



NAME OF POLICY

THIS POLICY WAS APPROVED:	MONTH YEAR
POLICY VERSION:	VERSION 1.0
THIS POLICY WILL BE REVIEWED:	MAY 2023
MEMBER OF STAFF WITH RESPONSIBILITY FOR REVIEW:	MIKE FISH
THIS POLICY WAS CONSULTED WITH:	LOCAL GOVERNING BOARD
THIS POLICY WAS DISTRIBUTED TO:	MARLEIGH PRIMARY ACADEMY STAFF

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1 Policy Statement

- 1.1 See also *Recruitment and Selection Policy* and *Equality & Diversity Policy*.
- 1.2 The purpose of this policy is to ensure that our recruitment policies are consistent with the principles of anti-discrimination and equal opportunities legislation. The main pieces of legislation being the Equality Act 2010, Equality Act 2006, the Employment Rights Act 1996 and the Human Rights Act 1998.
- 1.3 The most modern piece of anti-discrimination legislation, the Equality Act 2010 (EqA 2010), codifies the existing laws on unfair treatment and outlaws discrimination in relation to nine "protected characteristics".
 1. Age;
 2. Disability;
 3. Gender reassignment;
 4. Marriage and civil partnership;
 5. Pregnancy and maternity;
 6. Race (including ethnicity and national origin);
 7. Religion or belief;
 8. Sex; and
 9. Sexual orientation.
- 1.4 The EqA 2010 makes it unlawful for any employer or potential employer to discriminate against any work seeker (or employee) on the basis of the above protected characteristics.
- 1.5 All work seekers must be able to have confidence that Over Primary School operates in a lawful and transparent manner. Over Primary School seeks to demonstrate that the principles of fairness and equality of opportunity are at the heart of recruitment policy and procedure.

2 Circumstances in which discrimination may occur

- 2.1 Discrimination in a recruitment context could potentially occur in a number of ways:
 - 2.1.1 In the arrangements that an employer (or potential employer) puts in place when deciding on whom to offer employment. This could be the person specifications / job description used, the criteria adopted by the potential employer for the type of applicant they will allow to apply or even the format / content of the interview process. Where the 'arrangements' are geared towards excluding a certain protected characteristic or subjecting individuals in a group to a detriment then this may fall foul of anti-discrimination legislation - for instance, setting a maximum age limit on those who may apply for a role.
 - 2.1.2 In the terms on which the potential employer makes an offer of employment. This could be by offering different terms to different applicants based solely (or

predominantly) on a protected characteristic – for instance, by paying men more than women.

- 2.1.3 By not offering a certain person, or category of person, employment or engagement at all.

3 Types of Discrimination

- 3.1 The specific types of discrimination in employment / engagement that must be avoided are:

- 3.1.1 Direct Discrimination – this is defined as treating an individual less favourably than you would treat others because of a protected characteristic. An example of this would be refusing to employ an individual because they are disabled.
- 3.1.2 Indirect Discrimination - acts, decisions or policies which are not intended to treat anyone less favourably, but which, in practice, have the effect of disadvantaging a group of people with a particular protected characteristic. Where such an action disadvantages an individual with that characteristic, it will amount to indirect discrimination unless it can be objectively justified. An example of this would be a 'nationality' requirement to work in a restaurant. For instance, a Spanish restaurant may wish to only hire native Spanish employees in order to keep the ambiance of their restaurant. This would disadvantage any applicant who was not natively Spanish. However, this could be objectively justified as a genuine occupational requirement.
- 3.1.3 Harassment – this is defined as unwanted conduct related to a protected characteristic which has the purpose or effect of either violating the individual's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for the individual. An example of this would be sexualised comments made to an applicant during an interview.
- 3.1.4 Victimization – specifically in a discrimination context, victimisation, would be the unfavourable treatment of an individual where they have done a 'protected act'. A protected act in this context would be an individual complaining that they have been discriminated against or assisting someone else in complaining that they have been discriminated against. An example would be where an employee is offered a role, but complains of harassment at the interview. If this employee was dismissed because they had raised this complaint then the dismissal would be victimisation.
- 3.1.5 Instructing, causing, inducing or knowingly helping unlawful acts – the EqA 2010 makes it unlawful to instruct, cause, induce or help someone to discriminate

against, harass or victimise another person, or to attempt to do so. An example of this would be where an employer instructs a recruitment agent not to allow applications from people of a certain race. The liability for this act would rest with the employer as they had instructed, caused or induced an unlawful act. In this scenario, where the agent then knowingly helps that unlawful act take place the agent would also be at fault.

