

# **Park Road Primary School**

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## **PR007 EQUALITY POLICY**

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*'Unique Individuals Learning Together'*



Policy No: PR007-2  
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**POLICY**

Version	Date of change	Date of release	Changed by	Reason for change
PR007-2	September 2019	September 2019	NP	Update of policy and plan

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## **Equality Scheme**

### **Introduction**

This policy and plan sets out how Park Road Primary School will work to promote equality. It details how we comply with our specific duties under the Equality Act 2010 as well as outlining the school's approach to inclusion.

### **Values and Visions**

At Park Road, we are a 'harmonious community, where tolerance and respect permeate throughout'. (Ofsted 2012). We have a culture of tolerance, respect, inclusion and diversity in which all those connected to the school feel proud of their identity, are accepted and happy.

We respect diversity. We understand that treating people equally is not simply a matter of treating everybody the same. In order for our school to be truly inclusive, we know we need to make the necessary steps to enable every young person is given the equality of opportunity to develop socially, to learn and to enjoy community life. This means we do our best to make reasonable adjustments for disability, recognise and celebrate cultural differences and understand the different needs and experiences of all children.

### **Overarching Equality Statement**

- We welcome our duties under the Equality Act 2010 to eliminate discrimination, advance equality of opportunity and foster good relations in relation to age (as appropriate), disability, ethnicity, gender (including issues of transgender, and of maternity and pregnancy), religion and belief and sexual identity.
- We welcome our duty under the Education and Inspections Act 2006 to promote community cohesion.
- We pledge to respect the equal human rights of all our pupils and to educate them about equality, as expressed in the UN Convention on the Rights of the Child, the UN Convention on the Rights of People with Disabilities, and the Human Rights Act 1998.
- We will also respect the equal rights of our staff and other members of the school community.
- We will not tolerate bullying, harassment or hate of any kind, including towards anyone sharing a protected characteristic, such as LGBT

### **Guiding principles**

In fulfilling the legal obligations cited above, and to realise our vision and values as outlined above, we are guided by six core principles:

**Principle 1:** All learners are of equal value.

We see all learners and potential learners, and their parents and carers, as of equal value, whether or not they have a protected characteristic.

**Principle 2:** We recognise and respect difference.

**Principle 3:** We foster positive attitudes and relationships, and a shared sense of community and belonging and aim to consult and involve the whole school community.

**Principle 4:** We observe good equalities practice in staff recruitment, retention and development.

**Principle 5:** We aim to reduce and remove inequalities and barriers that may already exist.

**Principle 6:** We show understanding, compassion and care for all.

**Our policies, procedures and activities must not discriminate, but nevertheless do take account of differences**

## **Our responsibility**

All schools have a legal duty and a responsibility to:

1. Eliminate discrimination, harassment, victimisation and other conduct that is prohibited by the Equality Act 2010.
2. Advance equality of opportunity between people who share a protected characteristic and people who do not share it.
3. Foster good relations across all protected characteristics – between people who share a protected characteristic and people who do not share it.

## **Protected Characteristics**

We adhere to the legal definitions of these characteristics as set out by the Quality and Human Rights Commission (EHRC) code of practice.

- Disability
- Gender identity
- Pregnancy and Maternity (staff)
- Race
- Religion or Belief
- Gender
- Sexual Orientation
- Age (staff)
- Marriage (staff)

## **Monitoring**

Park Road Primary School is committed to the belief that every person matters. In order to ensure that we meet individual needs, promote equality, embrace diversity and support school self evaluation our school will collect, analyse and use data in relation to achievement, broken down as appropriate according to disabilities and special educational needs; ethnicity, culture, language, religious affiliation, national origin and national status; and gender.

The achievement of children will be monitored by ethnicity, gender, age and disability and we use this data to support students, raise standards and ensure inclusive teaching. We use this information to inform our curriculum and ensure this is reflective of our diverse community, to identify any gaps and to address this including providing targeted support, where appropriated, taking account of the achievement of all pupils when planning for future learning and setting challenging targets, encourage classroom and staffroom discussion of equality issues which reflect on stereotypes, include teaching approaches which are inclusive and reflective of our children and their families and seek to involve the community around the school in celebration and awareness raising of cultural issues

We collect, study and use quantitative and qualitative data relating to the implementation of the policy and plan, and make adjustments as appropriate.

