

Background

The law prohibits discrimination on the grounds of gender, race, disability, religion or belief, sexual orientation and age, by schools in their roles as employers, and also requires them not to discriminate in the provision of education on all these grounds apart from age and gender reassignment.

Much equal opportunities legislation has been passed in recent years. This includes the prohibition of age discrimination in relation to employment (October 2006) and the prohibition of discrimination on the basis of religion or belief or sexual orientation in relation to pupils in schools (April 2007). Schools also have express obligations to promote equal opportunities related to disability which came into force for secondary schools in December 2006 and for primary schools in December 2007. A similar express obligation also came into force in relation to gender (April 2007).

General Prohibitions

Ysgol Gymraeg Aberystwyth will not discriminate against:

- job applicants;
- existing members of staff;
- a child seeking admission to the school;
- existing pupils.

Ysgol Gymraeg Aberystwyth will not discriminate either directly or indirectly on the basis of:

- race;
- disability;
- gender;
- sexual orientation;
- religion or belief;
- age (relating to employment).

Definitions of Discrimination

Under the law, there are different categories of discrimination, with differences in the legal framework surrounding them.

“Direct discrimination” is unlawful on all protected grounds apart from, under certain circumstances, age and disability in schools (where that may be justified). Direct discrimination occurs when a person is treated less favourably than others in comparable circumstances because of a particular characteristic such as gender, race or disability. It is only when it may not be justified directly that indirect discrimination on the basis of age is unlawful. Direct discrimination on the grounds of disability may be justified against existing pupils and prospective pupils if the reason for doing so is both relevant to the circumstances of a particular case and substantial.

“Indirect discrimination” occurs when a provision, criterion or practice is applied equally to all but has the effect of placing members of one or more protected groups, of which the complainant is a member, at a substantial disadvantage as a result. Indirect discrimination is unlawful unless it can be justified for reasons not related to the characteristic concerned. An example might be a physical strength test, which could discriminate against women in relation to a job that involves teaching, but might be justified in relation to a non-teaching job that involves substantial lifting.

“Victimisation” is the practice of treating a person less favourably because they have taken action in respect of discrimination, for example by bringing a complaint or giving evidence for a colleague. Victimisation is also unlawful.

“Harassment” is any unwanted conduct related to a relevant protected characteristic such as gender or race which has the purpose or effect of violating a person’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them. Harassment is also unlawful in some of the situations covered by discrimination law.

Discrimination against Job Applicants or Existing Members of Staff

Ysgol Gymraeg Aberystwyth will not discriminate against an applicant for a post, or against an existing member of staff, on grounds of gender, race, sexual orientation, religion or belief, marital status, civil partnership, disability, gender reassignment or age. However, unlike other discrimination strands, direct age discrimination will not be unlawful if it can be shown to be objectively justified. In relation to disability but no other strand, there is an obligation to make reasonable adjustments in order to remove the substantial disadvantage created by the disability.

The school will ensure that there is no unlawful discrimination in relation to matters such as:

- recruitment procedures and selection standards;
- conditions of employment;
- opportunities for promotion;
- transfer;
- training or other benefits;
- disciplinary and grievance procedures;
- dismissals.

Legitimate Occupational Requirements

There are specific legal provisions which recognise that there may be some rare circumstances where employers will be allowed a defence to a claim of less favourable treatment on a particular “discrimination” ground. These are based on a particular relevant characteristic being an “occupational requirement” (such as a particular gender or age) for a particular job (see individual discrimination strands for details). The burden of establishing such defence rests with the employer. In the main it will only apply in respect of treatment linked to recruitment and refusing someone a post or training, and, in some circumstances, to dismissal from a post.

The school should bear in mind that a legitimate occupational requirement is just that, legitimate. A preference, however strongly held, for someone of a particular gender, sexual orientation, race or

age to take up a job is not of itself a legitimate occupational requirement, and in those circumstances it will not be sufficient to raise a legitimate occupational requirement as a defence to a claim of discrimination.

