

Equalities

Please read this section carefully. As a Governing Body you are responsible if a selection decision you have made is challenged under Equalities legislation.

Applicants – both successful and unsuccessful – may challenge the recruitment decision, and this may be taken to an employment tribunal.

You must comply with the following legislation and must keep a full written record of the entire recruitment process and all decisions made for **six** months after the interview date. This must be kept securely and then destroyed, in line with the data protection policy

NYCC supports the principle of equality of opportunity in employment and has a clearly stated policy for Equalities. Your school will have its own policy.

The aim of these policies is to ensure that all employees and all job applicants are protected from discrimination on the basis of age, gender, disability, gender reassignment, marital status, pregnancy, race, religion and sexual orientation. Your LA adviser, in conjunction with HR, will be able to provide further information on how to ensure your recruitment process is fair and transparent.

The Equality Act 2010

The Equality Act 2010 is a key piece of legislation which brings all current discrimination laws together.

As a Governing Body, you will not need to know the law in great detail but you will need to know how you can ensure your recruitment process complies.

Direct discrimination occurs where a person is treated less favourably on the grounds of:

- Gender
- Race – this includes ethnic or national origin, colour and nationality
- Age
- Religion
- Disability
- Sexual orientation
- Gender reassignment – the individual does not need to have undergone, be undergoing or plan to undergo any formal medical treatment, so a person who decides to dress and live as a member of the opposite sex without undergoing surgery is protected
- Pregnancy and maternity
- Marital status

It is also unlawful to discriminate against someone because of their association with a person from a particular group or because of a perception that you have about that person.

Indirect discrimination means the imposition of conditions which disadvantage members of a particular group.

Examples of Potential Discrimination

- × An advert specifies a 'headmaster' or 'headmistress' is required (Sex Discrimination)

- ✗ A job description or person specification states a requirement of at least x years of experience (e.g. minimum three years) (Age Discrimination)
- ✗ A selection panel wishes to limit accepted qualifications to those obtained in the UK or to modern qualifications such as GCSEs (Race or Age Discrimination)
- ✗ Application forms and supported documents are not made available in alternative formats (e.g. easy read) (Disability Discrimination)
- ✗ A candidate is not offered the post of headteacher as the Governing Body are worried parents will think the candidate is too young (Age Discrimination)
- ✗ A candidate is not offered the post because she is pregnant, on maternity leave or has / has had a pregnancy-related illness (Sex Discrimination)
- ✗ Rejecting applications from candidates requesting a job share or flexible working arrangements could be construed as discriminating against candidates with child care responsibilities; indirectly discriminating against women (Sex Discrimination)
- ✗ A candidate is not offered the post of headteacher as they have a disabled partner, and the Governing Body assumes that caring commitments outside of work may impact on their ability to do the job (Disability Discrimination by Association)
- ✗ A candidate is not offered the post of headteacher because the Governing Body makes assumptions about the candidate's sexual orientation (Sexual Orientation Discrimination)
- ✗ A candidate has informed the Governing Body they have limited mobility and require the assessment process to be held in accessible locations, but the Governing Body do not provide for this (Disability Discrimination)
- ✗ A shortlisting panel wishes to see the equal opportunities monitoring information or personal details provided by the candidates to help them make a shortlisting decision – this information is entirely irrelevant as any shortlisting decision should be based only on ability to do the job (Race, Age Discrimination)

Health Related Questions

Under the Equalities Act 2010, it is unlawful to request health and absence related information prior to the written conditional offer stage during the recruitment process. For this reason two separate references are requested;

1. Prior to interview, requesting information regarding employment history and safeguarding
2. After making a conditional offer of employment, requesting information regarding sickness absence
3. You may not ask a candidate to complete a health-related questionnaire prior to making them a conditional offer, or ask health related questions during the selection process.

Equal Opportunities Monitoring

It is the responsibility of the panel to ensure that data is collected but removed prior to shortlisting. At the end of the appointment process, the information contained in the equalities monitoring forms submitted by applicants should be entered into the NYCC Equalities Monitoring Database. Failure to follow procedures and maintain records may put schools at risk of being unable to defend decisions at Employment Tribunal should a claim be made by an applicant.

Disability

The Equality Act 2010 defines a person as having a disability 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. You are required to make any reasonable adjustments during the selection process to enable any candidates with a disability to adequately demonstrate their suitability for the role.

You also have a duty to consider the feasibility of making reasonable adjustments to the workplace, workstation or working environment in order to help employees who meet the protection of the equality act perform their job. Reasonable adjustments should also be made during the recruitment process. This might include ensuring disabled candidates are able to travel to the venue, access any specialist equipment and access all rooms. You should only discuss with the candidate their ability to do the job, not their disability. When an offer of appointment has been made, full

information should be sought about the nature of the disability and consideration should be given as to how this could be overcome, for instance by placing an individual with limited mobility in a ground floor office.

You do not have to employ people who are less able or not suitable for the post, but don't assume that people are less able, or not suitable, just because they have a disability. Your recruitment process should focus purely on their ability to do the role.

Genuine Occupational Requirement

In very few circumstances, an employer is allowed to discriminate if there is a 'Genuine Occupational Requirement' that the post holder has a particular religion or belief.

To apply a Genuine Occupational Requirement, an organisation must show that it is:

- a requirement of the job in order to keep to the ethos of the organisation; and
- proportionate to apply the requirement

Genuine Occupational Requirements must be identified before the post is advertised. According to the Act, Voluntary Aided (VA) and Voluntary Controlled (VC) schools with a religious character in law can apply some positive action on religious grounds in the appointment of teaching staff, particularly when appointing a headteacher. Further advice can be obtained from the Diocesan Adviser or LA Adviser.

Example for Voluntary Aided and Trust Schools with a religious character:

The governing body may give preference to any candidate whose religious opinions and worship are in accordance with the tenets of the religious denomination of the school.

A school could advertise for:-

- ✓ "a practising Catholic to build on the successes of the school"
- ✓ "an individual to play a major part in the development of the Religious Education curriculum"
- ✓ "a practising and communicant member of the Church of England with a strong commitment to nurturing pupils in the Christian faith"

Example for Voluntary Controlled Schools with a religious character:

A school could advertise for a headteacher who is committed to maintaining the Christian ethos of the school.

A school could advertise for:-

- ✓ "an individual to play a major part in the development of the Religious Education curriculum"
- ✓ "a headteacher with a strong commitment to nurturing pupils in the Christian faith"

Please note, VC schools may give preference to candidates who demonstrate 'ability and fitness to preserve and develop the religious character of the school' (School Standards and Framework Act, 1998, Section 10 (4)). VC schools may not give preference to practising Christians