The school community will collect this information through:

- admission procedures
- personnel recruitment procedures
- attainment and progress data
- ethos indicator questionnaires
- exclusion data
- attendance data
- complaints of bullying and harassment
- participation in school councils
- parent/carer involvement
- participation in extra curricular activities
- through other relevant agencies

Our monitoring activities enable us to identify any differences in pupils performance . This allows us to take appropriate action to meet the needs of specific groups and to inform our School improvement plan in order to make any necessary improvements.

### **Impact Assessment**

To reflect the school's intention to promote equality, eliminate discrimination, prejudice-related bullying and harassment, in all aspects of school life and the community:

All school policies, plans and procedures will be reviewed as part of a three year programme and amended if necessary with regard to the general duty under the Equality Act 2010.

We have the following existing policies which have been used to inform our Equality Policy. These include:

- School Improvement Plan – annual plan
- SEND policy
- Anti bullying policy
- Behaviour policy
- Safeguarding policy
- Swim policy
- Pupil premium policy
- PSHCE policy
- RE policy
- SRE policy
- Educational visits policy
- PE policy
- Recruitment policy
- Uniform policy

Impact assessments will be conducted on all policies as reviews take place.

### **How information gathered is used**

Stakeholders are regularly consulted and account is taken of relevant data and information in order to determine equality objectives which will inform:

- School self evaluation and relevant documentation.
- Opportunities and outcomes for targeted groups of pupils.

- The school community through the School Improvement Plan.
- Identification of continuous professional development opportunities.

## **Staff development**

- Professional Development opportunities will be identified in the annual CPD plan
- Staff training related to the specific identified needs of the current pupils
- Rolling programme of generic training (e.g. PSHE&C, Circle Time, etc)
- Provision mapping of staff
- Governor Training

## **Who is responsible?**

*The governors are responsible for:*

- making sure the school complies with the relevant equality legislation.
- making sure the school Equality Scheme and its procedures are implemented and followed by monitoring and evaluating its effectiveness.
- appointing a governor with particular responsibility for working with the school, parents and the community on the effectiveness of school's equality scheme and promotion of equality.

*The head teacher is responsible for:*

- making sure the school Equality Scheme and its procedures are implemented and followed
- making sure the equality objectives are readily available and that the governors, staff, pupils, and their parents and carers know about them
- producing information for staff and governors about the plans and how they are working
- making sure all staff know their responsibilities and receive training and support in carrying these out
- taking appropriate action in cases of harassment and discrimination, including racist bullying, homophobic bullying and bullying related to gender or disability or any of the other protected characteristics

*All staff are responsible for:*

- dealing with racist, homophobic and any other prejudice-related incidents
- being able to recognise and tackle bias and stereotyping
- promoting equal opportunities and good relations between people from different groups
- avoiding discrimination against anyone for reasons of ethnicity, disability or gender, (including transgender issues), religion or belief and sexual identity
- keeping up to date with equality legislation
- supporting the promotion of equality of opportunity and good relations through promoting an inclusive and collaborative ethos

*Pupils are responsible for:*

- following agreed rules and guidelines set down in the Equality Scheme
- treating themselves and others with respect, to feel valued and to speak out if they witness or are subject to any inappropriate language or behaviour

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*Parents/carers are responsible for:*

- supporting and encouraging their child to follow our vision and values and with the above responsibilities
- adhering to our commitment to equality

## **Annual reporting**

The Action Plan will be reviewed annually by the Governing Body and noted as appropriate in

- The Head teacher's Report to Governors
- The School Self Evaluation Documentation
- The School Improvement Plans
- Newsletters, website, publications to parents
- Within the School Prospectus

## **Action Plan to Address The General Duty to Promote Equality 2019-22**

### **Year One- 2019-20**

#### **Objective 1 :**

- Raise awareness for our children of diversity through:
  - ensuring opportunities for our pupils and community to meet, interact with and engage with people from a diverse range of backgrounds are established
  - planning learning opportunities that teach about diversity including family setups including those that are gay, bisexual or transgender
  - ensuring children have an understanding of the use of derogatory language that is related to sexual orientation. (General Duty 1)

