



HEARTS ACADEMY TRUST

Equality and Diversity in Employment Policy

Adopted by Directors:
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1. Objective

The purpose of this policy is to set out the Trust's commitment to equal opportunities in employment and to avoiding unlawful discrimination in all aspects of employment including recruitment, promotion, opportunities for training, pay and benefits, discipline and dismissal, performance and selection for redundancy.

This includes upholding its obligations under the Equality Act 2010 ("the Act") not to discriminate directly or indirectly in any of its activities against employees or applicants for employment on the grounds of the protected characteristics:

- Age
- Disability
- Gender re-assignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race (which includes ethnic origin, colour, nationality and ethnic or national origins)
- Religion or belief
- Sex
- Sexual orientation

It further includes fulfilling its Public Sector Equality Duty, in carrying out its functions, to have due regard to the need to:

- Eliminate discrimination and other conduct that is prohibited by the Act,
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it,
- Foster good relations across all characteristics - between people who share a protected characteristic and people who do not share it.

Having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

Definitions of terminology are at Appendix A.

This Policy complements the general equalities policies and procedures within the Trust which set out the Trust's commitments and obligations to the wider school community.

2. Policy Statement

The Board of Directors are committed to:

- promoting equality of opportunity and community cohesion where the diversity of different backgrounds and circumstances is appreciated and positively valued;
- promoting the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance for those with different faiths and beliefs;

and expects all staff, volunteers and other workers to share this commitment. It is recognised that this can only be achieved through sound procedures, good inter-agency co-operation and the recruitment and retention of competent, motivated employees who are suited to, and fulfilled in the roles they undertake.

The Board of Directors recognises the value of, and seeks to achieve a diverse workforce which includes people from different backgrounds, with different skills and abilities. We are committed to ensuring that the recruitment and selection of all is conducted in a manner that is systematic, efficient, effective and promotes equality of opportunity. Selection will be on the basis of merit and ability, assessed against the qualifications, skills and competencies required to do the job. We will uphold obligations under law and national collective agreements to not discriminate against applicants for employment on the grounds of age, sex, sexual orientation, marital status, disability, race, colour, nationality, ethnic origin, religion or belief.

The school may, where appropriate, apply positive action to encourage applications from particular groups where they are underrepresented in the workplace. In exceptional legitimate circumstances the Trust may apply a genuine occupational qualification to particular role (see Appendix A).

The Trust:

- will take positive steps to create a culture through its Board of Directors, Local Governing body, managers and other employees, workers and volunteers, in which everyone can feel confident of being treated with fairness, dignity and respect.
- aims to create a work environment in which all individuals are able to give their best, where all decisions are based on merit and which is free of harassment, victimisation and bullying.
- will provide appropriate training and support to employees to secure understanding of and compliance with its aim and expectations.
- will ensure that equality issues are considered and regularly reviewed, including assessing implications for people with particular protected characteristics as an integral part of our policy development and decision making processes.

Behaviour or actions by members of staff against the spirit and/or the letter of the law or this policy, including but not limited to acts of discrimination, bullying or victimisation against employees or others in the school community will be considered disciplinary matters and will be

dealt with under the school's Disciplinary and Dismissal Procedure and may, in some cases, lead to dismissal.

3. Policy in practice

The Trust has in place a range of employment related policies, procedures and practices which support and complement this Equality and Diversity in Employment Policy. These will be operated in a way which is consistent with the objectives of this Policy and Policy Equality and Workload Impact Assessments support this objective.

For the purposes of this Policy and the Act, the definition of 'employee' is extended to include:

- employees (those with a contract of employment)
- workers and agency workers (those with a contract to do work or provide services)
- some self-employed people (where they have to personally perform the work)

4. Responsibilities

It is recognised that everyone in the school community influences how equality and diversity is achieved and that everyone has a responsibility to uphold the law and principles of equality of opportunity. In addition to these general responsibilities, there are other specific responsibilities.

4.1 The Board of Directors has responsibility for:

- Determining, monitoring, reviewing and supporting the implementation of the Equality and Diversity in Employment policy in consultation with relevant stakeholders;
- ensuring employment and recruitment policies and practice are non-discriminatory in word and operation;
- analysing and monitoring policy and practice, initiating appropriate action;
- ensuring complaints are investigated and dealt with effectively;
- ensuring appropriate training takes place for Directors, governors and employees.

