

Future Leaders, Respect and Empathy

## SINGLE EQUALITY POLICY

THE FRIENDS OF LITTLE CHILDREN CHARITY AND THE CENTRE OF EXQUISITE LEARNING SKILLS

### **Safeguarding Statement**

At FLC, we respect and value all children and are committed to providing a caring, friendly, and safe environment for all children to play and learn in a relaxed and secure atmosphere. We believe every child should be able to participate in all nursery activities in an enjoyable and safe environment and be protected from harm. This is the responsibility of every adult employed by or invited to deliver services at FLC. We recognise our responsibility to safeguard all who access our nurseries and promote the welfare of all our children by protecting them from physical, sexual, and emotional abuse, neglect, and bullying.



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The Equality Act came into effect from autumn 2010 (amendment order 2012) which placed a new Single Equality duty on all public bodies which includes education. As such schools and nurseries are required to consider the needs of children and their families, employees, and contracted service providers. The Friends of Little Children (FLC) has developed this policy to ensure we meet our statutory duty regarding:

### Race, Gender and Disability Equality Community Cohesion Site / Asset Management and Health & Safety

This document sets out how children, employees, and visitors to the nursery with the following protected characteristics (previously known as equality strands) will be protected in our nursery from harassment and/ or discrimination:

- disability.
- gender.
- race.
- religion and belief.
- sexual orientation.

This document also extends to cover all aspects of vulnerability, including those associated with socio-economic factors where known.

FLC nursery school is committed to being a good charity and this policy outlines how we meet our varied duties in terms of recruitment and employment practices. We seek to be fully inclusive of all those in our community, including parents, guardians, and carers. As such, this scheme sets out how we will work to overcome any discrimination related to the other protected characteristics:

- age.
- being married or in a civil partnership.
- Pregnancy and maternity.

This policy will be evaluated with findings reported annually to Management. A full review will be conducted every three years.



### 2. Our Guiding Principles

In fulfilling the legal obligations outlined later in this policy, FLC nursery school is guided by the following principles:

### Principle 1: all members of FLC and the wider community are of equal value.

We see all members of the nursery and wider community of equal value:

- Whether or not they are disabled.
- Whatever their ethnicity, culture, religious affiliation, national origin, or socioeconomic circumstances.
- Whichever their gender and sexual orientation.
- Whatever their age.

### Principle 2: we recognise and respect diversity.

Treating people equally does not necessarily involve treating them all the same. Our policies, procedures and activities must not discriminate, but are differentiated as appropriate, to take account of differences in life-experience, outlook, and background and in the kinds of barrier and disadvantage which people may face in relation to:

- Disability, so that reasonable adjustments are made.
- Ethnicity, so that different cultural backgrounds and experiences of prejudice are recognised.
- Gender and sexual orientation so that the different needs and experiences of girls and boys, women and men are recognised.
- Age.

## Principle 3: We foster positive attitudes and relationships, and a shared sense of cohesion and belonging.

We intend that our policies, procedures, and activities should promote:

- Positive attitudes towards disabled people, good relations between disabled and non-disabled people and an absence of harassment of disabled people.
- Positive interaction, good relations and dialogue between groups and communities different from each other in terms of ethnicity, culture, religious affiliation, national origin or socio-economic circumstances, and an absence of prejudice-related bullying and incidents.
- Mutual respect and good relations between boys and girls, women and men and an absence of sexual harassment.
- Positive intergenerational attitudes and relationships.

Principle 4: We will ensure that the recruitment, retention, and ongoing development of staff/volunteers is undertaken in a fair and equitable manner to support our vision and values.



Our policies and procedures should benefit all employees/volunteers and potential employees/volunteers. For example, in recruitment and promotion, and in continuing professional development:

- Whether or not they are disabled.
- Whatever their ethnicity, culture, religious affiliation, \* national origin or socio-economic circumstance.
- Whichever their gender and sexual orientation.
- Whatever their age.

## Principle 5: We aim to reduce and remove inequalities and barriers that already exist.

In addition to avoiding or minimising possible negative impacts, we take opportunities to maximise positive impacts by reducing and removing inequalities and barriers that may already exist between:

- Disabled and non-disabled people.
- People of different ethnic, cultural and religious and socio-economic backgrounds.
- Girls and boys, women, and men.
- People of different sexual orientations.
- People whatever their age (where appropriate).