#### **Objective 2 :**

<b>Objective/Aim</b>	<b>Action</b>	<b>By Whom</b>	<b>Start/End</b>	<b>Monitoring/Evaluation</b>	<b>Impact/outcomes</b>
1.1 Undertake Stonewall awards to build upon equality awareness and provision and develop further	Achieve Stonewall Bronze award	NP/AC	Autumn 2019		All members of the community accept diversity, similarities and differences as part of their everyday experience
	Write action plan and implement to work towards consecutive awards in years 2 and 3 – i.e	AC	Spring 2020		School remains a truly inclusive school that champions the respect and rights of all groups of individuals, including those who share protected characteristics and including LGBT . As a result, pupils will understand, recognise and respect all groups of pupils with equal respect, tolerance and celebration
	Achieve Silver Award		Spring 2021		
	Achieve Gold Award		Spring 2022		
		NP/AC			



<p>1.2 Develop links with a range of diverse groups, communities and people Engage these people to support opportunities across all aspects of the school community and to further develop pupils' understanding of diversity and respect</p>	<p>Research links with other schools that reflect different contexts/communities i.e. inner city Manchester, London-  Establish links with a school in France-through JLN  Develop opportunities for pupils to collaborate i.e. on joint projects, video calls, emails and visits</p>	<p>NP/AC</p>	<p>By Spring 2020  By Summer 2020 Summer 2020 – Autumn 2020</p>		<p>To ensure a planned schedule of events is actioned each year using the diversity annual calendar to highlight opportunities</p>
<p>1.3 Further develop opportunities and range of supporting materials across foundation subjects that reflect diversity and build in opportunities to use as resources during planned curriculum activity i.e. guided reading and explicitly i.e. in</p>	<p>Conduct audit of materials within school ie. books, literature, other resources and materials(ie.historical/geographical artifacts, science resources) that reflect diversity  Identify gaps in resources and source materials, books and resources  Commission support from Madeleine Lindlley  Implement a new reading area in school that is more central and readily accessible than school's current library space, including areas to display a range of diverse books and plan displays linked</p>	<p>AC/NP/SA    NP/SA</p>	<p>Autumn 2019</p>	<p>Audit Drop ins/learning walks</p>	<p>Opportunities for raising awareness of diversity and equality thread through all learning opportunities across school and mapped out within the long term plan for each year group across curriculum subjects– as a result, pupils at PR understand, accept, respect and celebrate all forms of diversity and equality</p>

<p>displays, reading corners, as home readers etc</p>	<p>to the whole school half term learning theme that promote diversity of a range of groups including those with protected characteristics, SEN, disabled etc</p> <p>Develop Reading corners in classrooms and monitor usage of books</p> <p>English lead to reivew LTPs and add books to use when teaching units that reflect diversity</p> <p>Build in guided reading books across units of work and curriculum subjects that reflect diversity</p>	<p>Staff/SA</p>	<p>Ongoing</p>		
<p>1.4 Ensure planned calendar of events to celebrate and recognise diversity is built into learning opporunities and the curriculum</p>	<p>Develop a plan that promotes a range of opportunities to reflect, celebrate and raise awareness of a range of diverse groups</p> <p>Plan curriculum work in all classes that is linked to the above opportunities</p> <p>Plan assemblies inviting in people from diverse backgrounds and groups</p> <p>Invite in visitors to school connected to events on the annual calendar to further promote awareness and understanding</p>	<p>AC</p> <p>NP/AC-Staff</p> <p>NP/AC staff</p> <p>As above</p>	<p>Autumn 2019</p> <p>Ongoing across the year</p> <p>Review Summer 2020</p>		

## **EQUALITY ACT 2010 – GUIDANCE FOR SCHOOLS**

### **Introduction**

The Equality Act, which became law in October 2010, brings together nine separate pieces of legislation into one single Act, simplifying the law and strengthening it in important ways to help tackle discrimination and inequality.

The Act has streamlined all general anti-discrimination law for private, public and voluntary sector employment and services.

### **Definitions**

Discrimination means treating someone less (or more) favourably than a “comparator”. It can be direct, indirect or “arising from disability”.

Harassment (which is one form of discrimination) means violating someone's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Victimisation means discrimination because of a previous complaint.

### **Types of discrimination**

Previous duties only covered race, sex, disability. The main change is the addition of religion or belief and sexual orientation, pregnancy and maternity, gender reassignment and age.

Under the Equality Act 2010 the full list of “protected characteristics” is:

- race;
- sex;
- disability;
- age;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- religion or belief;

- sexual orientation.

