

School Employment Manual

# Equality and Diversity in Employment

This document applies to Community and Voluntary  
Controlled Schools and is advisory for Foundation and  
Voluntary Aided Schools



## Equality and Diversity in Employment

### Table of Contents

|  |    |
|--|----|
| Introduction.....  | 3  |
| Objectives.....  | 3  |
| Minimum Standards.....   | 3  |
| Roles and Responsibilities.....  | 4  |
| Governors.....   | 4  |
| Head Teachers.....   | 4  |
| Senior Leadership Team.....  | 4  |
| Staff.....   | 4  |
| HR Providers.....  | 4  |
| Discrimination.....  | 4  |
| Direct Discrimination – definition.....  | 4  |
| Indirect direct discrimination – definition.....                                     | 4  |
| Discrimination by victimisation.....   | 5  |
| Disability related discrimination – definition.....                                  | 5  |
| What to do if an employee believes that they have been<br>discriminated against..... | 5  |
| Defending discrimination claims.....   | 5  |
| Burden of Proof .....  | 5  |
| Employment Monitoring.....   | 6  |
| Equal Pay.....   | 6  |
| Defence.....   | 6  |
| Positive Action.....   | 7  |
| Positive Action Measures.....  | 7  |
| Occupational Requirements.....   | 8  |
| Further Information.....   | 9  |
| Links.....   | 9  |
| Appendix 1 – Further guidance on disability.....                                     | 10 |
| Appendix 2 – Positive about disability.....  | 12 |
| Appendix 3 – Gender Reassignment.....  | 17 |
| Appendix 4 – Religion or Belief.....   | 19 |
| Appendix 5 – Sexual Orientation.....   | 20 |
| Appendix 6 - Dignity at Work.....  | 21 |

## Introduction

All schools in Lincolnshire are expected to have in place an Equality and Diversity Policy which should set out their position on key areas for equality and diversity in regards to employment.

This advice provides guidance to Head Teachers and through them to Governors, in **Community and Voluntary Controlled Primary, Secondary and Special Schools with delegated budgets.**

Employees in **Foundation and Voluntary Aided Schools** will be employed directly by the Governors of that school. The equality and diversity advice is available for these schools to adopt, but there is no requirement from the local authority for them to do so.

Schools should note the requirement to publish data under the guidance on the Equality Act from the Equality and Human Rights Commission (EHRC). **(See Employment Monitoring Section)**

Schools should adapt and adopt these policies to reflect local requirements.

## Objectives

To support the policy by setting out the school's position on some key areas of equality and diversity in regards to employment matters and to promote an inclusive culture where we:

- respect and value the diversity of our of pupils, parents and colleagues
- ensure all staff have the opportunity to receive fair treatment in an environment free from discrimination and harassment.
- provide opportunities for promotion, training and continued employment to everyone based on merit and ability in relation to the role criteria. By doing this we can ensure that no employee or job applicant is disadvantaged by requirements that cannot be shown to be relevant to the job they applied for or hold.

The advice reflects best practice and conforms to all existing legislation, in particular the Equality Act 2010

## Minimum Standards

Every school in Lincolnshire has a duty of care to provide a safe workplace for its employees, one that is free from discrimination. Discrimination causes harm to individuals and denies the school the talents of a wide range of individuals. Discrimination will not be tolerated at any level, in any form.

Any employee found in breach of the school's Equality and Diversity Policy should be subject to the disciplinary procedure of that school and may be dismissed.

## **Roles and Responsibilities**

### **Governors**

Adopting the policy, adapting for local circumstances and monitoring its use

### **Head Teacher**

Managerial responsibility for the implementation of the policy and being accountable for its implementation and delivery

### **Senior Leadership Team**

To be familiar with the policy; they will promote and monitor the policy actively through their teams and through their work planning process, delivery, employment practices and employee development

### **Staff**

All employees will have access to, understand and implement this policy through their work and actions, supported by team discussions and training and take personal responsibility to implement and promote this policy in their day to day work in the School.

### **HR Providers**

Provide advice on the application of the policy and support to the Head Teacher and Governors

## **Discrimination**

Refer to appendices for more comprehensive definitions and guidance.

### **Direct Discrimination - Definition**

To treat a person, for a reason which relates to their race, colour, nationality, ethnic or national origins, religion or belief, gender, gender reassignment, sexual orientation, marital status, civil partnership status, hours of work, disability or age, less favourably than others are, or would be treated in the same or similar circumstances.