### Principle 6: We consult widely.

We recognise that people affected by a policy or activity should be consulted and involved in the design of new policies and in the review of existing ones. Wherever possible and/or deemed appropriate we will strive to involve:

- Disabled people as well as non-disabled.
- People from a range of ethnic, cultural, and religious and socio-economic backgrounds.
- Women, men, girls, and boys.
- People of different sexual orientations.
- People from different age groups.

## Principle 7: Children, their families, staff, and the wider community as a whole should benefit.

We intend that our policies and curriculum activities should benefit society, both locally and nationally, by fostering greater social cohesion, and greater participation in public life. Our policies seek to respect and include:

- Disabled people as well as non-disabled.
- People of a wide range of ethnic, cultural, and religious and socio-economic backgrounds.



- Both women and men, girls, and boys.
- People of different sexual orientations.
- People of different ages and between generations.

Since September 2007 all schools (including nurseries) have had a duty to contribute to 'working towards a society in which there is a common vision and sense of belonging by all communities; a society in which the diversity of people's backgrounds and circumstances is appreciated and valued; a society in which similar life opportunities are available to all; and a society in which strong and positive relationships exist and continue to be developed in the work place, in schools and in the wider community.' FLC charity upholds these values. (Ref: <u>Guidance on the duty to promote community cohesion</u>, Department for Children, Schools & Families, 2007). We make our contribution to community cohesion by creating opportunities, through the curriculum and activities for children to interact with those from different backgrounds and cultures. This enriches their understanding of the community and its diversity. (Please also refer to our Community Cohesion policy).

### 3 Aims of our Single Equality Policy

To articulate the nursery's commitment to equality, which permeates and is supported by all our policies, protocols, procedures, and practices, we aim:

- To ensure that everyone who belongs to, or meets, our FLC community is valued, respected and their individual needs are supported.
- To promote equality of opportunity and eliminate unlawful discrimination, harassment, or victimisation.
- To ensure all children could reach their full potential.
- To promote and support the continued professional development of all staff/volunteers.
- To comply with statutory duties under equalities legislation in one single document.

### 4 <u>The Purpose of the Single Equality Policy</u>

This equality policy is the nursery's response to the specific and general duties detailed in current equality legislation, which has been brought together under the Equality Act 2010 (see appendix 1). It is an attempt to capture how our FLC is systematically establishing, implementing, and embedding good practice in equality and diversity across all areas of nursery life. This includes a response to all aspects of diverse social identity.

This Single Equality Policy sets out how FLC will:

- Eliminate discrimination (see appendix 2).
- Eliminate harassment or victimisation related to any aspect of social identity or diversity.



- Promote equality of opportunity.
- Promote positive attitudes to all aspects of social identity and diversity.
- Encourage participation by disabled people and people representing different aspects of social identity in public life.
- Take steps to take account of difference even where that involves treating some people more favourably than others.
- Take proportionate action to address the disadvantage faced by groups of children. This includes progress reviews of children by groups as identified in data monitoring sets.

### 5 Planning to eliminate discrimination and promote equality of opportunity.

This policy is underpinned by the core belief that all children and young people are a key part of their local community, share the same rights to membership of that community and are entitled to a high-quality education.

It encompasses our duties to promote positive outcomes in relation to race, gender, and disability, but also identifies actions to address other social identities. It encompasses our anticipatory duties to plan for the reasonable adjustments (reasonable and proportionate steps to overcome barriers that may impede some children) we need to make to be best placed to help the children who come to FLC nursery.

Our action plan replaces the nursery's Disability Accessibility Plan (previously required under the planning duties in the Disability Discrimination Act) as it sets out that FLC will ensure access to provision for the children in the three areas required:

- Maximise the extent to which disabled / SEN children can participate in activities and the curriculum.
- Monitor the environment of the nursery to ensure the children can take advantage of education and associated services.
- Ensure delivery to the children with Special Educational Needs and Disability (SEND) is appropriate and equitable.

Our action plan is reviewed within our progress monitoring measures and as such equality objectives will be regularly reported to Management. In addition to on-going reporting a full review of the Single Equality Action Plan will be scheduled as a Management Board agenda item on an annual basis. Equality objectives will also be identified through consultation with key stakeholders using an appropriate audit tool e.g. Inclusion Quality Mark.

Staff/volunteers contribute to the development of this action plan to ensure they are aware of targets, can implement and embed best practice. We recognise the importance of engaging the whole nursery community and, where language presents difficulties in accessing or understanding either document, we will endeavour to assist.