It should be noted that the exceptions to the discrimination provisions for schools that existed under previous legislation – such as the content of the curriculum, collective worship and admissions to single sex and schools of a religious character, are all replicated in the new Act.

From April 2011 the Act will also introduce a single Equality Duty (public sector only) which will apply to schools. In respect of all the protected characteristics except age and marriage / civil partnership, this new public sector Equality Duty will require us to have due regard to the need to:

- eliminate unlawful discrimination, harassment, and victimisation (see above);
- advance equality of opportunity by;
  - removing or minimising disadvantages,
  - taking steps to meet people's needs;
  - encouraging participation in any activity in which participation by such people is disproportionately low.
- foster good relations by;  
tackling prejudice promoting understanding.

Schools will be expected to gather and analyse equality information relating to all the protected characteristics, where relevant and proportionate. It is recommended that this includes consulting and involving people from protected groups: pupils, parents, staff, governors, neighbours and trade unions. Ideally these people should be actively and meaningfully involved and not just consulted after the event. Professional publications and national websites provide a good starting point for informing yourself can we reference to somewhere?

This document is designed to inform Head teachers and governing bodies of aspects of the new Equality Act relating to Human Resources. Further information relating to other areas which the Equality Act cover, can be found using the link below:

<http://www.equalityhumanrights.com/advice-and-guidance/equality-act-guidance-for-education-providers-schools/>

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## **Key points to the changes of the Protected Characteristics**

### **Age (no change)**

The Act protects people of all ages. However, different treatment because of age is not unlawful direct or indirect discrimination if you can justify it, i.e. if you can demonstrate that it is a proportionate means of meeting a legitimate aim. Age is the only protected characteristic that allows employers to justify direct discrimination.

The Act continues to allow employers to have a default retirement age of 65 until April 2011. After this.....could we add something brief here?.....

### **Disability (new definition and changes)**

The Act has made it easier for a person to show that they are disabled and 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.

As before, the Act puts a duty on you as an employer to make reasonable adjustments for your staff to help them overcome disadvantage resulting from an impairment (e.g. by providing assistive technologies to help visually impaired staff use computers effectively).

The Act includes a new protection from discrimination arising from disability. This states that it is discrimination to treat a disabled person unfavourably because of something connected with their disability (e.g. a tendency to make spelling mistakes arising from dyslexia). This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know, that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is a proportionate means of achieving a legitimate aim.

Additionally, indirect discrimination now covers disabled people. This means that a job applicant or employee could claim that a particular rule or requirement you have in place disadvantages people with the same disability. Unless you could justify this, it would be unlawful.

**The Act also includes a new provision which makes it unlawful, except in certain circumstances, for employers to ask about a candidate's health before offering them work. This may impact on School procedures on pre-employment references.**

### **Gender reassignment (new definition)**

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 a woman who decides to live as a man but does not undergo any medical procedures would be covered.

It is discrimination to treat transsexual people less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would be treated if they were absent because they were ill or injured.

### **Marriage and civil partnership (no change)**

The Act protects employees who are married or in a civil partnership against discrimination. Single people are not protected.

### **Pregnancy and maternity (no change)**

A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and any statutory maternity leave to which she is entitled. During this period, pregnancy and maternity discrimination cannot be treated as sex discrimination.

You must not take into account an employee's period of absence due to pregnancy-related illness when making a decision about her employment.

Could we add something in around redundancy and maternity and rights to a suitable alternative post where there is one, over and above other employees?

### **Race (no change)**

For the purposes of the Act 'race' includes colour, nationality and ethnic or national origins.

### **Religion or belief (no change)**

In the Equality Act, religion includes any religion. It also includes a lack of religion, in other words employees or jobseekers are protected if they do not follow a certain religion or have no religion at all. Additionally, a religion must have a clear structure and belief system. Belief means any religious or philosophical belief or a lack of such belief. To be protected, a belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour. Denominations or sects within a religion can be considered a protected religion or religious belief. Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief.

### **Sex (no change)**

Both men and women are protected under the Act.

### **Sexual orientation (no change)**

The Act protects bisexual, gay, heterosexual and lesbian people.



