

Towards an Equality, Diversity and Inclusion Strategy

A Resource for Governors
of Independent Schools

September 2021



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Introduction

This resource for governors was commissioned by AGBIS to support governors of independent schools in understanding equality, diversity and inclusion and helping them to embed fairer and more equal cultures within their school community, which is ultimately to everyone’s benefit.

Governors play a powerful role in the life of any school, working with the senior leaders in setting strategies and promoting positive experiences at school for staff and pupils. Governors equally play a significant role in scrutinising systems and decisions of senior leaders and are ultimately responsible for the life of the school, which includes creating safe environments for both pupils and staff.

Schools, in turn, play a hugely significant role in shaping the minds and attitudes of future generations and equipping young people for their lives.

This resource considers all aspects of equality, including discriminatory behaviour based on the legal “protected characteristics” under the Equality Act 2010 as well as other types of unacceptable conduct.

This resource comes at a crucial time for the education sector. The Black Lives Matter movement placed a powerful spotlight on matters of race equality across society, including in schools. The #MeToo movement and, more recently, the Everyone’s Invited movement showed the scale of the problem of sexual harassment, sexual violence and misogynistic behaviours taking place amongst young people across the country.

In March 2021, Ofsted announced an investigation into safeguarding policies in state and independent schools following the Everyone’s Invited movement. Ofsted visited 32 schools in the course of its investigation. The key findings and recommendations of Ofsted’s report are summarised in Appendix 2 below.

The Covid crisis is also highly relevant. Covid has caused a plethora of issues for schools and these have been difficult years as a result, but it is now also known that Covid is having a second impact: inequality. Billed as the “inequality virus”, the data that is emerging shows that the

virus (and the measures taken as a result of the virus) is having a disproportionate impact on minority groups, including women who were more likely to take on additional childcare and household responsibilities during the pandemic, as well as soaring rates of domestic abuse, people with disabilities and those from black and minority ethnic backgrounds being more likely to suffer health inequalities. These societal issues will no doubt have an impact on schools and governors should be aware that where there is inequality, there will certainly be scope for discrimination and harassment to arise.

The #MeToo and Everyone’s Invited movements showed that a major scandal engulfing a school (or any organisation) can be mission critical and can lead to regulatory intervention, criminal investigations, reputational damage, resignations, loss of commercial partners, loss of pupils, as well as the cost of crisis management. Some of this damage can take years to repair. In addition, there is the impact on the pupils or staff who may have suffered because of the behaviour.

EDI is therefore critical for schools. Where governors truly embrace the task of embedding a safer and more inclusive culture, schools should be better able to detect and act on inappropriate behaviours early. An embedded equality, diversity and inclusion strategy will help to foster a “speak up” culture where issues are raised rather than ignored or even covered up. As well as being ethically sound, all of this will in the long run serve to protect the school against complaints, grievances or legal challenges in the area of equality.

How to use this resource

This resource is designed to give governors the tools and prompts to consider equality, diversity and inclusion (or EDI) in their schools, to ask the right questions of senior leaders and to understand how they might embed an EDI strategy, having regard to their particular context.

The resource includes:

- an explanation of equality, diversity and inclusion, to assist governors in understanding these concepts and how they relate to the school context;
- the relevant legal and regulatory framework for schools;
- a section on the importance of EDI for staff, pupils and a school’s culture;
- a consideration of the overarching areas of school life to which EDI is relevant, together with an Appendix containing questions which governors can use as tools to inform the assessment of what actions need to be taken in terms of EDI in their school; and
- guidance on embedding an equal, diverse and inclusive culture.

The principles of equality, diversity and inclusion in this resource apply equally to staff, governors and pupils, although some of the legislation, guidance or specific principles have as their focus either staff or pupils.

What is Equality, Diversity and Inclusion

The concepts of equality, diversity and inclusion are broadly understood as follows:

- Diversity is about the ways in which people differ. These differences should be recognised, celebrated and treated as a natural part of society.
- Equality is a natural extension of diversity and is based on the idea of fairness, whilst recognising that everyone is different.
- Inclusion means that all people, regardless of their abilities, disabilities or health care needs, have the right to be respected and appreciated as valuable members of their communities.¹
- Separately, governors may have heard the term 'equity' in this context. Equity is about giving people what they need, in order to make things fair. It means giving more to those who need it, which is proportionate to their own circumstances, in order to ensure that everyone has the same opportunities; for example providing more support to a disadvantaged student so they can reach their full potential.²

Independent schools are, by their nature, individual and distinct organisations, whether they are schools with a particular subject focus or specialism, a boarding element, or a defined religious ethos.

Governors will need to consider for themselves what equality, diversity and inclusion means in the context of their school and this will help inform the school's approach to achieving a more equitable culture. Some key overarching principles (which governors may wish to consider and adopt for use) include:

- Everyone in the school community is equal, regardless of their religious beliefs, race, sexual orientation, gender or gender identity, disability or age;
- Diversity is a strength and differences should be recognised and valued;

- The school's values and culture reflect the importance of feeling safe;
- Everyone is encouraged to be themselves and reach their full potential;
- A sense of belonging is promoted in the school;
- Positive relationships are promoted throughout the school;
- Prejudice and stereotyping are challenged;
- A 'zero-tolerance' stance is taken on all forms of discriminatory behaviour; and
- Concerns and disclosures are taken seriously, and due process is followed, including where necessary liaising with external authorities.



Legal Framework

The Equality Act 2010 (Equality Act)

The law governing discrimination in respect of employment and the provision of goods and services, which includes provision of education, is set out in the Equality Act. The key purpose of the Equality Act is to protect people from unfair and unjust treatment on the grounds of a ‘protected characteristic’.

The Act contains nine protected characteristics: gender, age, disability, marriage and civil partnership, pregnancy and maternity, race, sexual orientation, religion or belief, and gender reassignment. The Act generally relies on individual litigation-driven enforcement.

The Equality Act makes it unlawful for schools to discriminate, harass or victimise applicants, pupils or staff on the basis of their protected characteristic. The Equality Act applies to schools, including their pupil admissions, staff recruitment, provision of education, facilities and disciplinary processes (see below for certain exemptions for schools and charities).

Legally, there are different types of discrimination under the Equality Act:

- **Direct discrimination** occurs where a person is treated less favourably than others because of their (or a family member’s) actual or perceived protected characteristic.
- **Indirect discrimination** occurs where a provision, criterion or practice is applied which disadvantages people with a protected characteristic and which cannot be justified as a proportionate means of achieving a legitimate aim.
- **Disability discrimination**, which includes:
 - Direct and indirect discrimination;
 - Discrimination arising from disability - where someone is treated unfavourably because of something arising in consequence of their disability and it cannot be justified as a proportionate means of achieving a legitimate aim; and

- Failure to comply with the duty to make reasonable adjustments - schools have a duty to make reasonable adjustments for disabled employees and pupils and they will be in breach of the Equality Act if they fail to make reasonable adjustments to alleviate disadvantages caused by a disability.
- **Harassment** is unwanted conduct related to a protected characteristic which has the purpose or effect of violating a person’s dignity or creating a hostile, humiliating or offensive environment for them. For the purposes of harassment, the protected characteristics of pregnancy and maternity and marriage and civil partnership are not relevant. Harassment includes conduct of a sexual nature and less favourable treatment of an individual because they rejected or submitted to sexual harassment or harassment related to sex or gender reassignment.

- **Victimisation** occurs where a person is subjected to a detriment because they have exercised their rights under the Equality Act (or the perpetrator believes they have done so or may do so). It also applies to someone who is supporting (or who indicates that they intend to support) another person who is exercising their rights under the Equality Act.

The Equality Act provides the following exemptions in the context of schools and charities:

- Single-sex schools which can lawfully discriminate on grounds of sex in their admission process, ([paragraph 1 of Schedule 11 to the Equality Act](#)); and
- Schools with a religious character which can lawfully discriminate on grounds of religion or belief in admissions and in access to any benefit, facility or service, ([paragraph 5 of Schedule 11 to the Equality Act](#)); and
- Provided it is in pursuance of a charitable instrument, charities may restrict benefits to those who share a protected characteristic if:

- the provision of benefits is a proportionate means of achieving a legitimate aim ([section 193\(2\)\(a\) of the Equality Act](#)); or
- the provision of benefits seeks to prevent or compensate for a disadvantage linked to the characteristic ([section 193\(2\)\(b\) of the Equality Act](#)).

Governors should note a few further key points:

Intention is not relevant. Even if a school (or an individual) does not intend to discriminate or have any ill intention, their actions could still constitute discrimination.

Moreover, schools could be liable where there is subtle unconscious bias. Cases can arise where it is decided that someone might not “fit in” to the school because they do not have the same experiences or background. In some cases, this could amount to unlawful discrimination.

A one-off act of harassment is sufficient to satisfy the legal definition. There does not need to be repeated behaviour.

The fact that an employee or pupil may have put up with being harassed or even participated in the behaviour (such as participating in jokes) is not a defence.

