



EQUALITY AND DIVERSITY POLICY

Coombe Academy Trust

Equality Analysis Impact

Title of Policy: **EQUALITY SCHEME – Developed by the Equality Working Party**

Considered at Trustees' Committee meeting: **Full Board**

Most recent review: September 2018

Next review: September 2019

Is there relevance to equality?

- | | | |
|---|---|-----------|
| 1 | Does the policy have an adverse effect on employees, pupils or the wider community and therefore have a significant effect in terms of equality? If yes, then please answer questions 2 and 3. | No |
| 2 | Does the policy have an adverse effect upon a group with protected characteristics? (sex, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy or maternity, age) | No |
| 3 | Does the policy affect one or more of the equality objectives set by the school? (Please refer to the Equality Policy) | No |

If the answer to question 2 or 3 is yes, a full equality analysis will need to be completed by the SLT Lead before the next committee meeting.

Please detail the objective and explain the relevance of the policy to the objective and protected characteristics below.

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1. Introduction

This equality and diversity policy adheres to the requirements of the Equality Act 2010 and is informed by the Department for Education's advice to schools, issued May 2014. It applies to all learners, staff and visitors in the schools of the Academy Trust.

The Academy Trust is committed to promoting equality and diversity, maintaining an inclusive and supportive environment for all who work and study in its schools. We recognise that it is unlawful to discriminate against a pupil, prospective pupil, member of staff, prospective member of staff or visitor by treating them less favourably because of their:

- sex
- race
- disability
- religion or belief
- sexual orientation (including marriage and civil partnership, in the capacity of employer)
- gender reassignment
- pregnancy or maternity
- age (not in relation to pupils, but in the capacity of employer)

These are commonly known as 'protected characteristics' under the Equality Act 2010.

2. Core Aims

In order to ensure equality and fairness for all, governors and staff in the Academy Trust are committed to the following aims:

- Eliminate discrimination, victimisation, harassment and other conduct that is prohibited by the Act (a 'general duty')
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it (a 'general duty')
- Foster good relations across all characteristics – between people who share a protected characteristic and people who do not share it (a 'general duty')
- Monitor the impact of the equality and diversity policy to determine its effectiveness through:
 - (i) publishing information to demonstrate how the school is complying with its responsibilities
 - (ii) preparing and publishing equality objectives (the 'specific duties')

These core aims, described as 'duties' under the single Public Sector Equality Duty (April 2011), are subject to a process of 'due regard' where, in carrying out the school's functions, relevant and proportionate consideration to that duty will be given.

Further detail relating to day to day considerations of these core aims is described in each school's Equality and Accessibility Action Plan, where the school's equality objectives are published, alongside information demonstrating how the school complies with the Public Sector Equality Duty.

The Academy Trust recognises that the equality duty supports good education and improves pupil outcomes. It helps us to identify priorities such as underperformance, poor progression, and bullying. It does this by requiring us to collate evidence, look at the issues and consider action to improve the experience of different groups of pupils. It therefore helps us to focus on what can be done to tackle these issues and to improve outcomes by developing measurable equality objectives.

3. Responsibilities

Policy document

The Senior Leadership Team of each school will oversee the implementation of the Equality and Diversity policy. The trustees will review and agree this policy at least once every four years to ensure it remains commensurate with the law and best practice.

Equalities objectives

The governors will agree the school's equality objectives which are set by the Senior Leadership Team and reviewed at least once every four years. These objectives will be included alongside the school's improvement plan. The governors will have overall responsibility for monitoring progress made in achieving equalities objectives. Equality objectives under the PSED will be published on the school's website and updated at least once every four years.

Compliance with the PSED

Information which demonstrates how the school complies with the PSED will be published and updated annually on the school's website.

Practices

All members of staff remain personally responsible for ensuring that they act within the law. The Senior Leadership Team is responsible for ensuring that all staff carry out their duties in a lawful manner and that proper training and support is provided accordingly.

All forms of discrimination by any person within the school's responsibility will be treated seriously, as such behaviour is unacceptable and may lead to disciplinary action.

4. Related Policies

The Academy Trust's commitment to promoting equality and diversity will be reflected in all its policies.