### **Indirect Discrimination – Definition**

Applying a provision, criterion or practice which, although applied equally to all employees, is such that:

- a considerably smaller proportion of one group can comply with it.

- it can not be shown to be justified on non-discriminatory grounds, e.g. for operational reasons
- it is to the detriment of the particular group because they are unable to comply with it

### **Discrimination by victimisation**

This occurs where an employee is treated less favourably because they have made allegations or brought proceedings under these acts; or given evidence or information in support of such proceedings or allegations.

### **Disability related discrimination - definition**

This occurs when the reason for less favourable treatment relates to the disability but is not the disability itself.

### **What to do if an employee believes they have been discriminated against**

All schools are committed to ensuring that any complaint of discrimination is dealt with quickly and effectively.

In the first instance employees may be able to resolve the issue by talking to the person they feel is discriminating against them and asking for the reasons for their behaviour. Where this is not appropriate the employee should raise the issue with the Head Teacher or Chair of Governors when the Head Teacher is being complained about. The allegations will then be investigated using the Grievance Procedure to highlight concerns.

### **Defending discrimination claims**

To defend a claim of gender, gender reassignment, race, disability, sexual orientation, or religion or belief discrimination at an Employment Tribunal, the employer must show that

- justification for different treatment exists
- justification is genuinely the cause of the difference in treatment
- justification does not amount to, or take account of, the difference of gender or race
- in order to justify age discrimination the employer needs to show that different treatment achieves a legitimate aim and is a proportionate means of achieving that aim.

### **Burdon of proof**

The burden of proof is shifted to the employer once facts, as presented by the complainant, are established from which it may be presumed that discrimination has occurred.

## **Employment monitoring**

From 6<sup>th</sup> April 2012, Schools must publish information about the staff that it employs and must monitor all employees by ethnicity, gender and disability in the following areas:

- Workforce make up (all employees and new starters)
- Applications for training
- Grievances
- Capability
- Disciplinary action
- Performance appraisals
- Employees leaving the authority
- Gender pay gap information

The results must be published annually.

This information has to be published for Schools who employ 150 employees or more. Those with less than 150 employees are not required to publish the information but the advice from the EHRC is that they “will still need to have workforce information in order to meet their obligations to prepare and publish equality objectives and carry out equality analysis of workforce related policies and practices, e.g. in relation to promotion or pay gaps”.

## **Equal pay**

A woman and a man have a right to equality in contractual terms and benefits when they are employed:

- on like work, i.e. work of the same or broadly similar content to that of a man/woman
- on work rated as equivalent – i.e. in a job which a job evaluation scheme has shown to have equal value to that of a man/woman
- on work of equal value, i.e. the same demands in terms of responsibility, skill, decision making etc are made within a woman’s job as compared to that held by a man and vice versa
- on part time work doing the same work as full time employees, i.e. they should be paid the same rates (pro-rata)

## **Defence**

For “like work” and “work rated as equivalent” provisions, the School must be able to demonstrate that a “genuine material difference” exists to justify any variation in pay and benefits. The difference must be a personal one which is material to the performance of the job, e.g. relevant experience and length of service.

Defence of a claim for “work of equal value” can, however, rest either on a material difference, as above, or on material factors not attributable to the personal qualities of the two employees involved.

For “part time work” provisions, the School must be able to demonstrate a genuine material difference between the jobs being compared.

### **Positive action**

The School strives to develop a workforce that broadly reflects the communities it serves, by taking steps to make sure that people from groups currently under-represented in the workforce are encouraged to apply for jobs with us.

Where minority ethnic groups are under-represented, it is lawful (but not a statutory requirement) to encourage a particular social group to take advantage of opportunities for a specific type of work (this includes training). Selection will always be made solely on merit. **(See Positive Action Measures below)**

This is provided that at any time within the previous twelve months:

- there are no persons of that social group doing that work at that establishment, or
- that group is disproportionately small compared with the proportion of the group to other employees in the workforce as a whole and among the population of the area from which the school normally recruits its employees

### **Positive action measures**

These measures can also be applied where one social group is under represented in a particular type of work within a school.