There is a “reasonable steps” defence available to employers under the Equality Act in discrimination claims if the employer can show that it took reasonable steps to prevent an individual “from doing that thing”, or “from doing anything of that description”. Recent case law confirms that this defence will not be available to an employer where training on equality and diversity is stale.

If an employee brings a discrimination claim and succeeds in showing that their employer has breached the discrimination provisions in the Equality Act (either directly or by failing to take reasonable steps to prevent an employee from discriminating against another), compensation is uncapped.



Equality Act 2010: Positive Action

Schools can lawfully implement “positive action” in the workplace.

Positive action describes the voluntary measures which organisations can take to improve equality for people who share one or more of the nine protected characteristics. It enables organisations to take action to tackle the particular disadvantage, different needs or disproportionately low participation of a particular group, provided certain conditions are met.

In the school context, such action could include targeted provision of resources or putting in place additional or bespoke provision for a particular disadvantaged group.

The Equality and Human Rights Commission (EHRC) give six general examples of positive action:

- placing job adverts to target particular groups, to increase the number of applicants from that group;
- including statements in job adverts to encourage applications from under-represented groups, such as ‘we welcome female applicants’;
- offering training or internships to help certain groups get opportunities or progress at work;

- offering shadowing or mentoring to groups with particular needs;
- hosting an open day specifically for under-represented groups to encourage them to get into a particular field; and
- favouring the job candidate from an under-represented group, where two candidates are ‘as qualified as’ each other.

[The EHRC Statutory Code of Practice](#) contains detailed information and worked examples of positive action in the workplace.

Note that positive discrimination (preferential treatment to benefit members of a disadvantaged or under-represented group who share a protected characteristic, in order to address inequality) is unlawful where it does not meet the statutory requirements for positive action.

Microaggressions

Separately, governors may be familiar with the term “microaggression” and certainly this is common language amongst young people.

Microaggression has no legal definition but is often defined as brief and commonplace daily verbal, behavioural, or environmental indignities, whether intentional or unintentional, that

communicate hostile, derogatory, or negative slights and insults toward the target person or group³ although there is also some debate as to whether the word microaggression has the effect of minimising discriminatory behaviours.

Research has shown that the impact of microaggressions can be significant; they impact negatively on performance in the workplace⁴ and can contribute to physical and mental health problems⁵. As the definition suggests, the perpetrator may not have any malicious intent. Microaggressions may amount to discrimination under the Equality Act, depending on the facts of each case. Examples of microaggressions could be teachers confusing children from the same ethnic background, mispronunciation of names (particularly if on a repeated basis), or questions such as ‘where are you really from?’. These subtle daily slights may be very impactful particularly if repeated and not challenged.

Likewise, governors may be familiar with the language of “institutional bias” in the context of discrimination. There is no legal definition of “institutional bias” but it is generally understood to mean systemic and inherent bias and discrimination within a particular organisation or institution.



Other unacceptable behaviours

There are other types of bullying or harassing behaviours that may not fall within the legal definition under the Equality Act because they are not related to a protected characteristic. Examples include:

- Bullying based on appearance (e.g. weight, height, disfigurement);
- Bullying based on class, social standing, geographical area, accent, income bracket;
- Bullying of care-experienced young people (i.e. looked after children and those who have been in care), who are particularly vulnerable to bullying;
- Bullying of young carers, who are also significantly more likely to be bullied.

Although these types of behaviour may not be expressly prohibited by the Equality Act, schools which have a culture committed to equality, diversity and inclusion will no doubt wish to identify and banish these types of unacceptable conduct.

Criminal Law

In some cases, criminal law may be relevant.

It is not feasible to cover every relevant criminal offence here, but hate crimes are worth mentioning. The term “hate crime” can be used to describe a range of criminal behaviour where the perpetrator is motivated by hostility, or demonstrates hostility, towards a victim because of their:

- Disability;
- Race;
- Religion;
- Sexual orientation; or
- Transgender identity.

In a recent development, from autumn 2021, police forces will be asked to record misogyny (contempt, hostility or ingrained prejudice towards women or girls) as a hate crime. The data will initially be gathered on an experimental basis pending recommendations for a longer-term solution from the Law Commission.

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[The United Nations Convention on the Rights of the Child](#)

The UN Convention is also relevant in the school context. The UK Government considers the UN Convention to be an “aspirational document” and makes legislation and policy decisions to realise the inalienable and universal rights within it.

Whilst the rights in the Convention apply to children in UK independent schools as a result of the UK having ratified the Convention, the Convention itself is not a feature of UK law and cannot be enforced in domestic courts.

In developing and embedding an EDI strategy, it is, however, useful to consider some of the relevant rights in the Convention to which children benefit as part of the wider picture, including:

- Freedom of thought, conscience and religion (Article 14);
- Right to Privacy (Article 16);
- Education (Article 28);
- Goals of Education (Article 29);
- Children from minority or indigenous groups (Article 30). Every child has the right to learn and use the language, customs and religion of their family; and
- Protection from sexual exploitation (Article 34)

A very useful summary of rights is available from UNICEF ([see here](#)) and further information on these rights is available on the UNICEF website [here](#).

NB: The Scottish Parliament is currently debating the incorporation of the UNRC into law in Scotland.

Regulatory and Statutory Framework

As well as the relevant law, independent schools are also regulated entities and there are a number of agencies that have produced relevant guidance*.

Independent School Standards

The Education (Independent School Standards) Regulations 2014 (Regulations) set out standards that apply to independent schools in England. The standards are contained in the [Schedule](#) to the Regulations. The standards for independent schools in Wales can be found [here](#).

The Independent School Standards [guidance](#) (applicable to England) is intended to help proprietors of independent schools understand the obligations under the Regulations. Inspectors take the guidance into account when reporting to the Secretary of State on the extent to which standards are being met, or are likely to be met, in relation to an independent school. The Department for Education would also take it into account when making decisions about regulatory or enforcement action on individual schools.

The Regulations embed the principle of respect for equality at the heart of school life. Schools are expected to actively promote principles that “further tolerance and harmony between different cultural traditions by enabling pupils to acquire an appreciation of and respect for their own and other cultures”. Schools must teach respect for protected characteristics through the Personal, Social, Health and Economic (PSHE) curriculum.

*Appendix 3 contains the relevant guidance for Scottish schools which they should refer to.

Inspections

Independent Schools Inspectorate

The [ISI Inspection Framework](#) (applicable to England) sets out that inspectors will evaluate (among other things):

- the extent to which pupils respect and value diversity within society, show respect for and appreciation of their own and other cultures, and demonstrate sensitivity and tolerance to those from different backgrounds and traditions;
- provision that prepares children for life in modern Britain: respect, positive contribution; development of fundamental British values; developing understanding and appreciation of diversity and differing needs within a community; and
- the extent to which leaders fulfil their statutory duties; for example, under the Equality Act 2010 and other duties and in relation to the ‘Prevent’ strategy and safeguarding and safer recruitment.

Schools in Wales may refer to guidance from Estyn ([here](#)).

Relevant Guidance

Department for Education

The DfE publishes guidance on an ongoing basis. The relevant guidance to be considered in conversations about EDI is:

- [Equality Act 2010: advice for schools](#)
DfE guidance to help schools understand how the Equality Act affects them and how to fulfil their duties under the Act.
- [Sexual violence and sexual harassment between children in schools and colleges](#)
DfE guidance on sexual violence and sexual harassment between children in schools, together with Keeping Children Safe in Education 2021 (KCSIE) which is key safeguarding guidance for schools in England.
- [Relationships Education, Relationships and Sex Education \(RSE\) and Health Education](#)
Statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers in England.
- [Mental health and behaviour in schools](#)
DfE guidance on how to create a whole school culture, including promoting positive mental health, understanding the link between mental health and behaviour, how to identify children with possible mental health problems, where and how to put in place support, including working with external agencies where required.

Further information and guidance for schools in Wales can be found [here](#) on the Welsh Government website.

“Schools must teach respect for protected characteristics through the Personal, Social, Health and Economic (PSHE) curriculum.”



The Charity Commission

Some independent schools are also registered charities and therefore need to act in accordance with charity law and guidance from the Charity Commission. Governors of schools that are charities are often also the trustees of the charity, in which case they need to understand their legal duties and the Charity Commission guidance in relation to the administration of charities.

The Charity Commission have published the following relevant guidance:

- **Trustee duties:** [The Essential Trustee: What you need to know, What you need to do](#). This guidance explains the key duties of all trustees of charities in England and Wales, and what trustees need to do to carry out these duties competently.
- **Safeguarding:** [Safeguarding and protecting people for charities and trustees](#). This guidance sets out that:
 - As part of fulfilling their duties, trustees must take reasonable steps to protect from harm people who come into contact with the charity.
 - Trustees should promote a fair, open and positive culture and ensure all involved feel able to report concerns, confident that they will be heard and responded to.