5. Monitoring and review

The governors will monitor the impact of this policy statement to determine its effectiveness, through the school's normal self-evaluation procedures, supported by the Equality Working Party. The governors will use the school's Equality and Accessibility Action Plan, together with the School Improvement Plan and other self-evaluation documents as their principal self-evaluation tools.

The results of monitoring will be reviewed at regular intervals to assess the effectiveness of the implementation of this policy statement. Consideration will be given if necessary to adjusting the policy statement to afford greater equality of opportunity to all.

6. Discrimination claims

Any breaches of this policy will be handled through the school's Behaviour Policy or the Staff Code of Conduct, as appropriate. The school will inform the local authority of instances of unfair discrimination. All incidents should be recorded using appropriate forms (see staff handbook) and a copies kept in the student or employee's file.

Appendix A - EQUALITY AND DIVERSITY POLICY

Guidance for equality and diversity considerations

A1. The duty to apply 'due regard'

Having due regard to the need to advance equality of opportunity is defined further in the Equality Act 2010 as having due regard to the need to:

1. Remove or minimise disadvantages
2. Take steps to meet different needs
3. Encourage participation when it is disproportionately low.

Paragraph 5.4 of the DfE's advice states that 'due regard' has been defined in case law and means giving relevant and proportionate consideration to the duty. For a school, this means that:-

- When making a decision or taking an action a school must assess whether it may have implications for people with particular protected characteristics.
- It should consider equality implications before and at the time that it develops policy and takes decisions; not as an afterthought, and it needs to keep them under review.
- The equality duty has to be integrated into the carrying out of a school's functions. The analysis necessary to comply with the duty should be carried out rigorously and with an open mind – it is not a question of just ticking boxes.
- Schools need to do this themselves and cannot delegate responsibility for carrying out the duty to anyone else.

A2. School improvement plan issues that the equality duty will help to address

Attainment – by focussing attention on performance gaps between groups of pupils, for example girls and boys, black, white and Asian pupils, and disabled and non-disabled students.

Participation in school activities – by providing a framework for identifying pupil needs, and weighing them against other education priorities when making any relevant decisions including those decisions on participation in school activities.

Ensuring pupils engage effectively in learning – by helping to identify priorities and develop different strategies to meet the different needs of individual pupils, considering how each decision and policy may affect pupils with different protected characteristics.

Bullying – by protecting the interests of all of pupils and fostering good relations.

Improve careers and progression – by analysing evidence of where pupils go after they leave school to maximize the potential of all pupils.

Exclusion – by bearing all issues in mind before making significant decisions.

Policy making - by helping the school decide its priorities to make policies and practices more relevant to all groups of pupils.

Making effective use of data and information - by identifying the needs of different groups of pupils through individual tracking of attainment, lesson observation and talking to pupils and parents.

Supporting effective partnerships - by encouraging initiatives in the local authority, local schools, parents, carers and members of the local community.

An opportunity to reconsider how schools treat their pupils - by prompting self-evaluation and considering how to mitigate adverse effects or bring about positive ones on different groups of pupils.

A3. The Public Sector Equality Duty (PSED) ‘specific duties’

Schools need to update the published equality information at least annually and to publish objectives at least once every four years. These specific duties aim to promote transparency in schools and to increase accountability to parents, carers and regulators.

The publication of non-confidential equality-related data and information about a school and its pupils will help parents to understand what the school is doing to eliminate any potential discrimination, advance equality of opportunity and foster good relations. Published information will also be a resource for decision-makers within the school.

Schools that employ more than 150 people are expected to publish information about staff as well as pupil-related data.

A4. Guidance on the type of information that should be published

This may include school performance data, anti-bullying policies, school development plan and equality milestones, curriculum materials, governing body minutes, equality training materials, and parent and pupil surveys. Schools can also refer to national surveys and other relevant information from the DfE, OFSTED, the teaching unions and the voluntary sector in the information they publish.