It is recommended that where there is under representation of particular ethnic minority groups in a particular area of work, the following action should be taken wherever appropriate and reasonably practicable:

- job advertisements designed to reach members of these groups and to encourage their applications, e.g. advertising in ethnic minority/disability/gender specific press as well as other newspapers
- use of employment agencies and careers offices in areas where these groups are concentrated
- recruitment and training schemes for school leavers designed to reach members of these groups
- encouraging employees from these groups to apply for promotion or transfer
- providing alternative routes to promotion to those without standard qualifications

- encouraging employees from those groups to attend management training
- promotion training or skill training for employees from these groups, if they lack particular expertise but show potential. This may include language training

Positive measures to promote equal representation in terms of gender, sexual orientation, religion or belief can include:

- training existing employees for work which is traditionally the preserve of one gender, religion or belief, e.g. training women for skilled manual or technical work
- positive encouragement to women to apply for managerial posts
- advertisements which encourage applications from minority gender, sexual orientation, religion or belief, or from disabled people, but makes it clear that selection will be on merit
- alternative working arrangements, including flexible working hours, other special leave for family care, religious observance and assistance with childcare arrangements

Positive discrimination in a very limited set of circumstances in relation to appointments is permitted by the Equality Act 2010. Advice should be sought from Human Resources.

Further advice and guidance is available in the Recruitment, Selection and Induction Policy in the School's Employment Manual.

### **Occupational requirements**

Employers may place advertisements limiting employment to one social group if there is an occupational requirement that is the job requires a person of a particular social group for the role such as:

- it is necessary to preserve decency or privacy
- the post is in an establishment such as a hospital, prison, etc. which is single gender
- the job includes the provision of personal services to a group which can be most effectively provided by a person of that social group
- the job is one of two to be held by a married couple or by civil partners
- the job has restrictions imposed by laws relating to the employment of that social group
- the job involves the individual conducting intimate searches pursuant to statutory powers (e.g. the Police and Criminal Evidence Act)
- the job involves working in a private home and reasonable objection can be shown because of the intimate contact needed

In general, the School wishes to encourage a diverse workforce and will ensure that there is a minimum need to use occupational requirements.



## **Further Information**

See Appendix on:

Appendix 1 Further Guidance on Disability

Appendix 2 Positive about Disability

Appendix 3 Gender Reassignment

Appendix 4 Religion or Belief

Appendix 5 Sexual Orientation

Appendix 6 Dignity at Work

## **Links**

[Schools Employment Manual](#)

[Recruitment, Selection and Induction Policy](#)

[Code of Conduct](#)

[Redeployment Scheme for School Based Staff](#)

[Model Leave of Absence Policy](#)

## **Appendix 1 – Further Guidance on Disability**

### **Definition of Disability**

A person has a disability if he or she:

- has a physical or mental impairment
- the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities

For the purpose of the Act, these words have the following meaning:

- “substantial” means more than minor or trivial
- “long-term” means that the effect of the impairment has lasted, or is likely to last, for at least twelve months (there are special rules covering recurring or fluctuating conditions)
- “normal day-to –day activities” include everyday things like eating, washing, walking and going shopping.

The Equality Act 2010 provides rights for people not to be directly discriminated against or harassed because they have an association with a disabled person. This can apply to a carer or parent of a disabled person. Additionally, people must not be directly discriminated against or harassed because they are wrongly perceived to be disabled.

### **Duty to Make Reasonable Adjustments**

The duty to make “reasonable adjustments” is owed to individual disabled job applicants and employees as and when the need arises. The obligation is placed on the employer when a particular applicant has notified that employer on his/her application form. This duty applies in the same way to existing employees who are disabled or become disabled, once they have notified their employer that they have a disability.

### **Reasonable Adjustments**

Where a provision, criterion or practice applied by or on behalf of an employer, or a physical feature of their premises, places a disabled person at a substantial disadvantage in comparison with persons who are not disabled, “reasonable adjustments” may help to overcome the practical effects of a disability and enable the employee to continue working. Employers need to demonstrate that all possible action has been taken to make adjustments that are considered to be reasonable. The School wishes to be an employer that can accommodate disabled persons needs if at all possible.