Discrimination against a Child seeking Admission or an Existing Pupil

Areas with Express Obligations to Promote Equal Opportunities

There are currently three areas where the law goes further than the general prohibition on discrimination and places general and express obligations on public authorities, that includes schools to promote equal opportunities. Those areas are race, disability and gender. The other key obligations and provisions are described in the relevant paragraphs below.

Race Discrimination

Under the Race Relations Act 1976, the governing body must not discriminate against a child on the grounds of race

- when admitting him/her to the school;
- in the provision of education or allocation to specific types of classes;
- when applying standards of behaviour, uniform or appearance;
- when giving pupils careers and work experience guidance;
- when delivering access to benefits, facilities or other services.

The Race Relations (Amendments) Act 2000, which revised the Race Relations Act 1976, requires schools and LEAs and other public bodies to:

- eliminate unlawful racial discrimination;
- promote equal opportunities; and
- promote good relations between people of different racial groups.

The statutory obligation requires educational establishments to actively deal with racial discrimination, and to promote equal opportunities and good racial relations. The explicit obligations to which each educational establishment is expected to conform are as follows:

- to have a written policy on racial equality;
- to assess and monitor the impact of their policies on the different racial groups of pupils, staff and pupils, with the emphasis being on achieving different racial groups of pupils;
- to ensure that information is available about their policies to promote racial equality;
- to take steps to publish the monitoring results annually;
- to consider the general obligations of the Race Relations (Amendment) Act for public bodies.

The governing body has a legal responsibility to ensure that the school meets its statutory obligations, and that it expressly formulates a racial equality policy which reflects the ethnic population needs of its pupils. The governing body is also required to ensure that the school's equal opportunities policy is updated and that its principles are upheld in the school and shared with parents and carers.

The school will monitor the effectiveness of arrangements for ensuring equality by the following means:

- pupils' attainment and progress;
- curriculum learning and teaching;
- pupil behaviour;
- disciplinary action and exclusion;
- racial harassment and bullying;
- school values.

Disability Discrimination

Discrimination on the grounds of disability is somewhat different to other areas of discrimination legislation, for example it is not unlawful to discriminate in favour of disabled people, and employers are required to make "reasonable adjustments" to deal with specific problems affecting disabled applicants and staff.

With regard to schools, the Disability Discrimination Act 1995, as amended by the Disability Discrimination Act 2005, includes a general obligation to consider the need to promote equal opportunities for disabled people and to eliminate discrimination, and an express obligation to publish a Disability Equality Scheme.

The school will meet its statutory requirements by -

- promoting equal opportunities between disabled people and others;
- eliminating unlawful discrimination under the Disability Discrimination Act;
- eliminating the harassment of disabled people for reasons relating to their disability;
- promoting positive attitudes towards disabled people;
- encouraging disabled people to take part in public life;
- taking steps to meet the needs of disabled people, even if doing so requires more favourable treatment.

To achieve these aims, the school will prepare an Accessibility Scheme which sets out a strategy and guidelines.

See the Disability Policy and Accessibility Scheme

Sex Discrimination

Part 3 of the Equality Act 2006 revised the Sex Discrimination Act 1975 by including an obligation to promote gender equality. Schools must show that they are promoting equality for men and women and that they are eliminating sex discrimination. They are also required to actively introduce a gender equality scheme.

The school will meet its statutory obligations by:

- preparing and publishing a gender equality scheme, showing how it intends to achieve its general and express obligations and noting its gender equality objectives;
- considering the need to include objectives to deal with cases of any pay gaps between the genders when formulating its general objectives;
- gathering and using information about how the school's policies and practices affect gender equality in the workforce and when providing services;
- consulting with stakeholders and considering relevant information to determine gender equality;
- assessing the impact of its current and proposed gender equality policies and practices;
- implementing the actions noted in its scheme within three years;
- reporting on the scheme each year and reviewing the scheme at least every three years.