- The risks that the trustees must be aware of include:

- sexual harassment, abuse and exploitation;
- cyber abuse;
- physical or emotional abuse;
- bullying or harassment;
- discrimination on any of the grounds in the Equality Act 2010;
- a charity’s culture may allow poor behaviour and poor accountability;
- people may abuse a position of trust they hold within a charity.

- The charity must have a clear code of conduct for staff and volunteers which sets out:

- the charity’s culture and values; and
- how people in the charity should behave.

- **Serious Incident Reporting:** [How to report a serious incident in your charity](#). This is guidance for charity trustees about serious incidents: how to spot them and how to report.

- **Governance:** The [Charity Governance Code](#) is non-statutory guidance, and is described as a practical tool developed by a steering group with the help of more than 200 charities and organisations to help charities and their trustees develop high standards of governance. The Code emphasises how addressing equality, diversity and inclusion helps a board to make better decisions.

- **Diversity of boards:** The Charity Commission has emphasised the [importance of a diverse trustee board](#):

- “A diverse board is more likely to contain a broader range of skills, knowledge and experience than one which is more narrowly based. When preparing to recruit new trustees, a charity should, in general, seek to increase or at least maintain the diversity of its trustee board.”
- “You can achieve greater diversity by reaching out into communities that are not presently represented, for example by advertising and by making specific efforts to assist people who might otherwise have difficulties in attending board meetings”. (Diversity of boards is discussed further below).

“A diverse board is more likely to contain a broader range of skills, knowledge and experience than one which is more narrowly based. When preparing to recruit new trustees, a charity should, in general, seek to increase or at least maintain the diversity of its trustee board.”

The Charity Commission

Equality and Human Rights Commission (EHRC)

The EHRC has issued non-statutory [guidance](#) which explains what schools must do to meet the requirements of equality law. It is not a statutory code but may be used as evidence in legal proceedings. Following the guidance may assist schools in avoiding adverse decisions in such proceedings. Independent schools in Wales should refer to the following technical guidance [here](#).

It has also published guidance for employers about their responsibilities under the Equality Act.

The [Employment Statutory Code of Practice](#) from the EHRC, is the technical guide on the detail of equality law aimed at lawyers, HR, Courts and Tribunals and everyone who needs to understand the law in depth, or to apply it in practice.

The following is also relevant:

- [guidance](#) for schools on reasonable adjustments for disabled pupils; (applicable to England) and
- [guidance](#) on sexual harassment and harassment at work.

ACAS

ACAS has published guidance entitled “[Improving equality, diversity and inclusion: making your workplace inclusive](#)”. The guidance refers to organisations developing an equality, diversity and inclusion policy (or equal opportunities policy) and provides a template, as well as giving advice on how to put the policy into action.

The ACAS Code of Practice on Disciplinary and Grievance Procedures is applicable when dealing with employment issues including handling grievances and disciplinary matters. The Code can be found here (<https://www.acas.org.uk/>). ACAS also provide guidance on carrying out investigations which is available on their [website](#).

Home Office

The Home Office has published revised [guidance](#) on the Prevent duty (dated April 2021), which includes a section for schools. This guidance is for specified authorities in England and Wales (including schools) on the duty in the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism. Whilst this guidance focuses on the threats of both Islamic extremism and extreme right-wing, white supremacist ideology, schools should be alive to other extremist belief systems and ideologies that may draw in young people and take preventative steps. For example, there has been a recent focus on the “incel movement” (an online sub-culture of predominately men and boys who define themselves as “involuntarily celibate”). This sub-culture has been linked with a spate of killings particularly in the US.



Why is EDI Important?

Governors will recognise that an environment where there is bullying, discrimination and harassment, is not one that is conducive to a safe and supportive learning environment.

Countless studies have demonstrated the disadvantage suffered by individuals on the basis of their protected characteristics. For example:

[Research](#) from the Anti-Bullying Alliance in 2020 suggests that children and young people are more likely to be bullied in schools because of their race, faith, gender, disability, sexual orientation or trans status.

[Research](#) from the YMCA on the young Black experience of institutional racism in the UK highlights the following statistics:

- 95% of young Black people report that they have heard and witnessed the use of racist language at school;
- 49% of young Black people feel that racism is the biggest barrier to attaining success in school, while 50% say the biggest barrier is teachers' perceptions of them – e.g. being seen as “too aggressive”; and

- Young Black people feel that they are more likely to be permanently excluded, which is mirrored in national data. UK Government statistics on pupil exclusion and ethnicity show that Black Caribbean pupils were around three times as likely to be permanently excluded than white British pupils (0.29% compared with 0.10% respectively), and around twice as likely to receive a fixed period exclusion (10.1%) compared with white British pupils (5.2%). Young Black people in the focus group on education felt that this higher exclusion rate could be linked to false perceptions that their teachers have of them.

A [survey](#) by Metro Youth Chances in 2014 found that 83% of trans young people say they have experienced name-calling and 35% have experienced physical attacks.

With respect to staff diversity, countless reports show the benefits for organisations when they adopt a diverse and equal culture. For example, in the context of race equality, the report: “*The Time for Talking is over. Now is the Time to Act*”. Race in the Workplace – The McGregor-Smith Review ([see here for report](#)) was published in February 2017. It concludes:

- Every person, regardless of their ethnicity or background, should be able to fulfil their potential at work. That is the business case as well as the moral case. Diverse organisations that attract and develop individuals from the widest pool of talent consistently perform better;
- There is no reason why every organisation in the UK should not have a workforce that proportionately reflects the diversity of the communities in which they operate, at every level. This is what the collective goal should be;
- The potential benefit to the UK economy from full representation of people of colour across the labour market, through improved participation and progression, is estimated to be £24 billion a year, which represents 1.3% of GDP; and
- There is discrimination and bias at every stage of an individual's career, and even before it begins and in the UK, there is a structural, historical bias that favours certain individuals. This stands in the way of ethnic minorities, women, those with disabilities and others.

8 in 10 teachers believe they have suffered sexual harassment or bullying in the workplace



NASUWT poll, 2018

81%

7 in 10 LGBT workers experienced at least one type of sexual harassment



TUC sexual harassment report, 2019

68%

1 in 8 LGBT women reported being seriously sexually assaulted or raped at work



TUC sexual harassment report, 2019

12%

Reports and studies, including from the education sector, show concerning levels of harassment and discrimination:

According to a 2018 NASUWT [poll](#) (the Teachers Union):

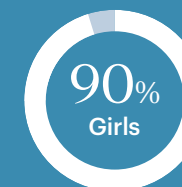
- Four in five (81%) teachers said they believed they had suffered sexual harassment or bullying in the workplace;
- Sexual harassment had come from pupils, parents, colleagues or managers; and
- Some had photos taken down their tops and “upskirting”.

A TUC sexual harassment [report](#) from 2019 found:

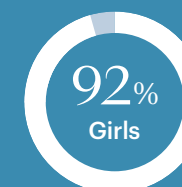
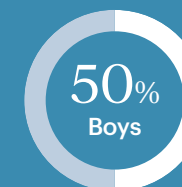
- 7 out of 10 LGBT workers experienced at least one type of sexual harassment (68%); and
- Almost 1 in 8 LGBT women (12%) reported being seriously sexually assaulted or raped at work.

A recent [report](#) (2021) published by recruitment firm Totaljobs found that:

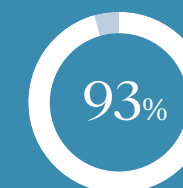
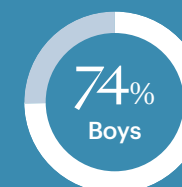
- Almost a third (32%) of trans people have experienced discrimination or abuse at work in the last five years;
- More than two in five (43%) have quit because their work environment was unwelcoming; and
- 65% of trans people did not reveal their gender identity at work, as compared with 52% in 2016.



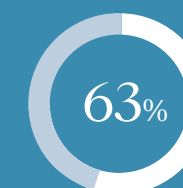
Said being sent explicit pictures or videos of things they did not want to see happens a lot or sometimes to them or their peers
Ofsted 2021



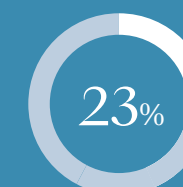
Said sexist name-calling happens a lot or sometimes to them or their peers
Ofsted 2021



Children and young people with learning disabilities have experienced bullying
Enable 2007



LGBT secondary school pupils experience homophobic bullying at school
EHRC (2010) Triennial Review

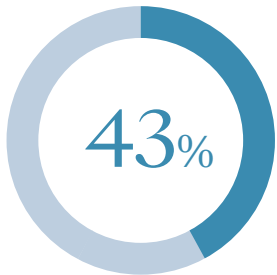


Young people experience bullying due to their faith
Beatbullying 2008

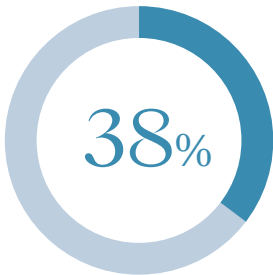
“In the wake of the Black Lives Matter and Everyone’s Invited movements, schools should expect to be asked about and challenged by their communities on the subject of equality and diversity. These movements have given people the confidence to come forward and make disclosures about concerning behaviours and schools need to be detecting these behaviours, as we explore further below.”