This provision does not oblige employers to make the best adjustments possible, e.g. to re-allocate key functions of the job, or to provide items which the individual could be reasonably expected to have already for their personal use. However, in deciding if it is reasonable to require an employer to

undertake a particular action, the following factors will be taken into account at an Employment Tribunal:

- the extent to which taking the action would prevent the disabling effect in question
- the practicability of such a step
- the financial and other costs and the degree of disruption to the employer
- the financial or other resources available to the employer
- the availability to the employer of financial and other assistance (e.g. the “Access to Work” scheme)
- the nature of the employer’s activities and size of undertaking (e.g. where an employee becomes disabled and can no longer undertake the duties of the post, it might be reasonable given the size of the County Council and the wide range of jobs available to seek suitable alternative employment in accordance with the **Redeployment Scheme for School Based Staff**)

It may be that a “reasonable adjustment” cannot be implemented quickly. In these circumstances, the candidate should be appointed and interim arrangements put in place until the adjustment can be made.

Examples of “reasonable adjustments are:

- modifying procedures for testing or assessment
- assigning to a different place of work
- providing a reader, interpreter or signer
- provision of materials in an alternative format such as large print or Braille
- acquiring or modifying equipment
- making adjustments to working environment
- modifying instructions or reference manuals
- alterations to working hours and/or allowing absences during work time for rehabilitation, assessment or treatment
- modifying disciplinary or grievance procedures

## **Appendix2 – Positive About Disability**

The County Council has signed up to the Positive About Disabled People initiative, requiring the five commitments set out below.

Please refer to the Recruitment, Selection and Induction Policy in the Schools Employment Manual for further advice and guidance.

### **Commitment 1 – Recruitment**

To interview all applicants with a disability who meet the minimum criteria for a job vacancy and consider them on their abilities.

The aim of this commitment is to encourage disabled people to apply for jobs by offering an assurance that should they meet the minimum criteria they will be given the opportunity to demonstrate their abilities at the interview stage.

#### **Essential Action – the employer must:**

- apply the commitment to all vacancies, internal and external, without exception. Managers and people involved in short listing must be made aware of their role.
- make minimum criteria available to disabled applicants and make applicants aware of where this information is available from the job advert
- when short-listing applications to reduce interview numbers, any disabled applicant meeting the initial minimum criteria must be set aside for interview and not subject to additional sift criteria.
- make sure they do not include non-essential requirements, which could inadvertently exclude a disabled person.
- make sure they consider whether the minimum criteria could be met with the facilities available through Access to Work (accessed through the Disability Employment Adviser at the local Jobcentre)
- make sure that the requirements under the commitments are known by internal and external vacancy fillers, e.g. employment and recruitment agencies
- ask applicants if they have a disability, but try to include a short statement explaining why, e.g. “This information is needed so that all disabled applicants who meet the minimum criteria for this position are offered an interview.”

#### **Desirable Action – The employer could:**

- consider including a brief statement, explaining what the symbol means in the job advert, e.g. “All disabled applicants who meet the minimum criteria for the job will be invited to interview. Minimum criteria details are available from .....
- consider including details of the minimum criteria in the job advert itself

- place job adverts in the disability press to attract disabled applicants, i.e. Disability Now.
- where minimum criteria cannot be fully evidenced on the application form because of an applicant's disability then, wherever possible, the employer should invite the applicant to demonstrate their abilities at an interview
- monitor what happens to disabled applicants through internal and external recruitment process.

## **Commitment 2 – Consulting Employees with a disability**

To ensure there is a mechanism in place to discuss at any time – but at least once a year – with disabled employees, what you and they can do to make sure they can develop and use their abilities.

The aim of this commitment is to ensure that disabled employees are getting the same opportunities as others to develop and progress within their job.

### **Essential Action – the employer must:**

- be able to identify who their existing disabled employees are, in order to fulfil this commitment
- bring this commitment, and the action it requires, to the attention of all employees who have responsibility for managing staff
- ensure that there is a mechanism in place for employees to gain information on developments agreed between managers and their staff
- ensure that disabled employees aren't inadvertently left out of communication and development exercises.
- make adaptations to training materials/premises and telecommunications.

### **Desirable Action – the employer could:**

- Encourage a working environment which encourages disabled employees to discuss their development at any time
- Ensure there is a mechanism in place for a disabled employee to speak to an alternative member of staff, should there be a problem with their immediate supervisor
- Monitor views and actions taken as a result of this commitment and consider wisely
- Publicise this commitment widely, i.e. internal guidance/news letters
- The employer to have a system in place to identify and consider issues raised by individuals that are not within their control to resolve, e.g. premises, training access and telecommunications
- Use a staff attitude or similar survey, to monitor the outcomes of this commitment for disabled people.
- Display Access to Work materials
- Consider setting up an employee forum to discuss needs and issues and ensure that views are considered and if appropriate acted on.