The equality duty does not require schools to routinely collect any more information than they do already. In most instances schools will already have sufficient information, either in the data that it routinely collects, through individual profiling or in the records that classroom teachers keep. Where there are gaps schools may decide to fill them by getting the views of parents and pupils with particular protected characteristics. They may also use information from national surveys or from the local authority, or by conducting surveys through partnerships with other schools. The discretion lies with the school leader to decide if the school has enough information about pupils with different protected characteristics to enable the school to meet their equality duty.

In governors’ meetings when new policies are being approved it is a good idea to record discussions about equality issues that arise, making it clear what evidence was used. This will make it clear how the equality duty has been met.

Chapter Five of the DfE Guidance on the Equality Act 2010 contains many useful and practical suggestions about what schools may publish:

<http://www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0064570/the-equality-act-2010>

A5. Provision for positive action

In some circumstances, schools will need to meet the needs of pupils in different ways so they can receive the same standard of education as everyone else does. The positive action provisions of the Equality Act 2010 permit schools to take 'proportionate steps' to help particular groups of pupils to overcome disadvantages connected to protected characteristics.

Provided that these steps are based on need/disadvantage/low participation and are not excessive, they will be lawful – for example organising 'female only' design and technology taster sessions, where participation of girls in the subject is clearly disproportionately low, or organising separate support classes for ethnic minority children who do not speak English. The Department of Education guidance contains more information about positive action, with examples.

A6. Ofsted inspections and equality

As part of their overall evaluation of a school, inspectors must consider the extent to which the education provided meets the needs of the range of pupils, and in particular the needs of disabled pupils and pupils who have special educational needs.

When evaluating the outcomes of pupils, inspectors must consider:

- how well disadvantaged pupils and those who have special educational needs and/or disabilities have achieved since joining the school and across the curriculum; and
- how well gaps are narrowing between the performance of different groups of pupils in the school and compared to all pupils nationally.

When evaluating the personal development, behaviour and welfare of pupils at the school, inspectors must consider:

- pupils' behaviour towards, and respect for, other young people and adults, and their freedom from bullying, harassment, and discrimination. This may include cyber-bullying and prejudice-based bullying and language related to special educational needs, sexual orientation, sex, race, religion and belief, gender reassignment or disability;
- that no pupils are disadvantaged by low attendance; and
- how well teachers manage the behaviour and expectations of pupils to ensure that all pupils have an equal and fair chance to thrive and learn in an atmosphere of respect and dignity.

When evaluating the quality of leadership and management of the school inspectors will focus on:

- how effectively leadership and management at all levels enable pupils to overcome specific barriers to learning; and
- how the school is engaging with parents and carers in supporting pupils' achievement, behaviour and safety.

In Ofsted's inspection framework, good and outstanding schools are the ones that:

- accurately evaluate their own strengths and weaknesses;
- match teaching strategies to the individual needs of pupils and meet the needs of the range of pupils at the school;
- have high expectations and improve their everyday experience through providing a safe and stimulating environment in which to learn;

- eliminate bullying – particularly identity-based bullying – and poor behaviour; and
- promote the moral, social and cultural development of the children in their care, including awareness of and respect for diversity in relation to, for example, gender, race, religion and belief, culture, sexual orientation and disability.

Useful evidence that schools could provide inspectors might be:

- how gaps in achievement between different groups of pupils have been closed, such as information for SEN/disabled pupils, boys and girls etc.
- what classroom strategies have been developed as a result.
- how effectively prejudice-based bullying has been tackled.
- a range of evidence over an extended period - the school's analysis of and response to pupils' behaviour in lessons over time, for example incident logs, complaints, the use of exclusion, rewards and sanctions and surveys.
- case studies used to evaluate the experiences of particular groups.
- how the views of pupils, parents and carers have altered over time as a result of anti-bullying policies.

A7. Goods and services

The equality duty applies when schools are buying goods and services, such as ICT, supply staff, consultancy, school meals, learning resources, training and administrative supplies. A key principle to remember is that schools cannot delegate complying with their equality duty to others. The onus is on the school to specify relevant matters in the procurement contract.

Staff can find further guidance on the practical aspects of procurement on the DfE website.

A8. Exceptions to discrimination provisions – the content of the curriculum

The content of the school curriculum has never been caught by discrimination law, and the 2010 Act now states explicitly that it is excluded. However the way in which a school provides education – the delivery of the curriculum – is explicitly included.

