



Community Services: Education

Argyll House
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To: Heads of all Educational Establishments

Dear Colleague

Equal opportunities in employment

The following policy refers to all employees of Argyll and Bute Council who are on teachers' conditions of service.

Equal opportunities policy

1 Statement of policy

- 1.1 Argyll and Bute Council education service is committed to the principle of equality of provision, access and benefit in the delivery of the service irrespective of race, colour, nationality or ethnic or national origins, religion, sex, sexuality, marital status, disability or age.
- 1.2 The Education Department has published reports such as *Sex Equality in the Education Service*, *Education in a Multicultural Society* and *The Promotion of Racial Equality and Harmony in Multi-Ethnic Secondary Schools*. These reports set out for schools and other branches of the service the Council's policies in a wide range of matters concerned with equal opportunities in education. These documents form the basis for Argyll and Bute policy and all employees are expected to contribute to the implementation of their recommendations.
- 1.3 Argyll and Bute Council is an equal opportunities authority. One of the aims of the authority's policy is to ensure that no job applicant or employee receives less favourable treatment than any other on grounds such as race, colour, nationality or ethnic or national origins, religion, sex, sexuality, marital status, disability or age or is disadvantaged by conditions or requirements which cannot be shown to be justifiable.

- 1.4 This policy will apply to recruitment, selection, promotion, transfer, training, benefits, facilities, procedures and terms and conditions of employment. The authority will pursue practices designed to promote equality and eliminate discrimination and will regularly review their effectiveness. Where further policy statements, practices or procedures are necessary these will be produced as standard circulars.
- 1.5 If any employee considers that he or she is suffering from or has suffered unequal treatment on the grounds stated above, he or she can make a complaint which will be dealt with in accordance with the agreed procedures for dealing with grievances.
- 1.6 Argyll and Bute Council agrees that when appropriate, as indicated by monitoring procedures, positive action can be taken to make this policy fully effective.
- 1.7 This policy is in accordance with the various codes of practice and relevant legislation such as the Equal Pay Act 1970 (as amended), Sex Discrimination Act 1975 (as amended by the Sex Discrimination Act 1986 and the Employment Act 1989), Race Relations Act 1976, the Disabled Persons (Employment) Acts 1944 and 1958, the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005 and the Equality Act 2006 with associated regulations.

2 Responsibility of the authority as an employer

- 2.1 To ensure that its policy of equal opportunities in education is properly and effectively operated, Argyll and Bute Council has allocated overall responsibility to the Executive which has delegated authority for the implementation and monitoring of the policy to the Executive Director of Community Services.
- 2.2 Responsibility for the application of this policy has been allocated to the heads of service and through them to all promoted postholders.
- 2.3 The authority has made the following commitments:
 - (a) to discuss with relevant trade unions the policy's content, implementation, and monitoring arrangements;
 - (b) to ensure that the policy is made known to all employees and job applicants and that employees are aware of their obligations as described in section 3 below;
 - (c) to provide training and guidance for all staff and in particular promoted staff to ensure that they understand their position in law and their responsibilities and duties under the Council's equal opportunities policy and to offer training to parent council members;
 - (d) to examine and regularly review existing procedures and criteria;
 - (e) to monitor regularly the application of the policy with the aid of statistical analyses of the workforce and job applicants;

(f) to promote optimum use of human resources and potential.

3 Responsibility of employees of the authority

3.1 Although the primary responsibility for providing equal opportunity rests with the employer, every employee has a responsibility to promote equality and prevent discrimination. In particular employees:

(a) must co-operate with the authority's measures to ensure the promotion of equal opportunity and non-discrimination;

(b) must draw the attention of management and where appropriate, trade unions, to suspected discriminatory acts or practices;

(c) must not harass, victimise or intimidate colleagues, other employees, job applicants, pupils and students on any grounds.

3.2 As it is unlawful to instruct or put pressure on others to commit acts of discrimination, so it is unlawful to discriminate in response to such instructions or pressure.