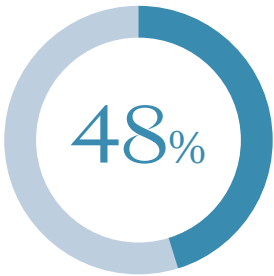
The 2018 NASUWT poll (referred to previously) identified that, of respondents who had been sexually harassed:



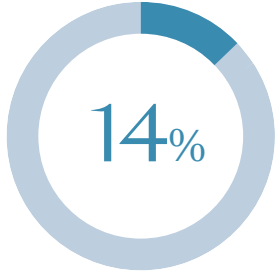
Suffered a loss of confidence



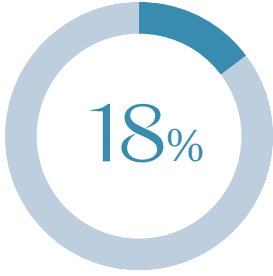
Experienced anxiety and/or depression



Made changes to their daily routine to avoid the harasser



Changed jobs or moved to a new school



Felt their career progression was hit

Impact of discrimination and harassment:

The impact of bullying, discrimination or harassment because of any of the protected characteristics or other bullying behaviour can be very serious.

Research by the Anti-Bullying Alliance shows that:

- Bullying harms children and young people’s wellbeing, causing social anxiety, a sense of feeling unsafe and mental health issues;
- Bullying shuts down the ability to learn, leading to poorer attainment, reduced ambition and increased absences; and
- The effects of bullying persist into adulthood, increasing the risk of poor health in later life (including depression, suicidal thoughts, heart disease and diabetes).

The Metro Youth Chances 2014 survey referred to above found that:

- almost a third (32%) of trans young people say they have missed lessons due to discrimination or fear of discrimination; and

- over a quarter (27%) of trans young people have attempted suicide.

More generally, and thinking about staff, discrimination and harassment can lead to:

- Low morale amongst the workforce which can lead to disengagement;
- Individuals having low opinions of their colleagues, managers and talented staff leaving;
- Individuals feeling depressed, anxious and suffering physical health issues such as loss of sleep, impact on appetite; and
- In extreme cases, severe or persistent bullying or harassment can even lead to self-harm and suicide if the victim feels they can no longer cope or they aren’t being supported.

“The impact of bullying, discrimination or harassment because of any of the protected characteristics or other bullying behaviour can be very serious”

A Whole School Approach to EDI

In deciding to embed an EDI strategy, governors will need to grapple with difficult subjects, understand their school's current approach to EDI and make a long-term commitment to change.

It is important that governors understand that formulating an EDI strategy requires collaboration between all members of the school community. An EDI strategy will be most relevant where it is informed by the voices of governors, senior leadership, staff, pupils and parents, particularly those with protected characteristics.

A 'whole school approach' means that everyone in the school has a responsibility for equality, diversity and inclusion and it is not simply considered an initiative or subject that is left to one individual, group or committee. Similar approaches have been taken in the area of safeguarding and child protection and mental health in schools.

A 'whole school approach' involves all members of the school community being responsible for the culture and being committed to "living" the principles that emerge as a result of the EDI strategy and to appropriately challenging infractions.

Successful implementation of an EDI strategy will necessitate consideration of its application across every aspect of school life. Included below are overarching areas of school life.

In Appendix 1, more detailed questions are put forward to help governors begin these conversations or to use as checklists. The lists of questions include points that will help inform the assessment of what actions need to be taken to embed an EDI strategy and will help in the formulation of an equality "action plan" which may emerge from the strategy. The questions are comprehensive but not exhaustive and schools should examine them to determine whether they are relevant and appropriate in light of their particular circumstances or whether there are other points or questions to add in.

Overarching areas of school life:

Admissions: to successfully implement an EDI strategy, schools should consider the opportunities and challenges to diversify their intake and mitigate the risks of discrimination in the admissions process. Schools may also need to improve data collection and analysis, review their selection process and develop outreach opportunities. This may also involve a review of how bursaries and scholarships are awarded.

Behaviour: in embedding an EDI strategy, it will be important to determine whether there is evidence of discrimination or bias in the application of a school's behaviour, discipline and uniform policies and review its data on behaviour sanctions, including exclusions.

Community engagement: schools can benefit from a diverse and engaged group of parents and alumni. In some cases, schools can take advantage of what their community has to offer by fostering relationships with parents and alumni, and taking the opportunity to build reciprocal relationships with state schools.

“A ‘whole school approach’ means that everyone in the school has a responsibility for equality, diversity and inclusion and it is not simply considered an initiative or subject that is left to one individual, group or committee.”

Curriculum and teaching: a representative curriculum will include authentic portrayals of diverse communities, experiences and people, which are not merely tokenistic. This supports all pupils to feel more reflected (and consequently, more engaged) in what they see and learn. A diverse curriculum should also focus on the positive aspects of the minority experience and not just concentrate on negative terms which can reinforce stereotypes.

Co-curriculum: a school's co-curriculum provides opportunities to more consciously address diversity and inclusion (e.g. in assemblies, clubs, talks by visiting speakers, and on school trips).

Diversity monitoring: in order to successfully implement an EDI strategy, schools will need to be able to identify meaningful data on diversity within the school community. Failure to do so will present a serious obstacle to taking action against discrimination in the school. As such, data collection and monitoring systems may need to be reviewed and updated.

Governance: it is important for schools' governing bodies and committees to be diverse and inclusive. The Parker Review (referred to at page 21) gives useful insights and recommendations on board diversity (albeit in another sector). Schools may consider setting up a working group of governors to examine issues around EDI and take forward the development of an EDI strategy. Governors should consider whether EDI becomes a standing agenda item at meetings.

Safeguarding: The school's safeguarding policies, processes and systems should clearly set out when discriminatory behaviours meet the thresholds for reporting concerns to the local authority (either the Local Authority Designated Officer (LADO) if dealing with concerns or disclosures about adults working with children or the children's social care team if dealing with concerns or disclosures about behaviours between children or young people). The EDI strategy should give consideration to whether particular groups of children may be more vulnerable to abuse (such as those with disabilities or from the LGBT community) or whether for some groups of children there may be additional barriers or hurdles if making a disclosure of abuse or accessing support.

Owen O'Rorke is a Partner at Farrer & Co and a specialist in data protection law. Owen says "Be aware that information about an individual's ethnicity, religion, sexual orientation, gender identity or disability fall into special categories of data under UK GDPR. Schools will need a lawful basis to collect and monitor this data: diversity monitoring for equality of opportunity and treatment is a permitted purpose, but generally this ground cannot be relied on for making decisions about a specific individual. (Note that other grounds exist to process such data, even without consent, where it is necessary to do so for pastoral and safeguarding purposes. Schools should have in place an appropriate policy document setting out how it believes it complies with the requirements of data protection legislation and an indication of how long it intends to keep the data)".

“One key aim of an EDI strategy should be that the workforce is reflective of the working population and that employees feel respected and able to carry out their job in an environment that is free from discrimination and harassment.”

School culture: An examination of school culture is critical. Does the school foster a “speak up” culture? Do staff feel confident in identifying and dealing with bullying, harassment and discrimination issues (including microaggressions), both among the staff community and between pupils? Can staff and pupils “be themselves” while at school, or do they feel they need to hide certain parts of themselves to assimilate? Culture is discussed further below.

Staff diversity and inclusion: one key aim of an EDI strategy should be that the workforce is reflective of the working population and that employees feel respected and able to carry out their jobs in an environment that is free from discrimination and harassment. An EDI strategy with a follow up action plan would almost certainly consider issues such as the wording of recruitment adverts, methods of sifting applications and CVs, methods of interviewing, staff training, retention, mentoring, progression, appraisals and the importance of exit interviews.

Separately, two further themes are:

Challenging discrimination: it is essential to creating an inclusive school environment that the school takes action to challenge discriminatory behaviour when it occurs. This requires clear articulation in school policies about what discriminatory behaviour is (providing specific examples) and what sanctions will apply to people who engage in it. This includes dealing with low level behaviours or concerns and doing so in a proportionate way. Lower level behaviours (such as perhaps cruel “jokes” or comments) can have a significant impact on individuals (whether they are one off comments or part of a sustained campaign of bullying) and where they are not challenged and acted on can create the conditions in school for more hostile, violent or abusive behaviours to set in; and

Raising concerns and whistleblowing: critically, everyone in school must feel able to raise concerns and report incidents with confidence that the concerns or disclosures will be taken seriously, acted on proportionately and in line with school procedures and that issues can be raised without fear of retribution.