In line with the Sex Discrimination Act, the school will not discriminate on the grounds of gender:

- against a child seeking admission to the school (however, single-sex schools will be allowed to remain as single-sex schools);
- in the provision of education or allocation to specific types of classes;
- when applying standards of behaviour, uniform and smartness (although it is not necessarily unlawful to set different, but similar, rules for boys and girls with regard to their uniform or appearance);
- by excluding pupils or punishing them in other ways (for example, keeping them in school);
- when giving pupils careers and work experience guidance;
- when delivering access to benefits, facilities or other services.

The Sex Discrimination Act makes it unlawful to discriminate in employment on the grounds of gender. However, discrimination against a man or a woman is permitted in cases where a person's sex is a valid occupational qualification for a post (as defined in detail in Section 7 of the Act). For example, this would apply in cases where a man rather than a woman (and vice versa) would have to take up a post in order to ensure propriety or privacy, such as appointing a man to be a physical education teacher on the basis that the job would require him to enter boys' changing rooms when they are in use.

Discriminating in employment against transgender people is unlawful under the Sex Discrimination Act (as revised by the [Sex Discrimination \(Gender Reassignment\) Regulations 1999](#)). It is unlawful to treat a person less favourably on the grounds that he has stated his intention to reassign his gender, whether this process is happening or has happened – this is defined as a process undertaken under medical supervision in order to reassign a person's gender (but a process that does not require medical or surgical treatment). Guidelines for employers on dealing with gender reassignment are available on the [Government's Equalities Office website](#).

Under the Sex Discrimination Act, it is unlawful to discriminate in relation to employment on the grounds that a person is married or in a civil partnership.

Areas with no Obligation to Promote Equality

There are two areas which currently have no obligation to promote equality.

Religion or Belief and Sexual Orientation

Discrimination on the basis of religion or belief and sexual orientation is now unlawful in employment and in the provision of education, although the law does not place an obligation on public authorities to actively promote equality in these areas.

The Governing Body is aware of the Employment Equality Regulations (Sexual Orientation) 2003 and the Employment Equality Regulations (Religion or Belief) 2003 that include discrimination on the basis of sexual orientation and religion or belief, relevant to schools as employers. These Regulations apply to all aspects of employment, including:

- recruitment;
- terms and conditions;
- promotions;
- transfers;
- dismissals;
- training; and
- all employment practices such as dress codes and disciplinary procedures.

They make it unlawful to discriminate either directly or indirectly or harass anyone due to their religion or belief, or perceived or actual sexual orientation, or because they are friends with, or associate with someone of a particular sexual orientation, religion or belief.

Age Discrimination

The Employment Equality Regulations (AGE) 2006 make it unlawful for employers to discriminate on the basis of age. Age discrimination is somewhat different to other types of discrimination as neither direct nor indirect discrimination are unlawful if they can be “subjectively justified” – that is, that it can be demonstrated that it is a proportionate way of achieving a genuine aim. This is a detailed test and is not necessarily easy to prove if it is legally challenged.

As with other discriminatory legislation, the Regulations allow employers, when recruiting to posts, to treat applications for a post differently on the grounds of age if an age-related characteristic is a genuine occupational requirement for that post. An employer may also rely on this exception in matters which deal with promotion, transfer and training and when dismissing a person from a post which has a relevant genuine occupational requirement. However, schools should be very wary of assuming that they are able to demonstrate that age is a genuine occupational requirement in relation to any post. ACAS provides guidelines in the Age discrimination section of its website. (N.B. Age discrimination legislation does not apply to the treatment of pupils in schools.)

Who is the Employer?

In the case of Ysgol Gymraeg Aberystwyth, Ceredigion Education Authority is the employer for all staff.

Prepared by the Headteacher in conjunction with staff _____ * _____ Date

Accepted by the Governing Body _____ * _____ Chair

_____ * _____ Date

*(The copy of this policy in its paper form, which is kept in the Headteacher's Office, has been signed and dated. Some of these policies also include the School Council's comments and opinions)