3.3 Employees therefore must not:

(a) unlawfully discriminate in the course of their employment against other employees, job applicants or any other person;

(b) induce or attempt to induce other employees, trade unions or management to practice unlawful discrimination;

(c) victimise individuals who have made allegations or complaints of discrimination as defined by this policy or who have provided information about such discrimination.

3.4 Discriminatory offences committed by employees in the course of their employment, particularly if committed by those in positions of authority, will be viewed in a serious light and if proven will result in disciplinary action being taken against the employee, which may lead to dismissal.

4 Responsibility of trade unions

4.1 The trade unions recognise the contribution which they and their members can make to the effectiveness of the Council's equal opportunities policy, practices and procedures through co-operation, participation and advocacy. Many unions have already developed policies on this issue and their positive contribution towards the further development of policies and practices within the Council will be welcomed.

5 Policy on the employment of persons with disabilities

5.1 As the largest employer in the area, Argyll and Bute Council recognises both its statutory and social obligations to people with disabilities and in this respect is committed to a positive approach not only with regard to the recruitment of people

with disabilities but also in the retention, whenever possible, of employees who suffer a disability during their employment with the Council. This statement has been prepared having regard to the Disabled Persons (Employment) Acts 1944 and 1958, the Disability Discrimination Act 1995 and the Department for Work and Pensions Code of Good Practice on the Employment of Disabled People.

5.2 Definition

In so far as the application of this policy is concerned a person with a disability is a person whose disability restricts him/her in obtaining or keeping employment which would normally be suited to his/her age, experience and qualifications.

5.3 Objectives

In order to achieve the overall aims incorporated in the introduction to this statement the following objectives will form the basis of this policy document:

- (a) to provide full and fair opportunities for persons with disabilities in the areas of recruitment, training, development and promotion;
- (b) to ensure, whenever possible, that employees with disabilities are provided with the necessary aids and/or adaptation to equipment etc to enable them to carry out their duties on relatively equal terms with other employees;
- (c) to provide a safe and comfortable working environment by adapting premises, where necessary and practicable, to meet the specific needs of employees with disabilities.
- (d) to ensure that in the event of an employee becoming disabled and unable to perform satisfactorily the role for which engaged options such as the reallocation of duties, retraining or redeployment will be fully explored and discounted as being impracticable before consideration is given to the options of early retirement or dismissal on the grounds of incapacity;
- (e) to ensure that where necessary the person with a disability receives advice on welfare rights available or rightfully due to the individual through the following schemes:
 - i mobility allowance;
 - ii assistance with fares;
 - iii attendance allowance;
 - iv family income support;or other benefits deemed appropriate by the DSS;
- (f) to ensure that all employees are aware of the Council's policy on the employment of people with disabilities and to encourage the involvement of the appropriate trade unions in the operation and further development of the policy.

5.4 Operation of the policy on the employment of disabled people

In terms of the Council's employment policies relating to persons with disabilities, responsibility for these rests with the Executive Director of Community Services.

Responsibility for the day to day activities relating to both the policy and statutory requirements, will be vested in the HR officer who will liaise with employees with disabilities.

The HR Officer will undertake the following duties in addition to those already allocated:

- (a) maintain all necessary records relating to employees with disabilities;
- (b) as an ongoing process identify employees who may have a disability with a view to determining what assistance, if any, can be provided to enable them to cope better in the work situation and at the same time encourage them to register as persons with a disability;
- (c) review the job requirements of all vacant posts to be advertised internally or externally with a view to identifying and eliminating factors which unnecessarily debar or limit the selection of a candidate with a disability, assuming all else to be equal with regard to qualifications, knowledge, suitability etc;
- (d) liaise as necessary with Strategic Human Resources, other departments of the Council, the Disablement Advisory Service of the Department for Work and Pensions and other appropriate agencies with regard to:
 - i the availability and recruitment of suitable persons with disabilities;
 - ii the possible retention of employees who become disabled during their employment with Argyll and Bute Council;
 - iii the provision of aids, grants, allowances, and the adaptation of premises;
 - iv occupational assessments, medical examinations, attendance at rehabilitation centres, in-service training;
 - v any other matter relative to the employment needs of people with disabilities;
- (e) monitor job performance of employees with disabilities with a view to identifying and, if possible, eliminating any work related problems arising from their disability.