Excluding the content of the curriculum ensures that schools are free to include a full range of issues, ideas and materials in their syllabus, and to expose pupils to thoughts and ideas of all kinds, however challenging or controversial, without fear of legal challenge based on a protected characteristic. But schools will need to ensure that *the way in which issues are taught* does not subject individual pupils to discrimination.

For example, there would be no valid complaint against the content of the curriculum if:

- a girl complains that putting *The Taming of the Shrew* on the syllabus is discriminatory
- a fundamentalist Christian objects to the teaching of evolution in science lessons unbalanced by the teaching of “intelligent design”.
- a school does a project to mark Gay Pride Week. A heterosexual pupil claims that he finds this embarrassing and that it discriminates against him on grounds of his sexual orientation; a Christian or a Muslim pupil objects to it on religious grounds.
- a Muslim pupil objects to the works of Salman Rushdie being included on a reading list.

However, valid complaints that the curriculum is being delivered in a discriminatory way might well arise in situations such as the following:

- a teacher uses the fact that 'The Taming of the Shrew' is a set book to make derogatory generalisations about the inferiority of women.
- in class discussions, black pupils are never called on and the teacher makes it clear that she is not interested in their views.
- girls are not allowed to do DT or boys are discouraged from doing food technology.
- The girls' cricket team is not allowed equal access to the cricket nets, or the boys' hockey team is given far better resources than the girls' team.

A9. Exceptions to discrimination provisions – collective worship

There is a general exception to the religion or belief provision, which allows all schools to have acts of worship or other forms of collective religious observance. This means the daily act of collective worship, which for maintained schools is mandatory and should be of a broadly Christian nature, is not covered by the religion or belief provisions. The exception means that schools will not be acting unlawfully if they do not provide an equivalent act of worship for other faiths.

Schools are also free to celebrate religious festivals and could not be claimed to be discriminating against children of other faiths if, for example, they put on a nativity play at Christmas or hold a celebration to mark other religious festivals such as Diwali or Eid.

A10. Uniforms

The Equality Act does not deal specifically with school uniform or other aspects of appearance, but the general duty of due regard in relation to the treatment of pupils with protected characteristics applies. The Human Rights Act 1998 highlights the need to be careful that blanket uniform policies do not discriminate. Consequently it will be up to the individual school to consider the implications their uniform requirements have on their pupils.

For example, it might be unlawful if items of uniform were considerably more expensive for girls than for boys. It may also be discrimination because of disability if, for example, a child who has a skin condition which means they cannot wear nylon is not allowed to wear cotton trousers as part of the uniform.

Schools should be sensitive to the needs of different cultures, races and religions and act reasonably in accommodating these needs, without compromising important school policies, such as school safety or discipline. It is well established that it would be race discrimination to refuse to let a Sikh child wear a turban because of a school policy requiring that caps be worn, but legal judgments have not supported the absolute right of people of faith to wear garments or jewellery to indicate that faith.

A11. Special issues for some protected characteristics

a. Sexual orientation and gender reassignment

This equality duty extends to pupils who are lesbian, gay and transsexual. When publishing information to demonstrate compliance with this aspect of the equality duty, schools need to be mindful of what is relevant to the age and stage of the children. It is not always appropriate to monitor certain protected characteristics of young people, for example their sexual orientation or gender assignment status.

The Commission has published guidance about monitoring around sexual orientation:

http://www.equalityhumanrights.com/uploaded_files/research/improving_sexual_orientation_monitoring_v6_22-12-10.pdf

When a school is considering whether to monitor the sexual orientation of pupils, it should consider that pupils may be unsure of their own sexuality or unwilling to disclose it because of lack of trust. Establishing policies and guidance concerning prejudice-based bullying, which are shared with all parents and pupils, can be an effective way forward. Good and regular staff training will also help.

