



HIGH WELL SCHOOL
Preparing for Positive Futures

Equality and Diversity in Employment

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| Policy Lead: | Michael Davis HR Manager |
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| Signed by Chair of Governors: | <i>Margaret Turner</i> |
| Date: | 01.02.2022 |

1. INTRODUCTION

The purpose of this guidance is to inform High Well School equality policy by providing:

- 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 school's equal opportunities policy, procedures and practices.

As an employer High Well School has 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 (gender)
- sexual orientation
- marriage and civil partnership
- pregnancy and maternity.

These are called '**protected characteristics**'. It is essential, that all appointing panels in school 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.

In addition to employer responsibilities, the school is 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.

The focus of this document is specifically to provide information on employment related issues within the school.

2. High Well School Policy Statement

High Well School has a duty to act positively to create and promote access to school services to all persons, irrespective of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, ethnicity, religion or belief, gender, sexual orientation, cultural, social or economic background. The school is committed to providing educational opportunities that are pupil and employee driven, prudent and efficient. It will be realistic, enthusiastic and ambitious and will treat the public and colleagues with fairness, respect and honesty at all times.

3. Managing Staff

High Well School recognises the 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 and reward
- opportunities for promotion
- appraisal/ support and supervision
- provision of references
- training and other benefits
- discipline and grievance
- dismissals
- requests to work flexibly or on a job share basis e.g. when a woman returns from maternity leave
- discretionary leave
- attendance management
- TUPE
- staffing reductions
- termination of contracts

4. Responsibilities of Staff

All employees have a duty to support the leadership of the school by upholding the law in their dealings with and management of staff and others, including volunteers and students on placement. 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 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 particularly relevant:

- Recruitment and Selection of Staff
- Grading of Posts and job evaluation
- Managing Employee Attendance
- Appraisal policy
- Pay policy
- Discipline, capability and grievance
- School Harassment Procedures
- Parental and Adoption Leave
- Flexible and Part time working including job shares

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

- Managing diversity is about ensuring that all employees have the opportunity to maximise their potential and enhance their self-development, and their contribution to the school. High Well School recognises that people from different backgrounds can bring fresh ideas and perceptions, which can make the way work is done more efficient and to contribute to the success of the school. Managing diversity successfully will help the school to nurture creativity and innovation and improve school performance.

7. Protected Characteristics: Key Changes

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 it is 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 school's HR Manager regarding this.

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.
- 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 providing assistive technologies to help visually impaired staff use computers effectively). Senior and Middle Leaders should seek advice where adjustments are required in the work place via the HR Manager.
- The Act limits the circumstances when it is permissible to ask health-related questions before offering an individual a job.

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| ✓ | <p>It is only possible to ask health-related questions to help to:</p> <ul style="list-style-type: none"> Decide whether to make any reasonable adjustments for an applicant 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. |
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- The Act includes a 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.

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 his or her gender. 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.

8. Positive Action in Recruitment and Promotion:

- 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. Breastfeeding Mothers:

- The Act specifically clarifies that it is unlawful to discriminate against a woman because she is breastfeeding. This includes requiring employers to undertake a risk assessment and provide appropriate facilities to accommodate the needs of the individual.

10. There are six different types of discrimination:

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

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.

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

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 the governing body must take steps to prohibit discriminatory behaviour by employees. The school's Harassment Procedure defines the scope and effects of harassment. The Code of Practice includes the informal and formal procedures for dealing with complaints of harassment.

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

Discrimination by perception: direct discrimination against someone because others think they have a protected characteristic. 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.

11. Definitions

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.

12. Equal pay

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 High Well School continually monitors and reviews job roles and pay.

As an employer High Well School will always 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

13. Sex discrimination

It is unlawful to discriminate against workers because of their gender.

14. Sexual Orientation Discrimination

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

Sexual orientation is defined as:

- Orientation towards people of the same sex (lesbian and gay man)

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

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

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

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 provider has 'opted in' to conduct such ceremonies and the minister of religion agrees
- protects those religious schools 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

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. The Equality Act also removed the upper age limits on unfair dismissal and redundancy.

Key points

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

Age in this context is not restricted to older employees, it applies to anyone of any age.

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.

Race discrimination

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.

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.

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

17. Religion or belief

It is unlawful to discriminate against workers 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.

It is therefore extremely important for the board to be sensitive to the cultural and religious needs of 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

18. Disability discrimination

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

Key points:

- 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

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.