It has to be emphasised, notwithstanding the foregoing, that responsibility for the selection of employees, including people with disabilities, will still be that of management.

In keeping with the Council's adoption of a more positive approach towards the employment of people with disabilities, the following general arrangements will also be introduced.

5.5 Recruitment and employment of people with disabilities

- (a) All applicants for posts who are "disabled persons" will be leeted by the authority for interview provided that:
- i the candidates meet the minimum criteria contained in the person specification, job description and advertisement;
 - ii there are no insuperable difficulties which could prevent the employment of the disabled person at the relevant work location.
- (b) Promoted staff responsible for the interviewing and selection of candidates will, in considering applicants with disabilities, liaise with Strategic HR to ascertain whether or not special facilities, services or grants are available through the Disablement Advisory Service to assist employment. In particular when interviews are being held, care should be taken to ensure that account is taken of the physical requirements of such candidates before, during and after interviews and where necessary, special arrangements should be made. All applicants who are "disabled persons" who meet the minimum criteria for a vacancy as expressed in the essential column of the person specification will be interviewed and considered on their ability.
- (c) No existing employee who becomes disabled should automatically be considered to be incapable of performing the duties for which they were employed. An assessment of the employee's position should be carried out to take account of any necessary modification to the job, relocation or other change needed to ensure continuity of employment with the Council. The circumstances of each case should be looked at on an individual basis.
- (d) In relation to job training, career development and promotion no detriment should be applied to any employee with a disability solely on the grounds that the employee has a disability.

5.6 The working environment for people with disabilities

In order to provide for the needs of people with disabilities in its employment the Council will, as far as is reasonably practicable:

- (a) arrange to meet any initial training or retraining needs arising as a result of an employee's disability;
- (b) ensure that by training, promoted staff are aware of and sensitive to the needs and requirements of employees with disabilities;
- (c) ensure that necessary adaptations are carried out to premises to enable a person with a disability to fill a vacancy, calling on the advice of the Disablement Advisory Service and other appropriate agencies, as necessary;

- (d) ensure that buildings in which people with disabilities work are adapted as necessary for access and egress, particularly in relation to fire safety and other emergencies. Attention is also to be paid to such matters as toilet facilities, car parking etc;
- (e) have regard to the location of the place of work of a person with a disability, particularly if the employee has mobility problems;
- (f) ensure that the needs of employees with disabilities are recognised and that senior staff deal sympathetically with reasonable requests from such employees for time-off to attend to matters related to their disabilities, eg time-off for blind persons to take guide dogs to a vet when this cannot be arranged outwith working hours;
- (g) ensure through senior staff that colleagues of employees with disabilities are aware of their disabilities and possible measures of assistance that will be necessary. However, as it is recognised that some employees with disabilities may prefer that details of their disability are not revealed, any information that is disclosed must be with the complete agreement of the employee concerned.

6 Legislation

- 6.1 The primary responsibility at law rests with each employer to ensure that there is no unlawful discrimination, but individual employees at all levels have responsibility too. They must not discriminate or knowingly aid their employer to do so. There are also specific provisions in respect of obligations to people with disabilities. A summary of the relevant legislation and an explanation of the various terms used is provided in appendix 1.

7 Practices and Procedures

- 7.1 In order that this equal opportunities policy may become fully operative and effective, it will be necessary to conduct a continuing review of all existing recruitment and selection procedures and, if necessary, alter these procedures to ensure that they comply with the legal requirements and the spirit and intent of the practices and procedures contained in this document.