Diversity on The Board

A review carried out by Sir John Parker examining ethnic diversity of FTSE 100 boards urges leaders to improve the ethnic and cultural diversity of boards to better reflect the communities they serve. The Parker review contained recommendations which are transferable to the school setting including:

- Develop candidates for the pipeline and plan for succession. An EDI strategy could examine how to identify, develop and promote people from marginalised groups in order to ensure that over time there is a pipeline of diverse and capable candidates for board and senior level positions; and
- Enhance transparency and disclosure. A description of the school’s policy on diversity could be set out in an annual report, and could include a description of the school’s efforts to increase diversity within the school, including at Board level.
- The Parker Review highlighted “red flags” for boards, which again are transferable to the school setting:
- The board and senior management lack the resources and mechanisms to collect sufficient data to analyse the diversity profile of their organisation and the business case for change;
- Vague terms like “fit” or not being the right “type” are used to describe why a potential candidate may not be appropriate, without sufficient objective and detailed supporting evidence being given and tested;
- The board consists solely of people with similar professional backgrounds/qualifications;
- Diversity programmes have been implemented in the past but have not delivered results;
- The human resources teams or recruitment firms indicate that there are not any qualified minority ethnic candidates available to fill a vacancy;
- The pipeline of “high potential” candidates is predominately of one race, gender, nationality or religion;
- There is a “clustering” of particular ethnicities within specific jobs or seniorities;

- Internal engagement surveys indicate that actual or perceived bias is affecting career progression for non-majority ethnic employees; and
- There is a high level of “opting-out” or nonreporting of personal information regarding an individual’s ethnicity within the organisation.

The presence of any of these “red flags” indicates that follow up and investigation by the board is warranted.

Race in The Workplace

“The Time for Talking is Over. Now is the Time to Act. Race in the Workplace”, a review by Baroness McGregor-Smith CBE, makes the case for a diverse and inclusive workforce from the perspective of race and ethnic diversity. The review is aimed at all organisations and contains recommendations that are useful for schools.

- Mandatory unconscious bias training: ensure that staff at all levels undertake unconscious bias training to address lingering behaviours and attitudes that act as a barrier to a more inclusive workplace. (NB: Training should be high quality, engaging and interactive for staff. Many unconscious bias training programmes have been criticised for being ‘tick box’ exercises which can leave organisations with a sense of EDI being “done”. Training should be part of a programme of anti-discrimination training delivered by trainers who understand the education context and can provide tailored, practical advice on issues);
- Reject non-diverse lists when recruiting through a third party or recruitment agency: Long and short lists that are not reflective of the local working age population should be rejected;
- Diverse interview panels: larger employers should ensure that the selection and interview process is undertaken by more than one person. Wherever possible, this panel should include individuals from different backgrounds to help eliminate any lingering unconscious bias;
- Transparency on career pathways: ensure that new recruits receive a proper induction. Basic information should be available to all employees about how the career ladder works, including pay and reward guidelines and clear information on how promotions work; and
- Provide mentoring and sponsorship: employers should establish mentoring and sponsorship schemes internally, which are available to anyone who wants them.
- Reverse mentoring: senior leaders and board members should seek out opportunities to undertake reverse mentoring opportunities with individuals from different backgrounds in more junior roles. This will help to ensure that they better understand the positive impact diversity can have and the barriers to progression faced by these individuals;

Mary Breen is a Schools Advisor at Farrer & Co having been a Headmistress in the independent sector for over 20 years. Mary says “Appraisal of staff at all levels in a school has long been recognised as an important part of an individual’s professional development, and indeed should be seen as an individual’s professional right and a school’s professional duty. Too often, over-complex systems and unrealistic time frames mean that, however well written and well intentioned, appraisal can be the first thing to be set aside and the last thing to be started or completed. This has been true in many schools during the Covid-19 pandemic where remote management has been seen as a barrier.

At their best, appraisals provide feedback on performance, for example teaching and chairing or contributions to meetings, and also include feedback from colleagues – both junior and senior. It is crucial that feedback is given on a no-names basis, and it is crucial that one focus is ‘areas for development’. In an environment of trust and positivity, an individual can learn from others’ perceptions of their performance and their ‘way of doing things’ and this can be hugely instructive in terms of addressing any weaknesses and identifying training needs or shifting of priorities.

Appraisals of Heads should be 360 degree and regular – at least every 3 years – and are often undertaken by a professional outside of the organisation who reports back to the governing body. The appraisal of the Head should be a positive example of honest feedback for all other staff and would certainly include feedback on whole school objectives, and in this example, attitude and approach to all aspects of EDI.

Most professional associations of schools offer mentoring for new Heads by linking experienced Heads with those about to take on the role. Such mentoring might last up to 2 or 3 years. Increasingly, governors are aware that such mentoring depends upon the time available from the busy mentor/ Head, and are instead using external professionals to offer regular and sustained mentoring for their own Heads. This gives the Head time and space for confidential offloading, and discussions around individual objectives and how these link with school strategy, including in this example, attitude and approach to EDI. Mentoring, and reverse mentoring (as described elsewhere in this document) are increasingly used in schools at all levels of management and indeed between different peer groups among the pupil body”.

Embedding an Equal, Diverse and Inclusive Culture

There are likely to be very many key components to embedding EDI, but school values and culture are critical components. Whilst the written framework of policies and procedures is crucial, governors should seek out opportunities to gauge attitudes, beliefs and feelings within the school community which can be done through surveys and culture reviews.

In the midst of the #MeToo movement, the Director of the Institute of Business Ethics ended a speech to a charity trustee conference by saying:

“A good culture liberates and empowers an organisation while keeping it safe. The benefits are there for the long term, while clearing up the mess will take a lot of time and trouble if it goes wrong.”

The impact of a poor culture within a school cannot be underestimated. It can lead to low morale, staff leaving, pupils leaving, bullying, legal claims and reputational and financial risk.

A leading academic on safeguarding and organisational culture, Marcus Erooga, stated that culture can best be described as “the way we do things here”. It is useful to look at his studies on perpetrators of sexual offending against children in organisations, which show that there is a reduced likelihood of abuse taking place where the organisation’s messages and rules are clear and applied consistently to all staff irrespective of their position. The values of a school (as set out in policies and articulated through training) need to be clear and “lived” at each level of the school (including

through the conduct of the leaders and senior staff). This is the context within which people judge the appropriateness of their own behaviour and that of their colleagues.

Embedding a good culture takes positive and courageous leadership where professional standards are always maintained, where “cultural slippage” is challenged and where appropriate action is taken when boundaries have been transgressed. This means having meaningful and clear values, and ensuring that everyone has bought in and feels part of the school. As schools reflect on equality, diversity and inclusion, governors can ask themselves some of the questions in the School Culture section of Appendix 1 to better understand their existing culture.

“Many people find it difficult to speak about issues of discrimination, sometimes for fear of saying the wrong thing, or feeling that they don’t have the language or understanding to talk about the issues. This can mean that issues are ignored because conversations simply don’t happen. Schools are in a unique position to empower the staff and pupils to become confident in talking about equality and diversity, which will help create a more inclusive culture and potentially help address issues or concerns.”



Equality audits and reviews

Equality audits and reviews are common in other sectors. Feedback from governors, staff, pupils and parents can be taken anonymously through the use of surveys or schools might opt to use focus groups and workshops or even one to one interviews as part of a process of assessing attitudes and culture. Audits or reviews should also include reviews of policies.

Outside experts may be brought in to support a school with a review or audit. Indeed external experts may be able to support a school by assisting in its development of an EDI strategy and action plan, delivering a training programme and helping with the monitoring and evaluation of progress.

When considering an EDI strategy, the following steps may be relevant, depending on what work the school has already done on EDI:

1. Establishing a baseline. This means gauging what the school's position is now, before any action is taken. This allows governors to compare the "before and after" to determine the impact and effectiveness of actions taken. This can be done by reviewing diversity data across all aspects of school life and also conducting an equality audit or equality review in which feedback about people's experiences of school life can be examined.

2. Self-education. Before determining a strategy, governors and senior leaders may consider investing the time in self-education. There is a wealth of publicly available material and research from leading charities and non-profits on an array of subjects including racism, transgender issues, sexual harassment, religious intolerance and many other related topics. Even a small amount of self-education on the part of the governors would give insights into the issues and support a longer-term strategy, plan and training programme.

3. Statement of intent or commitment to an equal, diverse and inclusive culture. Across sectors, a number of organisations have publicly stated their commitment to EDI through announcements and statements of intent. Governors may consider whether to adopt this approach too and what any statement might say and how that might best be presented.

