equality Act 2010 makes it unlawful to discriminate against employees, job seekers and trainees because of their age. This includes direct and indirect discrimination, harassment and victimisation. Age in this context is not restricted to older employees, it applies to an employee of any age. The Equality Act also removed the upper age limits on unfair dismissal and redundancy.

16.2 It is unlawful because of age to:

- discriminate against someone, in certain circumstances, after the working relationship has ended, unless objectively justified
- compulsorily retire an employee unless it can be objectively justified.

16.3 Note: Objective justification means that differences of treatment on the grounds of age can sometimes be justified; objective justification is a test that employers will have to use to substantiate any exemptions to the laws. Schools are advised to seek guidance from the HR Service on these potentially complex matters of law.

17. Race discrimination

17.1 Race discrimination occurs when a person is treated less favourably because of race, colour, and nationality, ethnic or national origin. The Equality Act 2010 makes it unlawful for an employer to discriminate against employees because of these characteristics.

17.2 In very limited circumstances, there are some jobs which can require that the job-holder is of a particular racial group. This is known as an 'occupational requirement'. One example is where the job-holder provides personal welfare services to a limited number of people and those services can most effectively be provided by a person of a particular racial group because of cultural needs and sensitivities.

17.3 It is unlawful to discriminate against a job-seeker, worker or trainee on grounds of race, colour, nationality, and ethnic or national origins.

17.4 There is also a duty to assess and monitor the impact of equality policies on pupils, staff and parents, including the attainment levels of pupils from different racial groups. Ofsted will inspect and report on whether schools are meeting the general and specific equality duties.

17.5 There is no longer a requirement on schools to report racist incidents involving employees or non-employees to the Local Authority. However best practice dictates that schools record and report to the Local Authority all types of 'hate incidents' within any strand of discrimination no matter who the perpetrators are. For further guidance on Prejudice-based Incidents please refer to Prejudice-based Incidents on the Schools Portal.

18. Religion or belief discrimination

18.1 It is unlawful to discriminate against employees because of their religion or belief or lack of religion or belief. There is no specific list that sets out what religion or belief discrimination is. The law defines it as any religion, religious or philosophical belief. This includes all major religions, as well as less widely practised ones. All employees are also protected against discrimination if they do not hold a particular (or any) religion or belief.

18.2 It is therefore extremely important for the governing body/trust to be sensitive to the cultural and religious needs of their staff and this can include making provisions for:

- flexible working
- religious holidays and time off to observe festivals and ceremonies
- prayer rooms with appropriate hygiene facilities
- dietary requirements in staff canteens and restaurants
- dress requirements.

19. Disability discrimination

19.1 The Equality Act 2010 provides disabled people with protection from discrimination in a range of areas, including employment and occupation.

1.2 A school must make reasonable adjustments in the recruitment and employment of disabled people. This can include, for example, adjustments to recruitment and selection procedures, to terms and conditions of employment, to working arrangements and physical changes to the premises or equipment.

19.3 Disabled employees are also protected from harassment (see paragraph 9 (iv) for definition).

19.4 Legislation requires employers to make reasonable adjustments in any situation where the disabled person is placed at a substantial disadvantage compared to people who are not disabled. The legal assessment of what is considered reasonable will be based on relevant circumstances including effectiveness, practicality and financial consequences. Financial assistance to cover a proportion of the costs of recruiting, inducting or retaining a disabled employee is available through the “Access to Work” programme, part of the government’s Jobcentre Plus service. Schools are strongly advised to seek advice from the HR Service on making reasonable adjustments in the workplace and for advice and support on any other potential issues arising from the employment of someone who may be considered disabled under the provisions of the Equality Act.

19.5 Schools are also advised to seek specialist advice and support from the HR Service in line with the Managing Attendance procedure to ensure absence cases are dealt with consistently and in accordance with the school’s procedure where an employee’s disability is a factor.

20. Further Advice and Information

- The HR service can provide specialist advice and support on general and specific complex matters regarding equality and diversity issues in employment and the implementation of the school’s related policies and procedures.
- Advice on issues relating to LGBT matters, race equality, religion and beliefs can also be obtained from Nottinghamshire County Council’s Tackling Emerging Threats Team