7.2 Recruitment

All recruitment procedures, including those in relation to promotion, should follow the guidelines shown below and should be of a non-restrictive nature in order to attract as wide a range of suitably qualified applicants as possible.

- (a) Job description and person specification

The following guidelines should be observed:

- i a job description should be provided for all posts (or groups of identical posts);

- ii all job descriptions should be written in a clear and concise manner and should indicate the principal duties of the post and the appropriate salary details;
- iii job descriptions and person specifications should be reviewed before any subsequent recruitment action proceeds;
- iv job designations should not include male or female terms or ethnic criteria (unless there is a genuine occupational qualification for the job).

The person specification should define the necessary qualifications, experience and personal qualities required to do the job.

Care must be taken to ensure that those specifications are not unnecessarily restrictive so as to exclude particular groups as this may be deemed to be unlawful indirect discrimination.

(b) Advertising

Advertising of posts will be carried out in such a way as to attract applications from suitable candidates of both sexes and all ethnic groups, regardless of marital status. All advertising material and accompanying literature relating to employment or training issues will be regularly reviewed to ensure that there is no occurrence of direct or indirect discrimination in this area. The only exception to this would be those posts where there is a genuine requirement for an occupational qualification on the grounds of race or sex.

(c) Application forms

All application forms used by the education service are designed to obtain:

- i personal information; and
- ii job related information.

The personal information is used to compile data, which will assist in the monitoring processes outlined in this document through which control will be exercised and the equal opportunities policy applied.

7.3 Selection

(a) Short listing for promoted posts

Short listing must be based on the job related information contained in the application form, using the person specification and job description as the criteria. Additional information included with an application form will be considered but **only** in relation to the applicant's experience, ability or qualifications.

Testimonials may be included by applicants but contact with employing organisations will only be made by the authority on approval of the applicant.

It is therefore important that staff involved in short leeting are:

- i clearly informed of the selection criteria and the need for their consistent application;
- ii given guidance and training on the effects which generalised assumptions and prejudices about age, race, sex, sexual orientation, disability or marital status can have on selection decisions;
- iii made aware of the possible misunderstandings that can occur in interviews between persons of different cultural backgrounds;
- iv made aware of their personal responsibilities to avoid discrimination of any kind.

Academic qualifications are one of the criteria for selection and should be used in accordance with relevant legislation, guidelines etc. There should be no artificial restrictions on the numbers from any group. In most cases, the adoption of quotas is unlawful. Reasons for non selection for short leeting will be recorded and stored for a year. Such reasons must be of an informative nature - general comments such as "unsuitable" are unacceptable.

(b) Interviewing

All persons involved in selection interviewing must be informed of the provisions laid down in the various acts with regard to discrimination. Training courses on selection and interviewing skills will take account of this policy and relevant acts. All employees and elected members regularly involved in selection interviewing will be required to take appropriate training. Members of parent councils will be expected to undertake training.

Where an interview panel has three or more members it will normally comprise at least one member of each sex and every effort will be made to ensure an even distribution of the sexes in the larger panels.

The aim of the interview is:

- i to confirm and amplify the information contained in the job application form in order to assess the candidate's ability/suitability for a specific job;
- ii to provide an opportunity for the candidate to make further inquiries concerning the nature of the job and conditions of employment in order to assess the appointment if it is offered.

As the purpose of questions posed at the interview is to provide additional information to supplement or clarify that provided in the application form, it is essential that some comparable questions are asked of each applicant being interviewed and that the substance of the questions should not vary according to the sex, race or marital status of the applicant. Questions should be expressed in a simple way and not make use of phraseology that may disadvantage a

particular candidate. Questions relating to the following areas must be avoided during the course of the interview:

- marital intentions;
- occupation of spouse;
- number of children, family intentions, domestic arrangements;
- trade union activities;
- political and/or religious beliefs.

Questions that have a direct bearing on the applicant's suitability for a post may be asked, eg all applicants for a secondment to a residential outdoor centre may be asked if they would be in a position to work flexible hours as required by the post.