4. Written strategy. As with any strategy, an EDI strategy should have clear aims and objectives. Depending on the school context, an EDI strategy may have quite ambitious aims or where there is significant work to do in this area a school might start off with more modest aspirations. The strategy will be based on the school's current position on EDI and governors have to be realistic about where the school is in terms of equality and diversity and be realistic about what can be achieved within particular time frames. Governors and senior leaders will need to consider what EDI means in the context of their school and what they

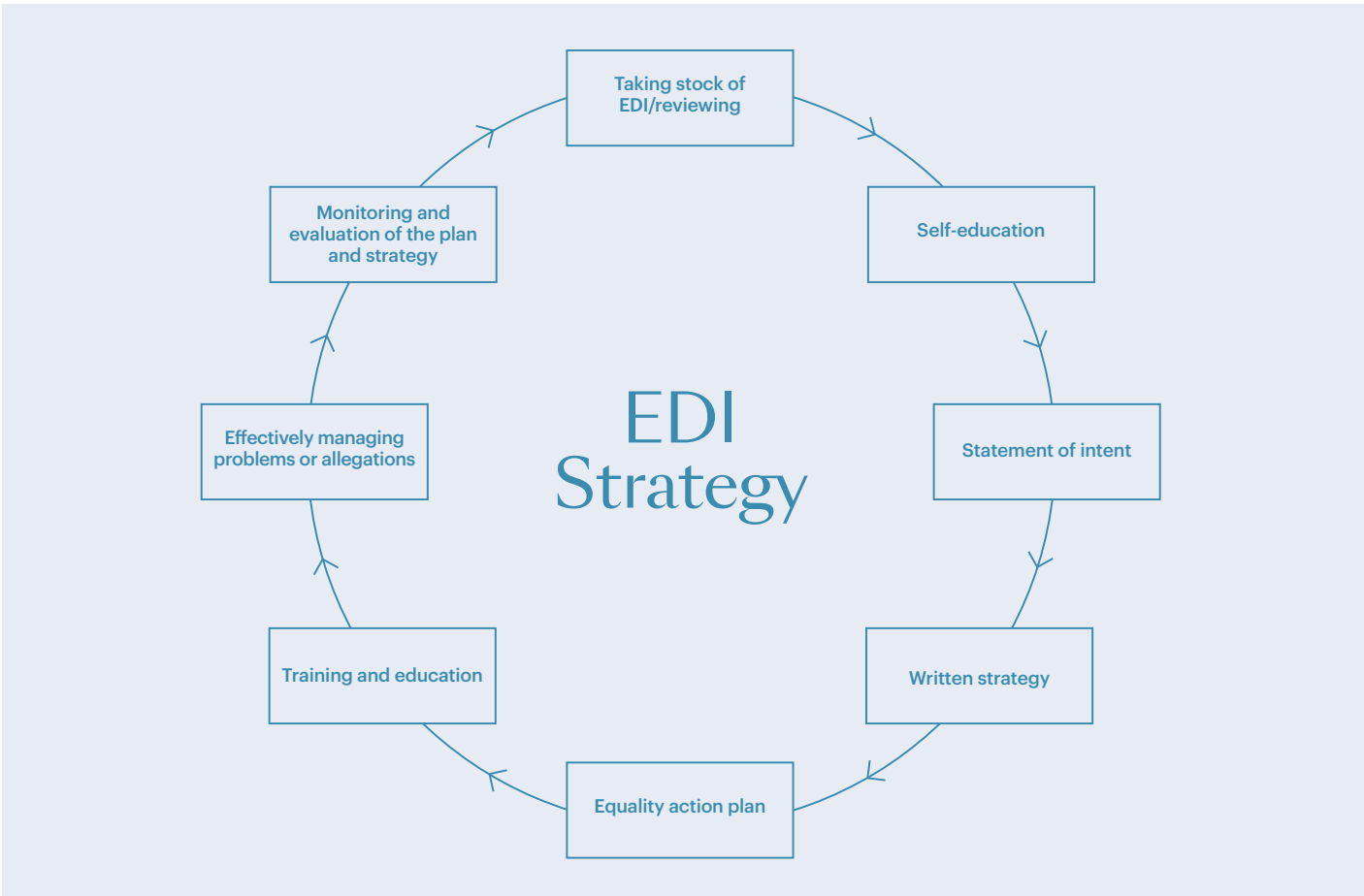
hope to achieve from an EDI strategy and action plan (see below). The checklists in Appendix 1 should assist schools in creating a plan for the development and delivery of their strategy. This resource makes clear that EDI is not simply the development of a policy or even a suite of policies (though policies are part of the picture). It's about attitudes and behaviours, which have to be embedded, and the way in which values are lived and policies are brought to life via training and implementation.

5. Equality action plan. An equality action plan (which could also be called a diversity and inclusion action plan) can be developed that would cover all areas of school life, with clear goals and timeframes for delivery of goals. As with the written strategy, the aims will depend on the position the school in question is starting from in terms of EDI. The questions in Appendix 1 can be used to inform the development of the action plan. The plan will rely on the setting of goals, collection and analysis of data, identification of the gaps and areas of concern, the steps to address the issues and monitoring of progress.

6. Training and education. It is likely that an ongoing programme of training and education on EDI issues will form part of any equality action plan. Training and education on EDI, which is also an opportunity to reinforce the school's values, should also equip staff and pupils to safely challenge unacceptable attitudes and behaviours and know how to report concerns or incidents to the right people in the school. Many organisations also opt to incorporate "bystander training" into their programmes.

7. Managing problems or allegations. Part of creating a safer culture free from harassment and discrimination includes schools being able to properly manage concerns and allegations. This means taking allegations seriously and responding promptly, applying the code of conduct and behaviour policy consistently, following the relevant policies and, where applicable, statutory guidance. In most cases there will also be a need for investigations with clear outcomes.

8. Monitoring and evaluation of the EDI strategy and equality action plan. Governors can use a range of strategies to monitor, evaluate and assess the impact of the EDI strategy and action plan over a period of time. This includes collection of data, impact assessments, surveys, audits and reviews which have been discussed above. Governors may also detect cultural change through noticing an uptick in EDI issues being raised. Counterintuitively, this may well be an encouraging sign, showing that individuals may be feeling more empowered to speak up if there are issues. Not every initiative from an EDI plan will work. Where the action plan and strategy do not appear to be delivering the aims and objectives, governors should not be afraid to admit where there have been failings or shortcomings, or if certain initiatives are not producing results, and go back to the drawing board to consider other means by which the objectives might be achieved. Outside experts may be valuable in such a scenario.



Appendix 1

1.1

Admissions

Do you collect diversity information during the admissions process? Is it reviewed to understand application and success rates? Is this information reported to the governing body to enable appropriate oversight?	Have you reviewed admissions information on the school's website? Will it attract families and pupils from all backgrounds?
Do you ensure unconscious bias in the admissions process is directly addressed in EDI training?	Can you develop outreach and partnerships with schools in the state sector to encourage pupils from different backgrounds to apply?
If there is more than one school in a group, have you considered aligning the schools' selection processes to share resources and knowledge?	Are the school's admissions procedures transparent and capable of being understood?

1.2

Behaviour

Does the school collect data on the application of disciplinary sanctions, including data relating to ethnicity, religion, gender and gender identity, and is it analysed regularly for potential bias? Is this data available to governors?	Does your behaviour policy allow for sanctions for online discriminatory or bullying behaviour and off-site behaviour?
Do you ensure training directly addresses bias in applying the school's behaviour policy?	After incidents of discrimination, do you review what happened? Do you consider steps you can take to prevent this kind of incident happening in the future? Did the incident identify any training needs? Did your policies work well, were they followed, did the incident show any weaknesses or gaps in knowledge or procedures?
Do senior leaders have systems to harness different groups of pupils' experiences of disciplinary sanctions, identify any disproportionate impact and discuss what steps could be taken to address issues?	Does the school make reasonable adjustments to procedures for pupils with additional needs and disabilities?
Have you reviewed the school's uniform policies to ensure they are clear and inclusive?	

1.3

Community Engagement

Do you provide opportunities for parents to engage with the school on EDI, including sharing resources and training opportunities with parents?	Does the school have any connections/associations with organisations that are controversial? Have you considered whether those connections are consistent with the school's values, culture and EDI objectives?
Do you consult parents of children with different protected characteristics about their children's needs and experiences in order to inform pastoral care?	

1.4

Curriculum and teaching

Do pupils and staff feel the curriculum is diverse and representative of all backgrounds?	Is the PSHE curriculum being used to increase opportunities to learn about the modern experience of people from different ethnic groups, religions, genders, LGBT communities and people with disabilities and focus on diversity issues in the UK?
Has the senior management team been consulted on the school's vision for diversifying the curriculum and the positive impacts it will have for all pupils?	Have you created a curriculum resource bank that takes advantage of the many web-based diversity and inclusion resources, to support staff in accessing suitable resources to update their curriculum?
As part of the curriculum development plan, have teachers been asked to identify opportunities for diversifying taught content?	Have teaching resources been reviewed to assess whether discriminatory slurs and stereotypes are prevalent and whether it would be appropriate to select different resources? If resources are retained, have teachers developed a plan to ensure these are properly contextualised and pupils with protected characteristics do not feel singled out? Are teachers aware that pupils should never be expected to read out discriminatory language in the classroom?
Have pupils been given an opportunity to contribute to the curriculum plan and encouraged to share ideas about topics they would like to study?	Does the school's EDI training directly address methods of teaching discriminatory materials with sensitivity and context?
Has the school explained its work on curriculum development to parents and given them an opportunity to express their views?	
Does the senior management team need support from specialist providers to deliver a diversified curriculum?	
Are teachers supported by professional development dedicated to exploring how to diversify the curriculum in their subject area?	
Does teaching material include positive starting points to learn about people with protected characteristics and avoid narratives which cast people with protected characteristics as victims?	
Has PSHE teaching been reviewed to ensure that it teaches pupils respect for all protected characteristics under the Equality Act?	