### **Commitment 3 – Retaining People who Become Disabled**

To make every effort when employees become disabled to make sure they stay in employment.

The aim of this commitment is to make sure that employees know that if they become disabled they will have the employers support to enable them to continue in their current job, or an alternative one. Retaining an employee who has become disabled means keeping their valuable skills and experience and saves on the cost of recruiting a replacement.

#### **Essential Action – the employer must:**

- ensure there is a mechanism for them to consider all the options, should an employee become disabled, or, if an employee's existing disability becomes worse.
- ensure that this commitment is widely known amongst all employees and all managers/supervisors
- make managers aware of the Redeployment Scheme for School Based Staff policy and how to implement it, should a member of their staff develop a disability
- ensure that guidance on dealing with inefficiency cases, addresses the issue of people whose performance is affected as a result of them developing a disability. The commitment does not ask employers to apply different standards to disabled employees, only to consider options should a person's disability be the reason for difficulties in performance.

#### **Desirable Action – the employer could:**

- Consider how flexible their procedures are to accommodate this commitment, e.g. do you as the employer offer flexible working patterns, job sharing, home working.
- Consider developing procedures to monitor the progress of employees who have become disabled, or whose disability has worsened.
- Network to assist the disabled person in their job search, making sure that supervisors/managers know about support available from the Disability Employment Adviser at the Jobcentre, should one of their members of staff develop a disability, e.g. advice on job restructuring, adapting workstations, Work Preparation and financial help through Access to Work.
- In cases where it proves impossible to retain the person consider using the Redeployment Scheme for School Based Staff to assist the disabled person in their job search. An employer could consider giving a disabled employee time off to look for another job.

### **Commitment 4 – Developing Awareness**

To take action to ensure that all employees develop the appropriate level of disability awareness needed to make your commitments work.

The aim of this commitment is to provide the appropriate level of disability awareness to all staff, in order to improve the working environment.

**Essential Action – the employer must:**

- define what the appropriate levels of disability awareness are. An employer may choose to vary their awareness training mechanisms, according to the particular role of the employee, e.g. personnel specialists could have detailed disability equality training, whereas a trainer might need to check how to accommodate people with different disabilities in a learning environment. Line managers and colleagues would probably benefit from general understanding of how attitudes and environment can affect disabled people. Some guidance on disability etiquette when meeting a disabled person should be considered.
- ensure that they are able to identify new staff and people moving posts, to ensure that they receive the appropriate level of awareness training.

**Desirable Action – the employer could:**

- consider taking people on a Work Preparation trail, so that existing employees can gain experience of working with disabled colleague and handling sensitive issues. Contact your local Disability Employment Adviser at the local Jobcentre for further advice.
- set up mechanisms to evaluate the effectiveness of your awareness raising activities and other actions taken as results of the disability symbol commitments.
- include mechanisms in your recruitment handbooks

**Commitment 5 – Reviewing Progress and Keeping People Informed**

Each year, to review the five commitments and what has been achieved, to plan ways to improve on them.

The aim of this commitment is for the employer to monitor their own practices and achievements in meeting their symbol commitments and to identify areas for further progress or good practice to share with others. The commitment also helps employers to plan how to let people know initially that the company has become a symbol user and to keep them up to date with developments.

**Essential Action – the employer must:**

- ensure that it is clear who is responsible for collecting information to make the review effective. Make it clear what information needs to be collected
- ensure there is a mechanism in place to share the results of the review with all employees

**Desirable Action – the employer could:**

- consider conducting a disability audit to get a benchmark from where to start
- review the effectiveness of policies
- consider recording recruitment and career progression information about disabled people
- consider recording information about people who stay in a job as a result of the employer retention policy
- identify and decide what future action is needed to develop further as a symbol user.



## **Appendix 3 – Gender Reassignment**

### **Definition of Gender reassignment**

Gender reassignment is a medical treatment which enables transsexual people to alter their bodies to match their gender identity.

The Sex Discrimination (Gender Reassignment) Regulations 1999 (subsumed into the Equality Act 2010), prevent discrimination against transsexual people on the grounds of sex in pay and treatment in employment and vocational training.

### **Definition of Discrimination**

It is unlawful to discriminate against a person that intends to undergo gender reassignment, or is undergoing gender reassignment, or has undergone gender reassignment at some time in the past.