A record of all interviews must be kept in order to show that a fair and objective comparison was made between candidates and to show why short-listed applicants were not selected following interview. In determining the non-selection of a candidate, interviewers must only consider factors relevant to the job and reasons for non-selection must be recorded. All documents relating to interviews, particularly interview assessment sheets will be retained for at least 1 year.

All applicants will be informed of the result of their job application at the earliest possible opportunity.

If any member(s) of an interviewing panel subsequently feels that discrimination has occurred in the selection process, the matter must be reported immediately to the Executive Director, who will investigate the allegation. Any complaint of unequal treatment received from a candidate will be dealt with in a similar manner.

7.4 Staff development

In organising the programme of in-service training and other staff development opportunities, every effort will be made to reconcile the aim of making opportunities conveniently available to those with family commitments with the need to avoid unnecessary disruption of pupils' education.

7.5 Conditions of employment

Conditions of service for teachers are mainly as set out in the national scheme of conditions of service. Notwithstanding the provision of the scheme of conditions of service no employee to which this policy relates will be discriminated against contrary to the terms of the Equal Pay Act 1970 (as amended), the Sex Discrimination Act 1975 and 1986, the Race Relations Act 1976, the Disabled Persons (Employment) Acts 1944 and 1958 or the Disability Discrimination Act 1995.

7.6 Monitoring

The Commission for Racial Equality, the Equal Opportunities Commission and the Department for Work and Pensions in their codes of practice recommend that employers ensure the effectiveness of their equal opportunities policy by regularly monitoring the effects of recruitment and selection decisions and personnel practices and procedures.

This means that all employees and job applicants will be asked to supply various details concerning their ethnic origin, sex, marital status, disability, religion etc. Agreement has been reached in principle with the teachers' side of the SNCT that monitoring will take place. Information obtained will be regarded as strictly confidential and will be supplied voluntarily by each individual through self analysis using standard pro forma.

(a) Current workforce

The strictly confidential system of monitoring will continue in order that a profile of the current workforce in the education service may be maintained.

(b) Applicants

Similar monitoring arrangements will be established in order that the response and appointments relating to all vacancies may be analysed.

(c) Staff development

The uptake and membership of all courses, both formal and informal, will be monitored. Where there is found to be an imbalance between groups according to sex, race, marital status or because of disability this will be investigated in order that appropriate action can be taken.

The information obtained from these monitoring arrangements will be carefully and regularly analysed in order to identify areas which may need particular attention. The following points will be specifically examined should the monitoring show that individuals from any particular 'group':

- i do not apply for employment or promotion or that fewer apply than might be expected;
- ii are not recruited or promoted at all, or are appointed in a significantly lower proportion than their rate of application;
- iii are under-represented in training or in posts carrying a higher salary, status or authority;
- iv are concentrated in certain sections or departments;
- v have a higher rate of leaving the Council's employment than would normally be expected.

7.7 Individual rights

In preparing this document, particular account has been taken of the following:

Disabled Persons (Employment) Acts 1944 and 1958;

Equal Pay Act 1970 (as amended);

Race Relations Act 1976;

Sex Discrimination Act 1986;

Employment Act 1989;

Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005;

The Equality Act 2006 and associated regulations;

Human rights Act 1998;

SRC Six-Point Plan;

SRC Department of Education Conditions of Service for Teachers in Day Schools;

SRC Department of Education Standard Circulars as applicable;

The Code of Practice issued by the Commission for Racial Equality - "For the elimination of racial discrimination and the promotion of equality of opportunity in employment";

The Equal Opportunities Commission's Code of Practice - "For the elimination of discrimination on the grounds of sex and marriage and the promotion of equality of opportunity in employment";

The Department for Work and Pensions Code of Good Practice on the Employment of Disabled People.

No aspect of this policy detracts in any way from an individual's right to submit a complaint to an employment tribunal or any other body which deals with the enforcement of the acts referred to in this document.