Appendix 1

1.5

Co-curriculum

Does the school have a sufficient number of outside speakers from diverse backgrounds to contribute to the co-curriculum and PSHE? Are they quality assured? Do these speakers speak about a broad range of topics, not just issues related to their protected characteristics?	Do ceremonies or events at the school need to be modernised to be more representative of the pupil and staff community?
Does the school monitor the range and backgrounds of speakers it invites to ensure balance?	If the school holds services for pupils of a particular religion, does it provide alternative activities for pupils who do not attend?

1.6

Diversity Monitoring

Do you have diversity data on a range of topics, including admissions and recruitment processes, pupil evaluation and attainment and disciplinary sanctions?	Do you encourage parents and pupils to provide diversity information?
Have you obtained diversity data for all current pupils?	Have senior leaders made commitments to improve diversity?
Have you integrated diversity monitoring into school processes for both pupils and staff?	Is diversity acknowledged and celebrated routinely and not just at “inclusion week” or “diversity week”?

1.7

Governance

Do the committees include people from diverse backgrounds?	Do you provide mandatory anti-discrimination training for governors? This should be provided by trainers who understand the education context.
Have you appointed a governor with specific responsibility for EDI? This person should have relevant experience of overseeing and implementing EDI initiatives.	Have you made EDI a standing item on every governing body agenda to ensure that the school regularly updates governors on its anti-discrimination work?
Do you need to recruit governors from diverse backgrounds in the next and future rounds of governor recruitment? In order to do so, do you need to amend your job descriptions?	

1.8

Safeguarding

Do the school’s safeguarding procedures clearly state when discrimination, harassment or bullying meet the thresholds for reporting to the Local Authority?	Is the school part of local policing partnerships to ensure that it is aware of emerging trends in the local area in relation to issues such as hate crime, gang violence, sexual violence, county lines and other problems that the police may detect in the locality?
Is the school aware of the concept of Early Help?	Are staff aware of when an incident of bullying, discrimination or harassment might necessitate a referral to the Local Authority Designated Officer or to Children’s Social Care or Local Authority?
Does the school use outside experts and “critical friends” to help review policies and procedures?	Reflecting specifically on the Everyone’s Invited movement, is the school aware of pupil engagement in negative or damaging sub-cultures (especially those online)? Does the school take a clear position on, and offer a counter-narrative to, negative sub-cultures (such as online misogynistic forums)? Does the school’s PSHE tackle the subject of revenge porn? Does the PSHE provision address issues such as the damaging effects of pornography in an age-appropriate way?
Is the school aware that children from particular groups or with certain protected characteristics are more susceptible to abuse?	
Is the school aware of specialist services and charities (both national and local to the school) for children with certain protected characteristics? Does the school keep an up-to-date list of such services?	

School Culture

Do you subject your systems to regular independent scrutiny and evaluation? Do you have a critical friend and expert who can support this process?	Do you provide regular, mandatory equal opportunities training to staff and pupils on each of the protected characteristics, including on how discrimination in relation to each characteristic can manifest itself? Is training provided by trainers who understand the education context and can provide tailored, practical advice on issues such as (for staff) teaching discriminatory materials, misidentifying/misgendering pupils and managing disciplinary incidents, and (for pupils) addressing discriminatory behaviour and bullying?
Does the school have a strategic equality plan? If so, does it need updating?	
How does the school embed, promote and reinforce its values as part of everyday life at the school?	
What are your school's values? Are the values meaningful in the context of the modern school?	
Are governors and senior leaders addressing EDI as a strategic priority?	Has equal opportunities training been impactful? How is the impact of it being measured?
Does the school have a short, medium and long-term vision for EDI in the school?	Do you have a culture where low level issues and boundary breaches (irrespective of the intention of the perpetrator) are acted upon in consistent and proportionate way and where all staff and pupils feel comfortable to share their concerns of discriminatory behaviour?
Does the school have a strategic equality plan (that is, a plan for what the school will do to improve equality, diversity and inclusion over a set time frame)? Should the school publish the equality plan or produce a statement of intent?	Do you have spaces and opportunities for staff and pupils to talk about equality and discrimination?
Do senior leaders, staff and pupils understand the impact of discrimination and harassment?	Do you have systems in place for ensuring staff do not misidentify / misgender pupils or pronounce their names incorrectly?
Do senior leaders invest time in educating themselves to enhance their personal understanding of discrimination?	
Is "Groupthink" understood and challenged so that opposing views are also heard to provide constructive challenge?	

Have you reviewed school policies, mission and aims statements to ensure they refer to the school's aspirations to be a diverse and inclusive environment and acknowledge structural barriers to achievement?	Does the school adequately and proportionately address "banter" irrespective of the intention of the harasser?
Have you checked school policies and procedures guard against bias?	Are you confident that all staff and pupils are empowered to speak out and that channels are in place to facilitate this?
Have you checked to ensure consistency across all policies and procedures (equal opportunities, behaviour, discipline etc)?	Does the school prioritise responding to cases, safeguarding and welfare ahead of reputational concerns?
Do you support pupils to understand puberty and sexual development, to identify harmful sexual behaviour and learn about consent and to communicate concerns about sexual bullying?	Do you use regular surveys to track the incidence of discriminatory behaviour and language by pupils?
Is the counselling staff at the school diversified so pupils of different ethnicities, religions, genders, LGBT pupils and pupils with disabilities are comfortable seeking counselling support after experiences of discriminatory behaviour or language?	Do you check whether third parties who have contact with the school, such as catering companies, security companies etc, have adequate EDI systems?
Do you have a Lead for EDI and do they sit on the senior management team (SMT)?	
Do you encourage pupils from diverse backgrounds to put themselves forward for leadership positions?	

1.10

Staff Diversity and Inclusion

Do staff feel the staff community is sufficiently diverse?	Could senior leaders seek out opportunities to undertake reverse mentoring opportunities with individuals with protected characteristics in more junior roles? This would help to ensure that they better understand the positive impact diversity can have on a school and the barriers to progression faced by these individuals
Have the senior leadership team developed a recruitment strategy to recruit teaching staff from more diverse backgrounds, with the support and oversight of the governing body? This should include measures of success.	
Would it assist to appoint a recruitment consultant specialising in EDI to help the school revise its recruitment materials and hiring processes?	Have you reviewed current performance management processes to ensure that staff with protected characteristics receive equal treatment and equal access to development and progression opportunities?
Are job descriptions drafted in plain English and do they provide an accurate reflection of essential and desirable skills to ensure applications from a wider set of individuals?	Do line managers and senior management and governors understand reasonable adjustments?
Does unconscious bias training directly address recruitment?	Do you provide regular opportunities for staff with different protected characteristics to meet senior leadership to talk about their experiences and help guide the school’s work on EDI?
Have you considered measures to improve the diversity of staff e.g. positive action under the Equality Act, blind applications and adopting a contextual approach to recruitment?	Is there a recruitment strategy that takes account of EDI issues?
Do you have diverse interview panels to help eliminate any lingering bias?	Do senior leaders understand positive action?
Have you analysed your retention data to determine how effectively you retain staff with different protected characteristics?	Does the school carry out equal pay audits and reviews?
Do all senior leaders have a clear diversity objective in their annual appraisal to make sure they take diversity seriously?	Has the school recently reviewed its policies and procedures to ensure that they follow EHRC and ACAS guidance?

1.11

Challenging Discrimination

Have you reviewed the school’s aims, mission and value statements and introduced a clear and prominent commitment to challenging all incidents of discrimination?	Are your disciplinary policies clear that “jokes” or “banter” about a protected characteristic can be particularly hurtful and will be challenged?
Do staff feel confident in identifying and dealing with discriminatory incidents (including microaggressions and low-level concerns), both among the staff community and among pupils?	Do you adopt the same attitude to pupils who disclose discriminatory behaviour (including racism, sexism, homophobia, transphobia or towards those with disabilities) as the school takes towards pupils who disclose safeguarding issues?
Do staff understand your policies and feel confident they can use appropriate language when dealing with sensitive issues like disability, race, sexual orientation and gender identity?	Have you reviewed your grievance and disciplinary policies to ensure they are compliant with the Acas Code of Practice on Disciplinary and Grievance Procedures and non-statutory guidance?
In practice, are all incidents of discrimination (no matter how low level) challenged and acted upon promptly (including investigations where appropriate) and appropriate disciplinary action taken?	Have you considered how to increase transparency about behaviour sanctions for discriminatory incidents for both staff and pupils?
Do you reinforce messages on discrimination and reporting discriminatory behaviour and language at relevant points in pupils’ school life?	
Do you have systems that allow for anonymous reporting of concerns?	

Ofsted Report

In March 2021, Ofsted announced an investigation into safeguarding policies in state and independent schools following the Everyone’s Invited movement. Ofsted visited 32 schools in the course of its investigation. The key findings and recommendations of Ofsted’s report are summarised here.