Schools should try to be aware which of their pupils are vulnerable to bullying and homophobic name-calling (such as the pejorative use of the word, 'gay') because of their sexual orientation or that of their parents. The DfE website states that it is compulsory for schools to enforce measures that will encourage good behaviour and prevent all forms of bullying. It provides support for designing anti-bullying policies and strategies in your school: <http://www.education.gov.uk/schools/pupilsupport/behaviour/bullying>

It is relatively rare for pupils – particularly very young pupils – to want to undergo gender reassignment, but there is evidence that the number of such cases is increasing and schools should aim to address any issues early on and in a proactive way as part of the equality duty. Further guidance is available from the GRES website: <http://www.gires.org.uk/assets/Schools/assistingschools.pdf>

b. Disability and Accessibility

Schools are allowed to treat disabled pupils more favourably than non-disabled pupils, and in some cases are required to do so, by making reasonable adjustments to put them on a more level footing with pupils without disabilities. The Act extends the reasonable adjustment duty to require schools to provide auxiliary aids and services to disabled pupils. Failure to make a reasonable adjustment can no longer be defended as justified.

Schools are not subject to the requirement of reasonable adjustment duty concerned with make alterations to physical features because this is already considered as part of their planning duties.

The EHRC has published guidance on the auxiliary aids duty which includes advice on when it would be reasonable for schools to have to make adjustments. The guidance is available at <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice/> .

There will be times when adjustments cannot be made because to do so would have a detrimental effect on other pupils and would therefore not be reasonable – for example, if a school put on a geology field trip which necessarily involved climbing and walking over rough ground and after fully considering alternatives to accommodate a disabled pupil in a wheelchair who could not take part it determined that there was no viable alternative or way of enabling the disabled pupil to participate or be involved, it would not have to cancel the trip as originally planned. This is unlikely to constitute direct discrimination or failure to make a reasonable adjustment.

c. Race

The definition of race includes colour, nationality and ethnic or national origins.

Segregation of pupils by race is always direct discrimination. It would thus be unlawful for a school to put children into sets, or into different sports in PE classes, according to their ethnicity. This stipulation in the Act is to make it clear that claims that segregated treatment is “separate but equal” cannot be sustained where race is concerned. It does not mean that schools cannot take positive action to deal with particular disadvantages affecting children of one racial or ethnic group, where this can be shown to be a proportionate way of dealing with such issues.

d. Religion or belief

The Equality Act defines “religion” as being any religion, and “belief” as any religious or philosophical belief. A lack of religion or a lack of belief are also protected characteristics.

These definitions are fairly broad and the concepts of religion and belief therefore must be construed in accordance with Article 9 of the European Convention on Human Rights and with existing case law. It is not however intended to include political beliefs such as Communism or support for any particular political party.

The Equality Act makes it clear that unlawful religious discrimination can include discrimination against another person of the same religion or belief as the discriminator. This is to ensure that any potential discrimination between, e.g. Orthodox and Reform Jews, or Shia and Sunni Muslims, would also be unlawful. So if a Muslim pupil is not chosen for a part in a school play because it is thought to be inappropriate for a girl of that faith, that will be discrimination even if the decision was taken by a Muslim teacher. Nor could a Muslim teacher choose one Muslim pupil over another for a part in the play because he thinks the chosen pupil is a more observant member of his faith and should be rewarded.

The definition of discrimination on grounds of religion or belief does not address discrimination on any other ground (such as race, sex or sexual orientation). The Act does not allow a teacher to discriminate against a pupil because of his own personal religious views about homosexuality or the role of women for example.

Where individual teachers are concerned, having a view about something does not amount to discrimination. So it should not be unlawful for a teacher in any school to express personal views on sexual orientation provided that it is done in an appropriate manner and context (for example when responding to questions from pupils, or in an RE or Personal, Social, Health and Economic education (PSHE) lesson). However, it should be remembered that school teachers are in a very influential position and their actions and responsibilities are bound by much wider duties than this legislation. A teacher’s ability to express his or her views should not extend to allowing them to discriminate against others.

e. Sex/gender

Same sex schools are exempt from certain issues around admissions relating to gender.

It is not necessarily unlawful to have some single sex classes in a mixed school, provided that this does not give children in such classes an unfair advantage or disadvantage when compared to children of the other sex in other classes. For example, it would be lawful to teach sex education to single-sex classes, as long as the classes were provided to both boys and girls, but unlawful to provide remedial classes just for boys who needed help with reading without doing the same for girls in a similar position.