4 Positive action to avoid Discrimination

- 4.1 *Personnel Governors who are likely to be involved in recruitment processes will seek to undertake training in avoiding 'unconscious bias'.*
- 4.2 *When advertising jobs, care will be taken to avoid language that is subtly biased, particularly by gender. Tools such as <https://gender-decoder.katmatfield.com> will be used to check wording.*
- 4.3 *Application forms initially only ask for a first name initial, in order to hide applicants' gender. Further personal information is removed by admin staff before forms are passed on to recruitment panel members.*
- 4.4 *When shortlisting, recruitment panels will ensure those from minority groups are only rejected if there are very clear and fair reasons for doing so. These reasons will be noted. Where possible, panels will aim for at least one person from a minority group to be included.*
- 4.5 *The governing body will seek to ensure that the make-up of recruitment panels is as diverse as possible.*

5 Occupational Requirements

- 5.1 As has been set out above, discrimination in employment is generally prohibited. However, in certain circumstances, an employer may have a defence to an act of indirect discrimination (or in specific instances, direct discrimination) that is otherwise unlawful if they are able to show that their requirements were genuine and related to a necessary part of the job role. Furthermore, any potentially discriminatory requirements must be a proportionate means of achieving a legitimate aim.
- 5.2 Specific examples of this are below:
 - 5.2.1 'Visa Requirements' – the requirements for a valid visa in each jurisdiction will differ. There is a potential here that the visa requirement for a certain jurisdiction will limit applications from individuals over a certain age. This would be potentially discriminatory, but would be an occupational requirement for a role in a foreign jurisdiction that cannot be worked around. This would therefore be a proportionate means of achieving a legitimate aim. However – the visa

- requirements entered for any role must be genuine. This requirement cannot be used to unlawfully restrict the access of older or younger workers from applying for a role unless it is a legal requirement of the country in which the job is posted.
- 5.2.2 'Years of teaching experience' – the requirement for a set number of years of teaching experience must either be a visa requirement or it must be based on a genuine requirement of the role for a specific purpose. This would be a valid condition where the teacher was required to coach less experienced colleagues or the educational requirements in the jurisdiction meant that a set number of years' experience was mandatory.
- 5.2.3 'Educational requirements' – the requirement to be educated to a specific level has the ability to be potentially discriminatory in terms of age. For instance, it is generally older teachers who would have more advanced levels of education i.e. educated to a post-graduate or masters level. As above, this is acceptable as long as the nature of the role requires a minimum level of education for a specific purpose.
- 5.2.4 Health / Medical checks – the check on an individual's medical history must be undertaken carefully. A job seeker may satisfy the legal definition of 'disability' under the EqA 2010 where they have a mental or physical impairment which has a long term, substantial, adverse effect on their ability to undertake normal day to day activities. This is different from the medical definition so care should be taken. Under the EqA 2010 a potential employer is required to make reasonable adjustments for those with disability to remove or reduce barriers to access to work.
- 5.2.5 Languages – fluency in a certain language has the potential to exclude individuals from a different ethnic or national origin. This is normally going to be justifiable where the individual is going to work with students who do not speak a foreign language and / or where the requirement of the role is to explain complex or varied topics or where the teacher will be engaging with young students. A consideration of what languages are required for the role and whether they are genuinely required is necessary.
- 5.2.6 Career Gaps / Employment History – where an individual has a career gap then care should be taken to not discriminate where this is on the grounds of pregnancy, child care, other parental leave, or for a disability related reason (either for the individual or where they care for a disabled third party). These enquiries are acceptable where the information disclosed is not then used to discriminate against a job applicant.

6 Reporting & Advice

- 6.1 Where an individual wishes to report any issue which may be in breach of the *Fair Recruitment Policy* they should send an email to Over Primary School's Chair of Governors: chair@over.cambs.sch.uk who will arrange an investigation and seek to remedy all reports of contravention of our *Fair Recruitment Policy* within a reasonable time scale.
- 6.2 Advice can also be sought from the Equality Advisory Support Service (EASS): [Online contact form](#), Telephone: 0808 800 0082