- Sexual harassment (including online sexual abuse) is highly prevalent for children and young people. The report noted that it is particularly common for children to be sent unsolicited sexual material, as well as lower-level yet damaging behaviour such as name calling. Whilst most sexual violence takes place outside of school, schools still have a responsibility to act on it.
- Teachers and leaders consistently underestimate the prevalence of sexual abuse, and especially of online sexual abuse. Children rarely report sexual harassment and violence for a variety of reasons, but even when they do, adults often dismiss reports of it. Furthermore, leaders and teachers are generally unclear on the processes to be undertaken following reports of sexual harassment and also in what instances it falls on the schools to investigate such reports.
- When asked about sexual violence, the young people typically talked about spaces outside of school, such as parties or parks. Ofsted found that senior leaders were unclear and needed guidance on what fell on schools to refer and investigate, noting that schools have a duty to refer concerns about children to statutory agencies irrespective of where they occur (in line with statutory guidance and local child protection procedures).
- A significant area for Ofsted which was referenced throughout the report was staff, DSL and governor training. Ofsted found that in just over a quarter of the schools they visited, Inspectors reported that governors had some sort of safeguarding training, although it was not always clear that this included specific training on harmful sexual behaviour. Evidence in the review indicates that there are gaps in governors’ knowledge of online safety issues when applied to sexual harassment and violence.
- Referring to the DfE guidance on sexual violence, Ofsted said that the guidance acknowledges that professionals may be required to make complex decisions in situations of peer-on-peer sexual harassment and sexual violence, including online. The guidance stresses the importance of effective training and clear policies for staff to help them take a considered and appropriate response.
- The report recommends that schools should act as though sexual harassment and online sexual abuse are happening, even if there are no specific reports of it. It emphasises the importance of safeguarding training for all staff, including the DSL and governors, to include identifying early signs of abuse, understanding the definitions of sexual harassment and sexual violence and good practice in upholding standards in responses to sexual harassment and abuse. It also emphasises the importance of teaching children what are acceptable and unacceptable behaviours. For further reading, analysis and an action plan, see Farrer & Co’s note of 23 June 2021, <https://www.farrer.co.uk/globalassets/briefings/everyones-invited-Ofsted-report--analysis-and-action-plan-v4.pdf>.

Guidance for Scottish Schools

- Independent School Regulation (Scotland)**

An independent school is defined in the [Education \(Scotland\) Act 1980](#). All registered independent schools are listed in the public [register](#) of independent schools and operating an independent school in Scotland without registering with the Scottish Ministers is unlawful. The Registrar of Independent Schools is responsible for administering the [registration of independent schools](#); however, the Scottish Ministers determine whether a school should be registered or not.

The proprietor (Board of Governors), is ultimately responsible for the school, including providing the headteacher and leadership team with scrutiny and challenge, whilst setting the strategic direction of the school. Proprietors also have a responsibility to ensure that their school does not become “objectionable”, or at risk of becoming so, in terms of section 99(1A) of the 1980 Act. Where a school is found to be objectionable, or at risk of becoming so, the Scottish Ministers may take regulatory action (serving a notice of complaint or imposing conditions on the school).

Conditions are, effectively, instructions obliging the school to take a course of action to improve. For example, the Scottish Ministers may impose a condition on the running of an independent school compelling the school to review and update the school’s anti-bullying policies in line with national guidance. Scottish Ministers may serve a notice of complaint on any independent school if the Scottish Ministers are satisfied the school is objectionable on one or more grounds including “that efficient and suitable instruction is not being provided at the school, having regard to the ages and sex of the pupils attending” or that “the welfare of a pupil attending the school is not adequately safeguarded and promoted there”.
- Education Scotland**

Education Scotland is the scrutiny and improvement body for educational establishments in Scotland and is responsible for the inspection of independent schools. While the Registrar of Independent Schools is hosted by Education Scotland, the Registrar’s remit is distinct from Education Scotland and HM Inspectors.
- Care Inspectorate**

Where an independent school is also providing residential accommodation; a boarding or residential school, and/or provides early learning and childcare, it must apply to be registered with the Care Inspectorate under the Public Services Reform (Scotland) Act 2010.
- General Teaching Council for Scotland (‘GTCS’)**

[The Registration of Independent Schools \(Prescribed Person\) \(Scotland\) Regulations 2017](#) require that all teachers in independent schools be registered with the GTCS. The GTCS maintains a register of teachers and sets the professional standards expected of all teachers in Scottish schools.
- Scottish Social Services Council (‘SSSC’)**

The SSSC is the national body for registering and maintaining standards for care professionals.
- Independent school inspections**

Independent schools are open to inspection by Education Scotland in the same way as those maintained by education authorities. [The inspection framework](#) is applied in independent schools in parallel with maintained schools. However, as with small schools and all-through schools, Education Scotland applies the inspection framework in a way that is responsive to the size, nature and particular aims and values of the independent school concerned. Education Scotland will also ensure that the inspection team includes the necessary experience and skills to respond to the particular educational philosophy of the school.

<p>In those cases where there is a residential component within the school, Education Scotland may inspect the care and welfare of boarders in conjunction with officers from the Care Inspectorate.</p> <p>Independent quality improvement through professional engagement visits</p> <p>Quality improvement and professional engagement visits have been developed with the independent school sector for the following key purposes:</p> <ul style="list-style-type: none">• to extend the nature of engagement and frequency of contact between HM Inspectors and independent schools• to contribute to school improvement and capacity building in the independent sector throughout Scotland• to further the overall aim of a more proportionate, intelligence-led engagement model, based on self-evaluation for improvement <p>The professional engagement visits are distinct from inspections and do not involve evaluating outcomes in relation to quality indicators.</p> <p>Equality, diversity and inclusion</p> <p>Education Scotland has developed an Equality and Equity Tool kit to support Early Learning and Childcare settings and schools to:</p> <ul style="list-style-type: none">• understand the principles of equality and equity• identify priorities for action• implement and evaluate a plan which will create positive impact for all. <p>In addition, it has produced an overview of race equality and anti-racist education, as well as exemplars of inclusion and equality teaching and learning.</p> <p>As elsewhere in the UK, Governing Boards are required to ensure compliance with the Equality Act 2010 and other duties and in relation to the ‘Prevent’ strategy and safeguarding and safer recruitment.</p>	<p>The Scottish Government is reviewing the provision of Mental Health support and learning in schools.</p> <p>A gender based violence working group has been established to develop a national framework to prevent and respond to harmful behaviour and gender based violence in schools.</p> <p>Scottish Charity Regulation</p> <p>Most mainstream Scottish independent schools are also registered charities and therefore need to act in accordance with charity law and guidance from the Office of the Scottish Charity Regulator (OSCR).</p> <p>Governors of schools that are charities are often also the trustees of the charity, in which case they need to understand their legal duties and the OSCR guidance in relation to the administration of charities.</p> <p>OSCR have published the following relevant guidance:</p> <p>Trustee duties: Guidance and good practice for charity trustees:</p> <p>This guidance explains what the law says charity trustees must do or must not do. The charity trustee duties are set out in The Charities and Trustee Investment (Scotland) Act 2005.</p> <p>The guidance includes:</p> <ul style="list-style-type: none">• Safeguarding Guidance: Keeping vulnerable beneficiaries safe• Meeting the Charity Test (including the specific public benefit test for independent schools)• Charities and the Equality Act 2010• Notifiable Events - when something serious has happened or is happening to the charity• Steps to successful charity trustee recruitment.
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	<p>Tabitha Juster Associate, Employment team, Farrer & Co.</p> <p>tabitha.juster@farrer.co.uk +44 (0)20 3375 7818</p>	<p>We are grateful to:</p> <p>John Edward Director of Scottish Council of Independent Schools (SCIS), for reviewing this Resource and producing the guidance notes at Appendix 3.</p>

<p>References</p>	<ol style="list-style-type: none">1. Local Government Association – https://www.local.gov.uk/publications/councillors-workbook-equality-diversity-and-inclusion2. Social Change UK – https://social-change.co.uk/blog/2019-03-29-equality-and-equity3. Eden B King et al, Discrimination in the 21st Century: Are Science and the Law Aligned?, 17 Psychol. Pub. Pol’y & L. 54, 56 (2011). Cited in About Microaggressions, by Ronald Wheeler, accessible here4. David W. Fujimoto, Thrown Under the Bus: Victims of Workplace Discrimination After Harris, 48 U.S.F. L. Rev. 111, 138–39 (2013). Cited in Cited in About Microaggressions, by Ronald Wheeler, accessible here5. See Kevin L. Nadal et al., Sexual Orientation Microaggressions: Processes and Coping Mechanisms for Lesbian, Gay, and Bisexual Individuals, 5 J. LGBT Issues Counseling 21, 30–32 (2011); Sue,Racial Microaggressions in Everyday Life, supra note 4. Cited in About Microaggressions, by Ronald Wheeler, accessible here
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