A positive action initiative specifically to help boys in such a position would not necessarily be unlawful but the school would need to be able to show that this was a proportionate way of dealing with a specific disadvantage experienced by boys and connected to their gender. It would not be proportionate simply to refuse help to girls with reading difficulties in order to help boys as a group catch up with the higher average attainment of girls. Pupils undergoing gender reassignment should be allowed to attend the single sex class that accords with the gender role in which they identify.

Although the Equality Act forbids discrimination in access to benefits, facilities and services, it does contain an exception which permits single sex sports. It applies to participation in any sport or game, or other activity of a competitive nature, where the physical strength, stamina or physique of the average woman (or girl) would put her at a disadvantage in competition with the average man (or boy). But while this

exception might permit a mixed school to have a boys only football team, the school would still have to allow girls equal opportunities to participate in comparable sporting activities.

The judgement on whether girls would be at a physical disadvantage needs to take into account the particular group in question, so it is much less likely to justify segregated sports for younger children. Where separate teams exist, it would be unlawful discrimination for a school to treat one group less favourably – for example by providing the boys’ hockey or cricket team with much better resources than the girls’.

f. Pregnancy and maternity

It is unlawful for schools to treat a pupil less favourably because she becomes pregnant or has recently had a baby, or because she is breastfeeding.

Local authorities have a duty under Section 19 of the Education Act 1996 to arrange suitable full-time education for any pupils of compulsory school age who would not otherwise receive such an education. This could include pupils of compulsory school age who become pregnant or who are parents. In particular, where pupils are unable to attend their previous school, the local authority would need to consider whether this duty is applied. ‘Suitable education’ should meet the individual needs of the pupil and must take account of their age, ability, aptitude and individual needs including any special educational needs they may have.

Local authorities must have regard to statutory guidance on alternative provision and the ensuring a good education for children unable to attend school because of health needs. This guidance is available on www.GOV.UK.

g. Sexual orientation and marriage and civil partnership

Maintained secondary schools have a legal requirement to teach about the 'nature of marriage' when they are delivering sex education. Many academies (including free schools) also teach about this topic, and when they do so, they must have regard to the Secretary of State’s guidance on sex and relationship education. Schools must accurately state the facts about marriage of same sex couples under the law of England and Wales, in a way that is appropriate to the age and level of understanding and awareness of the pupils.

Teaching about marriage must be done in a sensitive, reasonable, respectful and balanced way. Teachers are subject to professional requirements, the school curriculum, school policies, and anti-discrimination duties towards colleagues and pupils.

No school, or individual teacher, is under a duty to support, promote or endorse marriage of same sex couples. Teaching should be based on facts and should enable pupils to develop an understanding of how the law applies to different relationships. Teachers must have regard to statutory guidance on sex and relationship education, and to meet duties under equality and human rights law.

A12. Education specific employment provisions

The ‘general duties’ in the PSED also cover the benefits, facilities and services that a school offers to its employees, including training opportunities, promotion or dismissal.

Schools as employers are under the same duties to make reasonable adjustments in relation to disability for their employees or potential employees as they are for their pupils. They must make reasonable adjustments to arrangements or practices to alleviate disadvantage and must also take reasonable steps to

provide any necessary auxiliary aids and services. They are also under the duty to consider alterations to physical features of the school where that is reasonable to avoid disadvantage caused by disability.

It is unlawful for an employer to enquire about the health of an applicant for a job until a job offer has been made, unless the questions are specifically related to an intrinsic function of the work - for example ensuring that applicants for a PE teaching post have the physical capability to carry out the duties. After job offer, any health-related or past sickness record questions should be targeted, necessary and relevant to the job applied for.

It is now possible to take a protected characteristic into consideration when recruiting or promoting staff. Schools can favour candidates with a protected characteristic, if all candidates meet the selection criteria equally and if you are able to show that people with that characteristic face particular difficulties in the workplace or are disproportionately under-represented in your workforce. There must not be a policy of automatically favouring candidates with a protected characteristic – schools must always consider the abilities, merits, and qualifications of all of the candidates in each recruitment or promotion exercise, to avoid unlawful and discriminatory actions.