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## **Appendix 1 - Worked examples of discrimination**

### **Direct discrimination**

Paul, a senior manager, turns down Angela's application for promotion to a supervisor position. Angela, who is a lesbian, learns that Paul did this because he believes the team that she applied to manage are homophobic. Paul thought that Angela's sexual orientation would prevent her from gaining the team's respect and managing them effectively. This is direct sexual orientation discrimination against Angela.

### **Discrimination by association**

June works as a project manager and is looking forward to a promised promotion. However, after she tells her boss that her mother, who lives at home, has had a stroke, the promotion is withdrawn. This may be discrimination against June because of her association with a disabled person.

### **Perception discrimination**

Jim is 45 but looks much younger. Many people assume that he is in his mid 20s. He is not allowed to represent his company at an international meeting because the Managing Director thinks that he is too young. Jim has been discriminated against on the perception of a protected characteristic.

### **Indirect discrimination**

A small finance company needs its staff to work late on a Friday afternoon to analyse stock prices in the American finance market. The figures arrive late on Friday because of the global time differences. During the winter some staff would like to be released early on Friday afternoon in order to be home before sunset – a requirement of their religion. They propose to make the time up later during the remainder of the week.

The company is not able to agree to this request because the American figures are necessary to the business, they need to be worked on immediately and the company is too small to have anyone else able to do the work.

The requirement to work on Friday afternoon is not unlawful indirect discrimination as it meets a legitimate business aim and there is no alternative means to available.

## **Harassment**

Paul is disabled and is claiming harassment against his line manager after she frequently teased and humiliated him about his disability. Richard shares an office with Paul and he too is claiming harassment, even though he is not disabled, as the manager's behaviour has also created an offensive environment for him.

## **Third party harassment**

Chris manages a Council Benefits Office. One of his staff, Frank, is gay. Frank mentions to Chris that he is feeling unhappy after a claimant made homophobic remarks in his hearing. Chris is concerned and monitors the situation. Within a few days the claimant makes further offensive remarks. Chris reacts by having a word with the claimant, pointing out that this behaviour is unacceptable. He considers following it up with a letter to him pointing out that he will ban him if this happens again. Chris keeps Frank in the picture with the actions he is taking and believes he is taking reasonable steps to protect Frank from third party harassment.

## **Victimisation**

Anne makes a formal complaint against her manager because she feels that she has been discriminated against because of marriage. Although the complaint is resolved through the organisation's grievance procedures, Anne is subsequently ostracised by her colleagues, including her manager. She could claim victimisation.

## **Pregnancy and maternity**

Lydia is pregnant and works at a call centre. The manager knows Lydia is pregnant but still disciplines her for taking too many toilet breaks as the manager would for any other member of staff. This is discrimination because of pregnancy and maternity as this characteristic doesn't require the normal comparison of treatment with other employees.

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## **Appendix 2 – Frequently Asked Questions**

Please click on one of the links below to take you to the answer:

- [1. Which parts of the Act came into force on 1 October 2010?](#)
- [2. What about the other parts of the Act, when are they expected to come into force?](#)
- [3. What about events which occurred before 1 October 2010, where the employee raises a complaint of discrimination after that date?](#)
- [4. Does the Act expand the potential grounds of discrimination?](#)
- [5. After 1 October 2010, are authorities able to routinely ask questions about an applicant's health before a job offer is made?](#)
- [6. If an authority wants to ask a question about health for one of the permitted specified reasons, how should they do that?](#)
- [7. Does the restriction on asking questions about health include asking about the attendance record?](#)
- [8. Can an employer ask questions about health later in the recruitment process when or after the offer has been made?](#)
- [9. What if the candidate voluntarily offers up information about their health before an offer is made? Can the employer ask further questions about the candidate's health in these circumstances?](#)
- [10. If an employer asks a question for a permitted reason before an offer is made and health issues are disclosed, can the employer follow-up with questions on the issues disclosed or should they wait until after any job offer is made before asking any questions about health?](#)
- [11. What about teachers? Does the statutory fitness requirement for teachers amount to an intrinsic part of their role, meaning questions can be asked about health before a job offer is made?](#)
- [12. Do I need to check that I have policies and procedures in place to deal with the extension of third party harassment?](#)
- [13. Does the Act make any substantial changes to equal pay law?](#)
- [14. After the positive action in recruitment and promotion provision is introduced in April 2011, will local authority employers have to use it?](#)

### **1. Which parts of the Act came into force on 1 October 2010?**

Most of the Act came into force on 1 October 2010. This includes the basic framework providing protection from direct and indirect discrimination, harassment and victimisation, based on one of the protected characteristics, such as disability or religion or belief. Much of the basic framework is about harmonisation. Therefore, the Act should not result in any substantial changes for local authority employers in the way they operate their equality policies and in their responsibilities to their workforce.