4.2 Headteacher and other managers have responsibility for:

- ensuring that the Equality and Diversity in Employment Policy is implemented
- ensuring recruitment, employment and management policies and practices are undertaken in accordance with the Policy;
- ensuring the policy is brought to the attention of all employees/workers/volunteers and that they all receive appropriate training;

- treating all staff with dignity and respect and recognising and valuing individual skills and contributions
- creating an environment in which staff are able to identify and share good practice, celebrate success and encourage positive attitudes towards diversity
- dealing appropriately with breaches of this policy;
- ensuring a member of the senior management team is the nominated lead on equality and diversity issues.

4.3 All employees, volunteers and workers have a responsibility to:

- act within equalities legislation and to comply with the school policy;
- treat all staff with dignity and respect and recognise and value individual skills and contributions
- take part in training and comply with measures introduced to ensure equal opportunities and non-discrimination;
- report to their line manager, or other appropriate person, any breaches of this policy enacted against him/herself or another person by another employee, pupil or another person connected with the business of the school.

Employees can be held personally liable as well as, or instead of, the school for any act of unlawful discrimination. Employees who commit serious acts of harassment may be guilty of a criminal offence. Where an act of harassment is alleged, the school will thoroughly investigate the alleged circumstances and provide additional training/support to employees as considered appropriate.

5. Monitoring and reporting

The school will periodically monitor the application of its policies and procedures and their impact on staff and applicants to assess their effectiveness and revise them as necessary.

In particular, the school will monitor matters such as recruitment, promotion, training, pay, grievances, disciplinary action, leave of absence, flexible working, managing sickness absence or redundancy by reference to the protected characteristics of their employees. The school will consider and implement any appropriate action to address any issues that may be identified as a result of the monitoring process.

The school is committed to engaging with relevant stakeholders in the review of policy and practice.

The school will publish such equality data as is required in accordance with the Equality Act and the Public Sector Equality Duty. Any such publication will preserve anonymity and be in accordance with the Data Protection Act 1998 as amended).

Information provided by job applicants and employees for monitoring purposes will be used only for these purposes and will be dealt with in accordance with the Data Protection Act 1998 (as amended). All data collated for monitoring purposes will be used in such a way as to preserve anonymity.

6. Complaints

The school will make every effort to protect employees from discrimination and all concerns raised with the School will be handled in a positive and sensitive manner and in accordance with the appropriate policy/procedure.

Employees

Existing employees who feel they have been unfairly discriminated against, harassed, bullied or victimised should raise it in the first instance with their line manager or other manager where their own line manager is the subject of the complaint.

Employees should refer to the grievance procedure for further information. Employees will not be penalised for raising a grievance, even if the grievance is not upheld, unless their complaint is found to be both untrue and made in bad faith.

Applicants

Individuals who may be concerned that their application for employment has not been dealt with in accordance with this policy should raise their concerns via the school complaints procedure.

Others

Visitors or other members of the school community who experience or witness discrimination, bullying, harassment or victimisation should report the matter to the Head teacher in the first instance or via the school complaints procedure.

Appendix A

Definitions

1. Direct discrimination

- 1.1** Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic.

Direct discrimination could involve a decision not to employ someone, to dismiss them, withhold promotion or training, offer poorer terms and conditions or deny contractual benefits because of a protected characteristic. An example would be not employing a woman because she is pregnant.

1.2 Discrimination by Perception

Discrimination by Perception is where an individual is directly discriminated against or harassed based on a perception that he/she has a particular protected characteristic when he/she does not, in fact, have that protected characteristic (other than marriage and civil partnership, and pregnancy and maternity).

An example would be a heterosexual employee could bring a claim for harassment because of the protected characteristic of sexual orientation if he is taunted about his sexuality by colleagues who perceive him to be gay.

1.3 Discrimination by Association

Discrimination by Association is discrimination against a person because they have an association with someone with a particular protected characteristic'. Discrimination by Association applies to race, religion or belief, sexual orientation, age, disability, gender reassignment and sex.

An example would be not offering a job to the parent of a disabled child because the employer thinks they will need more time off due to the child's disability and there is no evidence to support this.

2. Indirect discrimination

Indirect discrimination is where a provision, criteria, policy or practice in the school is applied to everyone but particularly disadvantages people who share a protected characteristic compared with people who do not. Indirect discrimination can be justified if the school/academy can show it acted reasonably, for example that it is a 'proportionate means of achieving a legitimate aim' (see 2.1).

Indirect discrimination applies to age, race, religion or belief, sex, sexual orientation, marriage and civil partnership, disability discrimination and gender reassignment. Pregnancy and maternity are covered by indirect sex discrimination.