Appendix B - EQUALITY AND DIVERSITY POLICY

Definition of terms

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 you have a condition, rule, policy or even a practice that applies to everyone but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if you can show that you acted reasonably in managing your business, i.e. that it is 'a proportionate means of achieving a legitimate aim'. A *legitimate aim* might be any lawful decision you make in running your business or organisation, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful. Being proportionate really means being fair and reasonable, including showing that you've looked at 'less discriminatory' alternatives to any decision you make.

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 applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership.

Third party harassment

Employees will now 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 protected characteristic themselves. Employees are also protected from harassment because of perception and association. This applies to sex, age, disability, gender reassignment, race, religion or belief and sexual orientation.

The Equality Act makes you potentially liable for harassment of your employees by people (third parties) who are not employees of your company, such as customers or clients. You will only be liable when harassment has occurred on at least two previous occasions, you are aware that it has taken place, and have not taken reasonable steps to prevent it from happening again.

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; 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. It is now unlawful to victimise a child for anything done in relation to the Act by their parent or sibling. There is no longer a need to compare treatment of a complainant with that of a person who has not made or supported a complaint under the Act.

Definitions and clarification related to the protected characteristics

Age

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.

Disability

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. 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.

Ethnicity (social characteristics)

Ethnicity concerns a group that regards itself, or is regarded by others, as a distinct community by virtue of certain characteristics that will help to distinguish the group from the surrounding community; for example, along shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; or a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance.

Ethnic minority

This is an umbrella term, covering all the characteristics of a 'racial group' as well as the religious and cultural bonds that are seen as defining Muslims, Rastafarians and other group that may not have formal protection under the RRA. In England and Wales, 12.5% of the population are ethnic minorities according to the 2001 census.

Gender reassignment

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

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

Pregnancy and maternity

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.

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

Gypsy/Roma/Traveller

Since 2003 Gypsy/Roma and Travellers of Irish heritage are two distinct ethnicity group categories within the School Census. These two groups are defined as follows:

- Gypsy/Roma – This category includes pupils who identify themselves as Gypsies and or Romanies, and or Travellers, and or Traditional Travellers, and or Romanichals, and or Romanichal Gypsies and or Welsh Gypsies/Kaale, and or Scottish Travellers/Gypsies, and or Roma. It includes all children of a Gypsy/Roma ethnic background, irrespective of whether they are nomadic, semi-nomadic or living in static accommodation.
- Traveller of Irish Heritage – A range of terminology is also used in relation to Travellers with an Irish heritage. These are either ascribed and or self-ascribed and include: Minceir, Travellers, Travelling People, and Travellers of Irish heritage. Travellers of Irish heritage speak their own language known as Gammon, sometimes referred to as 'Cant' and which is a language with many Romani loan-words, but not thought to be a dialect of Romani itself.

The School Census categorisation does not include Fairground (Showman's) children; the children travelling with circuses; or the children of New Travellers or those dwelling on the waterways unless, of course, their ethnicity status is either of that which is mentioned above.

Race (physical characteristics)

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

Religion or belief

In the Equality Act, 'religion' includes any religion and also includes a lack of religion. 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.

Sexual orientation

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

Refugees and asylum seekers

There is an estimated 82,000 refugee children in British schools, 160 pupils at schools in RBK in 2005. RBK has an ongoing tradition of welcoming refugees and asylum seekers. The main groups living in the Borough are from Iraq, Afghanistan and Sri Lanka, but there are also families from over 45 countries where is conflict or persecution.

Refugee

A refugee is someone who has a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion and cannot expect protection in his or her own country. A refugee is someone who has been successful in the application for asylum.

Asylum seeker

An asylum seeker is someone who flees their home country and seeks refuge status in another country, possible because of war or human rights abuses, and then lodges an application of asylum with the UK Government.

Unaccompanied minor

This is an asylum seeking child under the age of 18 who is not cared for by their usual carers. If there is no suitable adult to care for them, the responsibility rests with the Learning and Children's Services and the children are cared for under the provisions of the Children Act 1989.