7.8 Grievances

Any teacher who feels aggrieved that he/she has been treated contrary to this policy should have recourse, in the first instance, to the procedure for settling grievances.

Yours sincerely

Executive Director of Community Services

March 2010

Appendix 1: summary of legislation and meaning of terms used within the policy

Race Relations Act 1976

This act makes it unlawful to discriminate against a person either directly or indirectly in the field of employment unless a genuine occupational qualification* is required in compliance with the act.

- (a) Direct discrimination consists of treating a person on racial grounds less favourably than others are or would be treated in the same or similar circumstances.

Racial grounds are grounds of race, colour, nationality - including citizenship - or ethnic or national origins. Groups defined by reference to these grounds are referred to as racial groups.

Segregating a person from others on racial grounds constitutes less favourable treatment.

- (b) Indirect discrimination consists of applying in any circumstances covered by the act, a requirement or condition which although applied equally to persons of all racial groups, is such that a considerably smaller proportion of a particular racial group can comply with it and it cannot be shown to be justifiable on other than racial grounds.

When an employer requires higher language standards than are needed for safe and effective performance of the job, this constitutes indirect discrimination.

- * A person's race may be a genuine occupational qualification (GOQ) for a job in which case discrimination in recruitment, training etc, would not be unlawful. This would be the case where the holder of a particular job provides persons of a racial group with personal services, promoting their welfare and those services can be provided most effectively by a person of that group.

Sex Discrimination Act 1975

This act makes it unlawful to discriminate against a person either directly or indirectly, in the field of employment, unless a genuine occupational qualification* is required in compliance with the act.

- (a) Direct discrimination occurs when a person of one sex is treated less favourably, on the grounds of sex, than a person of the other sex would be, in the same or not materially different circumstances.
- (b) Indirect discrimination occurs when an unjustifiable requirement or condition is applied equally to both men and women but has a disproportionately adverse effect on one sex, because the proportion of the one sex which can comply with it is much smaller than the proportion of the other sex which can comply with it.

A requirement to be mobile might bar more women than men. A complainant would have to show that fewer women than men could comply with such a requirement and that it is to her detriment that she cannot comply.

If such a requirement cannot be justified by the employer without regard to sex, it may then be deemed unlawful. A finding of unlawful discrimination may be made by an employment tribunal even though an employer has no intention to discriminate.

- (c) Marriage discrimination occurs when a married person is treated either more or less favourably, on the grounds of marital status, than an unmarried person of the same sex would be treated in the same or not materially different circumstances.

Such discrimination may be direct or indirect as explained above.

- * A person's sex may be a genuine occupational qualification (GOQ) for a job in which case discrimination in recruitment, training etc would not be unlawful.

Disabled Persons (Employment) Acts 1944 and 1958

These Acts place certain duties and obligations on employers with 20 or more employees (including those working at any branch) relating to the employment of people with disabilities who are registered under the acts.

Other definitions relevant to Council policies

- (a) Victimisation occurs when a person is treated less favourably than others would be because he/she has done something by reference to the provisions of this policy, the Equal Pay Act, Race Relations Act, Sex Discrimination Act or the Disabled Persons (Employment) Acts.

It is therefore unlawful to victimise an individual for a complaint made in good faith about discrimination or for giving evidence about such a complaint.

- (b) For the purpose of this policy, harassment is regarded by the authority as unwelcome comments, looks, actions, suggestions or physical contact that is considered objectionable and offensive to an individual or group of employees and which might threaten an employee's job security or create an intimidating working environment.

Harassment on any grounds will be regarded as a disciplinary offence.

- (c) Discrimination, victimisation and harassment are disciplinary offences and will lead to action being taken against the offending employee, which may be dismissal in terms of the Council's agreed disciplinary and grievance procedures.

The agreed grievance procedures take particular account of these offences and explain fully what action employees should take to discontinue such offences against them.

- (d) The authority is permitted in law, to take positive action to improve the position of under-represented groups in order that a starting position of genuine equality may be reached.