An example would be for a school to have a policy not to employ anyone with facial hair in the school kitchen for health and safety reasons. This policy may indirectly discriminate against certain religious groups.

2.1 Proportionate means of meeting a legitimate aim

There are limited circumstances where an employer may act in a way which is discriminatory, but where it can objectively justify discrimination as 'a proportionate means of achieving a legitimate aim'.

In attempting to demonstrate 'a proportionate means of achieving a legitimate aim', an employer must show:

- There is a legitimate aim such as a good business reason, but employers should note that cost alone is unlikely to be considered sufficient, and
- The actions are proportionate, appropriate and necessary.

Both of these points must apply in justifying 'a proportionate means of achieving a legitimate aim', not just one of them.

The process of determining whether discrimination is justified involves weighing up the employer's need against the discriminatory effect on the employee and group of employees with the protected characteristic.

A legitimate aim might be any lawful decision made in order to run the school effectively, 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 the schools has looked at 'less discriminatory' alternatives to any decision it has made.

Example - the long term aim of reducing inequality between men's and women's pay is always to be regarded as a legitimate aim for the purposes of justifying pay practices that indirectly discriminate against women. Therefore, short term pay protection schemes introduced with the aim of removing long-term inequalities in pay may be capable of being objectively justified, provided that their use is a proportionate way of achieving that aim.

3. Positive Action

Positive action describes measures targeted at a particular group that are intended to redress past discrimination or to offset the disadvantages arising from existing attitudes, behaviours and structures. The school may use lawful measures which can including:

- Targeting job training at people of particular racial groups, or either gender, who have been under-represented in certain occupations or grades during the previous 12 months, or encouraging them to apply for such work.
- Providing facilities to meet any specific educational, training, or welfare needs identified for a specific racial group
- Measures to provide training and special encouragement for returnees to the school after a period of time discharging domestic or family responsibilities.
- Special encouragement such as targeted advertising and recruitment literature, reserving places for one gender, training courses or providing taster courses in non-traditional areas.

Positive action is permissible and is different to positive discrimination which is illegal. Positive discrimination generally means choosing (or not choosing) someone solely on the grounds of a protected characteristic (eg gender or racial group) and not on their abilities.

4. Genuine Occupational Requirements

Employers can exercise the powers available under the Equalities Act to appoint a person from a particular group, where there is a genuine occupational requirement.

An example of a genuine occupational requirement would be appointing a female to work in a shelter for female victims of domestic violence.

5. Harassment

Harassment can be defined as “improper, offensive and humiliating behaviour, practices or conduct, which may threaten a person’s job security, create an intimidating, unwelcoming and stressful workplace, or cause personal offence or injury.”¹ ACAS

Harassment can often be identified by a series of what seem to be ‘trivial’ incidents. It is the impression of the harassed person, not the intentions or motivations of the harasser, which are important.

Harassment applies to all protected characteristics (see below) except for pregnancy and maternity and marriage and civil partnership. Employees can now complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Employees are also protected from harassment because of perception (see 1.2 above) and association (see 1.3 above).

6. Victimisation

Victimisation is where an employee is subjected to a detriment, such as being denied a training opportunity or a promotion because he/she made or supported a complaint or raised a grievance

¹ ACAS – Advisory Conciliation and Arbitration Service

under the Act, brought proceedings under the Act or doing any other thing for the purposes of or in connection with the Act or because he/she is suspected of doing so.

An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint.

Appendix B

Equality and pay

Equal pay

The Act provides that men and women should receive equal pay for equal work. This means that in most circumstances a challenge to pay inequality and other contractual terms and conditions still has to be made by comparison with a real person of the opposite sex in the same employment. However, the Act allows a claim of direct pay discrimination to be made, even if no real person comparator can be found. This means that a claimant who can show evidence that they would have received better remuneration from the school if they were of a different sex may have a claim, even if there is no-one of the opposite sex doing equal work with the school. This would be a claim under sex discrimination.

Pay secrecy

The school will not prevent or restrict its employees from having discussions to establish if they believe pay differences exist that are related to a protected characteristic, however we would expect any concerns to be shared with the leadership initially.

The school may, in particular, require its employees to keep pay rates confidential outside the workplace e.g. a competitor organisation.

Gender pay gap reporting

The Government is introducing mandatory gender pay gap reporting for public sector employers with 250+ employees in April 2018.

The first publication of data is April 2018 but snapshot data must be collected on 5 April 2017. The data required is:

- mean and median hourly rates by gender
- mean and median bonus payments (unclear what will constitute bonus pay) by gender
- the proportions of each gender in each salary quartile.