### 6 <u>Mainstreaming equality into policy and practice</u>

As well as the specific actions set out beneath this plan, FLC operates equality of opportunity in its day-to-day practice in the following ways:

### 6.1 Ethos and Organisation

FLC will ensure that the principles previously listed above also apply to the full range of our policies, procedures and practices including those that are concerned with:

- Children's progress, attainment, and assessment.
- Children's and staff personal development, welfare, and well-being.
- Teaching styles and strategies.
- Admissions.
- Staff/volunteers recruitment, retention, and professional development.
- Care, guidance and support.
- Behaviour and discipline.
- Working in partnership with parents, carers, and guardians
- Working with the wider community.
- Participation of groups in wider community activities.
- Preparing all members of our learning community for living and positively contributing to a diverse society.

### 6.2 Teaching and learning

We aim to provide all our children with the opportunity to succeed, and to reach the highest level of personal achievement. To do this, we will ensure the following:

- The achievement of children will be monitored by race, gender and disability and we will use this data to support children, raise standards and ensure inclusive practice. We will use this contextual data to improve the ways in which we provide support to individuals and groups of children.
- We will consider the achievement of all children when planning for future learning and setting challenging targets.
- We will use materials that reflect the diversity of the nursery, population, and local community in terms of race, gender, and disability without stereotyping.
- We will promote attitudes and values that will challenge racist and other discriminatory behaviour or prejudice.
- We will provide opportunities for children to appreciate their own culture and celebrate the diversity of other cultures.
- We will actively seek to involve all parents in supporting their child's education.



• We will encourage discussion of equality issues which reflect on social stereotypes, expectations, and the impact of such subjects on learning.

### 6.3 The Curriculum

We will actively seek opportunities to review the curriculum (including the enhanced curriculum) and curriculum subject / areas to ensure that teaching and learning reflect the seven principles outlined above. \*

\*The content of the curriculum is excluded from discrimination law following the Equality Act 2010. The Act does, however, explicitly include the delivery of the curriculum i.e. the way in which education is provided. Schools will need to ensure that the way in which issues are taught does not subject individual pupils to discrimination. Further that it would not be unlawful for a teacher in any school to express personal views on sexual orientation if it is done in an appropriate manner and context\*. (Draft guidance from the DfE cited in Equality Act 2010).

### 6.4 Admissions

Our admissions arrangements are fair and transparent, and do not discriminate on race, gender, disability, or socio-economic factors.

### 6.5 Equal Opportunities for Staff/Volunteers

FLC is committed to the implementation of equal opportunities principles and the monitoring and active promotion of equality in all aspects of staffing and employment. Whilst we try to ensure that the staffing of the nursery reflects the diversity of our community, all staff/volunteers' appointments and promotions are made based on merit and ability and in compliance with the law.

### 6.6 Employer duties

As a charity, we recognise the need to ensure that we eliminate discrimination and harassment in our employment practice and actively promote equality across all groups within our workforce.

Equality aspects such as gender, race, disability, sexual orientation, gender reassignment and faith or religion are considered when appointing staff/volunteers and re-evaluating staff/volunteers' structures, to ensure decisions are free of discrimination.

Actions to ensure this commitment is met include:

- Monitoring recruitment and retention (including bullying and harassment of staff/volunteers).
- Continued professional development opportunities for all staff/volunteers.
- Management support to ensure equality of opportunity for all.



### 7 Addressing Prejudice and Prejudice-related bullying.

The Friends of Little Children (FLC), is opposed to all forms of prejudice which stand in the way of fulfilling legal duties for all aspects of equality such as:

- Prejudices around disability and special educational needs.
- Prejudices around racism and xenophobia, including those that are directed towards religious groups and communities, for example anti-Semitism and Islamophobia, and those that are directed against Travellers, refugees and people seeking asylum.
- Prejudices reflecting sexism and homophobia.

We take seriously our obligation to report regularly to Management about the numbers, types, and seriousness of prejudice-related incidents at our nursery and how they were dealt with in line with existing legal requirements.

### 8 Roles and Responsibilities

### 8.1 The Head of Nursery will:

Ensure that all staff, volunteers, and parents are aware of the Single Equality Policy and that there is a collective responsibility to apply these guidelines fairly in all situations.