### **Exceptions**

In limited circumstances it may not be unlawful to discriminate if there is an Occupational Requirement.

### **Absence for Medical Treatment**

The Regulations do not specify a length of time that the employer should allow for a person undergoing medical and/or surgical treatment related to gender reassignment. However, an employer should not treat any less favourable a person absent while undergoing gender reassignment than he or she treats a person absent due to illness or some other cause, e.g. leave to care for a dependent.

If absence continues beyond the normal expectations for the process, a transsexual employee could be referred to Occupational Health under the Absence Management Policy.

### **Agreeing a Process for an Employee's Transition to a New Gender**

The Head Teacher and the employee will discuss the following at the earliest opportunity:

- whether the employee is to stay in their current post or be redeployed
- the expected timescale of the medical and surgical procedures and the time off required for medical treatment
- the expected point or phase of change of name, personal details and social gender
- who will inform line manager, colleagues and clients
- what amendments will be required to records and systems

- whether the employee is adequately covered by existing policy on issues such as confidentiality, harassment and insurance.
- agreeing a procedure for adhering to any dress code
- agreeing the point at which the individual will commence using single sex facilities, e.g. toilets

### **Gender Recognition Certificate**

The Gender Recognition Act 2004 allows transsexual people who have undergone gender reassignment to apply for gender recognition certificate

When a full gender recognition certificate has been issued, the person is legally considered to be of the acquired gender. There is no obligation on an individual to apply for a certificate.

There are special laws protecting the privacy of someone who has a gender recognition certificate. It is a criminal offence to disclose information about the gender history of someone with a gender recognition certificate without that person's consent.

The gender history of someone with a gender recognition certificate is not relevant in employment decisions, and the employee will be treated in accordance with his/her acquired gender for all employment benefits.

If a person is required to undergo a Criminal Records Bureau (CRB) check and complete a Disclosure Application as part of the recruitment process, they must disclose any previous names and/or gender to the CRB. To maintain confidentiality the applicant can contact the CRB via an established special application procedure, details of which are available on their website. Information relating to gender is released by the CRB only when necessary for the attention of those involved in the recruitment process.

Applicants should be aware that if they have convictions under their previous gender this would be evident from the conviction detail on the Disclosure Certificate.

## **Appendix 4 – Religion or Belief**

### **Definition of Religion or Belief**

Religion or belief is defined as “any religion, belief or similar philosophical belief.” The following factors are likely to be indicators of a religion or belief:

- collective worship
- clear benefit system
- profound belief affecting way of life, or world

Some of the main religions and beliefs likely to be covered are:

Baha'i, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Muslim, Parsi, Sikhism, Zoroastrians.

### **Employment Issues**

#### **Prayer**

Some religions require prayer several times a day. If an employee requests a place to pray, a Head Teacher may consider the use of appropriate meeting rooms/offices, if a dedicated prayer room is not a reasonable option.

If there is no suitable room that could be used and it is not practical to provide one there is no legal obligation to do so although every effort should be made to provide one.

#### **Time Off**

At present there are two religious holidays which are statutory and recognised by the School, the Christian festivals of Christmas and Easter, which fall outside of term time.

It is recommended that schools should accommodate, where possible, reasonable requests from employees for time off to observe other religious festivals. Head Teachers should use their discretion within the rules for granting leave during term time and refer to the Model Leave of Absence Policy.

#### **Extended Leave**

Certain religions may require extended leave for funerals at short notice. There may also be a need to travel overseas requiring extended leave for the attendance at family events such as weddings.

## **Appendix 5 – Sexual Orientation**

### **Definition of sexual orientation**

Within the Employment Equality (Sexual Orientation) Regulations, subsumed into the Equality Act 2010, sexual orientation is defined as:

- orientation towards persons of the same sex (lesbians and gay men)
- orientation towards persons of the opposite sex (heterosexual)
- orientation towards persons of the same sex and the opposite sex (bisexual)

### **Employment Issues**

Where social gatherings which extend to the partners of staff occur within the school, care should be taken with the wordings of invitations, posters, etc to ensure inclusion of those with same sex partners. Where opposite sex partners are invited, the exclusion of same sex partners is hurtful and may constitute discrimination.

“Outing” is when, against their wishes, a person’s sexual orientation is revealed by another person. “Outing” someone without their clear permission is inappropriate and a breach of that person’s privacy. Incidents where an employee is “outed” for malicious reasons and consequently suffer harassment by colleagues will be treated through the grievance and disciplinary procedures as appropriate.