However, the following provisions which came into force on 1 October do change the equality law framework:

The restrictions on employers asking job applicants questions about health at section 60.

The extension of third-party harassment to all of the protected characteristics, apart from pregnancy and maternity and marriage and civil partnership at section 40.

Changes to disability discrimination, including its extension to indirect discrimination at section 19 and changes to disability-related discrimination at section 15.

The change to the definition of gender reassignment, at section 7 - the removal of the requirement for medical supervision.

## **2. What about the other parts of the Act, when are they expected to come into force?**

The Government's intention is that the new public sector equality duty will come into force in April 2011. The new duty builds on the existing duties for race, disability and gender, by creating a new single equality duty covering age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation. The positive action in recruitment provisions will also come into force in April 2011.

## **3. What about events which occurred before 1 October 2010, where the employee raises a complaint of discrimination after that date?**

Acts or omissions giving rise to discrimination issues which happened wholly before 1 October 2010, or where relevant 1 April 2011, will be assessed by reference to the relevant legislation in place at the time. For example a complaint of race discrimination based on an act in September 2010, but not raised until October 2010, will be dealt with under the Race Relations Act 1976. However, if the act continues after 1 October 2010, it will be covered by the Equality Act 2010.

## **4. Does the Act expand the potential grounds of discrimination?**

No. Although the Act is designed to strengthen protection against discrimination, it has not increased the number of characteristics that qualify for protection under current discrimination legislation. They remain as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

## **5. After 1 October 2010, are authorities able to routinely ask questions about an applicant's health before a job offer is made?**

No, section 60 of the Act prevents employers from asking applicants about their health before offering them work or including them in a pool of successful candidates to be offered work when it becomes available, except for some specified reasons. These reasons are to:

find out whether an applicant is able to participate in an assessment to test their suitability for the role

establish whether there is a duty to make reasonable adjustments to enable an applicant to take part in the recruitment process

establish whether the applicant will be able to carry out a function that is intrinsic to the work concerned once reasonable adjustments are in place

monitor the diversity of applicant

take positive action in supporting employment for disabled people (for example under the 'two ticks' scheme), or

establish that a person has a disability where this is an occupational requirement.

This will mean that employers will not be able to make general enquiries about previous sickness absence until a job offer is made.

## **6. If an authority wants to ask a question about health for one of the permitted specified reasons, how should they do that?**

Application packs should be revised to ensure that no more information than is necessary for the permitted reason is obtained. For example, potential applicants should be provided with full information on the assessment process to be used and asked if, for reasons concerned with their health or a disability, they require an adjustment to the assessment process to be made. Where, for example, an intrinsic part of the job requires a significant amount of manual handling it would be legitimate for the employer to ask applicants about their health in relation to this particular aspect of the job. However, general checks on potential levels of attendance should not be carried out until after the successful applicant has been offered the position, on a conditional or unconditional basis.

If asking applicants about their health or disability for monitoring the diversity of applicants, it is advisable to ask for this information on a separate form to the application form.

**7. Does the restriction on asking questions about health include asking about the attendance record?**

Yes, in practice it does, as asking about attendance would in almost all cases be interpreted as asking questions about health. Therefore employers should not ask questions about the attendance record on application forms, or elsewhere, before the offer has been made.

**8. Can an employer ask questions about health later in the recruitment process when or after the offer has been made?**

Yes. The Act provides that the restriction on asking questions about health applies before a conditional or unconditional offer is made. This indicates that an offer can be made on condition that the potential employee has a satisfactory medical assessment, provided the employer does not discriminate against the applicant once medical information is revealed and makes all the adjustments that are reasonable in the circumstances to accommodate any disability.