Some religions do have strong views concerning sexual orientation but most do not advocate persecution of people because of their sexual orientation, and therefore this should not prevent a professional working relationship between colleagues. The over-riding emphasis of equality and diversity is that everyone has the right to be treated with dignity and respect in the workplace whatever their sex, race, colour, disability, age, religion or sexual orientation.

## **Appendix 6 – Dignity at Work**

### **Protected Characteristics**

The Equality Act 2010 describes those groups protected by equality legislation as “protected characteristics”, and are:

- Age
- Disability
- Race
- Religion or Belief
- Sex
- Sexual Orientation
- Gender Reassignment
- Marriage and Civil Partnerships
- Pregnancy and Maternity

### **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.

Harassment is when someone considers that they have been treated in a way that is detrimental to their dignity at work. Essentially it is treatment that somebody else finds unreasonable and unwelcome and which causes intimidation and offence.

Although it may involve overt abuse of power, bullying, coercion or violence, it can often appear in more subtle forms and can be unintentional.

Harassment can be a single act or numerous acts which are ongoing.

School employees will 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.

School employees are also protected from harassment because of perception and association.

### **Third Party Harassment**

The employer is potentially liable for harassment of its employees by people (third parties) who are not employees of the school, such as agencies working in the School, clients, parents or children.

Employers will be liable when harassment has occurred on at least two previous occasions; that they are aware that it has taken place, and have not taken reasonable steps to prevent it from happening again.

## **Discrimination**

### **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 (see perception discrimination below), or because they associate with someone who has a protected characteristic (see discrimination by association below).

### **Discrimination by association**

This is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

### **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.

### **Indirect discrimination**

Indirect discrimination can occur when a condition, rule, policy or even practice that applies to everyone, but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if it can be shown that the employer acted reasonably in managing the business, i.e. that it is “a proportionate means of achieving a legitimate aim”.

It can also be about someone else’s religion or sexual orientation other than the employee, e.g. an employee may be subject to harassment because his son is gay. This may be harassment on the grounds of sexual orientation, despite it not being the employees own sexuality that is the subject of the harassment.

Harassment can also occur where, for a reason which relates to a person’s disability, another person engages in unwanted conduct, e.g. an employee with a learning disability is called “stupid” and “slow” by a colleague at work. This may be harassment on the grounds of disability, whether or not the disabled employee was present when the comments were made, whether or not the disabled employee was present when the comments were made, because they were said with the intention of humiliating them.

## **Bullying**

Bullying is offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means which undermine, humiliate, denigrate or injure the individual or a group of employees. This kind of conduct is usually sustained.

Examples of bullying are:

- outing an employee in front of others
- sarcastic comments deliberately aimed at the individual
- ridiculing someone or deliberately setting them up to fail
- overbearing supervision or other misuse of power or position
- making threats about job security without foundation
- undermining a competent worker by overloading and constant criticism

### **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 2010; 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

Examples of victimisation are:

- ignoring someone or not offering them a post because they previously raised a complaint through any of the School's procedures
- blocking opportunities, e.g. training or progression because they have previously complained.

### **Implications**

Harassment, victimisation, bullying or discrimination can lead to illness, absence from work, an apparent lack of commitment, poor performance and resignation. The results include:

- poor morale
- employees resigning, including potential claims for unfair dismissal
- lower efficiency
- divided teams

### **Legislation**

The Dignity at Work Section of the Code of Conduct supplements the right of an employee to seek legal redress for harassment and/or discrimination through the relevant equality legislation as contained in the Equality Act 2010.

Under the Criminal Justice and Public Order Act 1994, it is an offence to intentionally cause a person harassment, alarm or distress. This is where someone;

- uses threatening, abusive or insulting words or behaviour, or disorderly behaviour

- displays any visible representation which is threatening, abusive or insulting

Under the Protection from Harassment Act 1997, it is an offence for someone to:

- behave in a way which they know, or ought to have known, causes another to fear the use of violence against them
- behave in a way which they know, or ought to have known, causes another harassment

Employees alleging harassment at work can complain to the police. Heads should also consider this where there is evidence to suggest criminal action.

Employers may be liable for what employees do during their employment, whether or not the employer knows of those acts. Employers can avoid a successful claim of unlawful discrimination only if they can show that they took reasonable steps to prevent the offence being committed.