**9. What if the candidate voluntarily offers up information about their health before an offer is made? Can the employer ask further questions about the candidate's health in these circumstances?**

If the candidate voluntarily offers up information about their health, for example at an interview, the employer can only ask further questions if they are asked for one of the specified reasons. For example, if the candidate offered up some information their health that relates to an intrinsic part of the job, the employer could ask the candidate about a potential reasonable adjustment that would enable the candidate to perform that part of the role. However, the general restrictions in the Act remain, so the employer must not ask questions that are irrelevant to establishing whether the candidate could do an intrinsic part of the role, such as general questions about attendance.

The EHRC Code of Practice to Employment gives the example of a candidate applying for a research role indicating at interview that he would need to use voice activated computer software. The employer could then ask about the type of adjustment that might be necessary to enable the candidate to prepare reports and briefings, which is an intrinsic part of the role. The employer could not ask 'why can't you use a keyboard? What's wrong with you?' as those questions are not about the candidate's ability to perform an intrinsic part of the job.

**10. If an employer asks a question for a permitted reason before an offer is made and health issues are disclosed, can the employer follow-up with questions on the issues disclosed or should they wait until after any job offer is made before asking any questions about health?**

As with question 9 above, the employer should only ask further questions if they are asked for one of the specified reasons, for example to establish whether an employee can do an intrinsic part of the role with reasonable adjustments in place.

From a practical point of view though, even where it may be legitimate to ask further questions before an offer is made, in some cases it may be more appropriate to wait and investigate further the candidate's ability to do the job once the job offer has been made (which can be conditional subject to the organisation investigating what adjustments can reasonably be made and satisfactory medical screening).

**11. What about teachers? Does the statutory fitness requirement for teachers amount to an intrinsic part of their role, meaning questions can be asked about health before a job offer is made?**

We consider not. Regulation 6 of the Education (Health Standards) (England) Regulations 2003 (the regulations) states that a person must not carry out a 'relevant activity' (subject to the duty to make reasonable adjustments) unless they have the fitness to carry out that activity. Relevant activities are defined in the regulations and are very general in nature, including activities such as 'delivering lessons to children' and 'an activity which is ancillary to the provision of education'. Because of the general nature of the statutory requirement it will in most cases be difficult to say that it amounts to an intrinsic part of the role, about which questions can be asked about health before a job offer is made.

We know that where safeguarding practices apply in schools, references are taken up prior to interview and schools normally ask about attendance and health issues at the same time. However this is for administrative ease rather than as a safeguarding requirement and, therefore, recruitment practices will have to be adjusted so that questions about health are not routinely asked until the offer of work has been made.

### **12. Do I need to check that I have policies and procedures in place to deal with the extension of third party harassment?**

Yes. The Act extends third party harassment to cover all of the protected characteristics, except for pregnancy and maternity and marriage and civil partnership. Such harassment occurs where a third party harasses an employee in the course of their employment three or more times and the employer is aware that the employee has been harassed before but fails to take reasonably practicable steps to prevent it. It does not matter whether the third party is the same or a different person on each occasion.

Therefore, it is recommended that employers review their policies to check whether any amendments need to be made to cover the extension to the other protected characteristics, and ensure the revised procedures are communicated to their employees. This is important so that employees are made aware of how they can report any third-party harassment when it first occurs, and any reasonably practicable steps can be put in place to try and stop the harassment being repeated.

### **13. Does the Act make any substantial changes to equal pay law?**

No. The equal pay provisions in the Act on the whole mirror the arrangements in the Equal Pay Act 1970. In particular, equal pay claims continue to be based on a contractual model. Therefore, individuals are still able to bring claims for up to six-years' back pay.

### **14. After the positive action in recruitment and promotion provision is introduced in April 2011, will local authority employers have to use it?**

No. The positive action provision is a voluntary power, enabling employers to use positive action on an individual case-by-case basis in recruitment and promotion situations. It applies where two candidates are both as qualified for the role, and works by making it lawful for the employer in such cases to select the candidate from the disadvantaged or under-represented group. It does not mean that employers will have to use it, although it is anticipated that many local authority employers will want to consider its use to address under-representation or disadvantage.

### **15. Does the new act have affect on obtaining employment references for new employees?**

Yes. The questions asked of a candidate's current employer can not relate to specific queries regarding health, for example it is forbidden to ask how many days off sick a candidate has had over a certain time period, as this cannot form part of your decision making criteria when making a job offer.



### **Appendix 3 - Events, festivals and celebrations**

See separate document PR007 - equality policy updated 2016 appendix 3 SMSC calendar