- Ensure that the policy is implemented effectively (supported by Management). Manage any day-to-day issues arising from the policy whether for children or for the nursery as an employer and treat all incidents of unfair treatment and any incidents of bullying or discrimination, including racist incidents, with due seriousness. Any action taken will be guided by the strategic policy ratified by Management.
- Ensure staff have access to training which helps to implement the policy.
- Liaise with external agencies regarding the policy so that the nursery's actions are in line with the best advice available.
- Monitor and report to Management annually on the effectiveness of the policy.
- Ensure that management are kept up to date with any development affecting the policy.
- Provide appropriate support and monitoring for all children and specifically target children to whom the policy/action plan has a more direct relevance.
  Ensure that all appointments panels give due regard to this policy to ensure there is no discrimination in employment or training opportunities.
  Promote the principle of equal opportunity when developing the curriculum; promote respect for other people and equal opportunities to participate in all aspects of nursery life.



### 8.2 Management

Management has set out its commitment to equal opportunities in this policy and will continue to do all it can to ensure that the nursery is fully inclusive to children, and responsive to their needs based on race, gender, and disability. They will:

- Ensure that the nursery complies with all relevant equalities' legislation.
- Recommend all managers receive up to date training in all the equalities duties.
- Designate a manager with specific responsibility for Equality.
- Establish that the action plans arising from this policy are part of the nursery's Development Plan.
- Support the Head of Nursery in implementing any actions necessary.
- Inform and consult with parents about the scheme.
- Conduct a review of the policy.
- Conduct on-going and a full annual evaluation of the action plan.

Seek to ensure that people are not discriminated against when applying for employment on grounds of race, gender, sexual orientation, or disability.

Take all reasonable steps to ensure that the nursery environment gives access to people with disabilities and strive to make communications as inclusive as possible for parents, guardians, and children.

Welcome all applications for admission to the nursery.

Ensure that no child is discriminated against on account of their race, gender, or disability.

- Have general responsibility for supporting other staff/volunteers in implementing this policy.
- Provide a lead in the dissemination of information relating to the policy.
- Identify good quality resources and continuous professional development (CPD) opportunities to support the policy.
- Under the direction of the Head of Nursery, provide advice/support in dealing with any incidents/issues.
- Assist in implementing reviews as detailed in FLC's Development Plan.

### 8.3 All Staff/volunteers will:

- Accept that this is a whole nursery issue and support the implementation of the policy and action plan.
- Be aware of this policy and action plan and how it relates to them.
- Make known any queries or training requirements.
- Know how to deal with incidents of concern, and how to identify and challenge bias and stereotyping.

Know procedures for reporting incidents of racism, harassment, or other forms of discrimination. They will challenge any incidents of prejudice, racism, or homophobia, and record any serious incidents, drawing them to the attention of the Head of Nursery/ Management.

• Not discriminate on racial, disability or other grounds.



Keep themselves up to date with relevant legislation and attend training and information events organised by FLC partnerships or the local authority/ministry of Education.

Ensure that all children are treated fairly, equally and with respect, and will maintain awareness of the nursery's Single Equality Policy and Action Plan.

Ensure that children from all groups are included in all activities and have full access to activities and the curriculum.

Will strive to provide material that gives positive images based on race, gender and disability, and challenges stereotypical images.

• Promote equality and diversity through teaching and through relations with children, staff/volunteers, parents, and the wider community.

Monitor and, where necessary, guide the practice of volunteers, visitors or contractors working in our nursery premises. Any concerns should be reported the Head of Nursery.

### 8.4 Children will:

- Be made aware of any relevant part of the policy, appropriate to age and ability.
- Be expected to act in accordance with any relevant part of the policy.
- Experience a curriculum, activities and environment which is respectful of diversity and difference and prepares them well for life in a diverse society.
- Understand the importance of eliminating discriminatory bullying and racially motivated incidents.

### 8.5 Parents, Guardians & Carers will:

- Have access to the policy.
- Be encouraged to support the policy.
- Could attend any relevant meetings/awareness raising sessions related to the policy.
- Have the right to be informed of any incident related to this policy which could directly affect their child.

# All visitors, volunteers and contractors are responsible for complying with the nursery's Single Equality Policy – non-compliance will be dealt with in the first instance by the Head of Nursery



### 9 <u>Consultation and involvement</u>

It is a requirement that the development of this policy has been informed by the input of staff/volunteers, parents/guardians and, where possible, children. We have achieved this by using the following to shape the plan:

- Input from Management through nursery's policy development and ratification processes.
- Input from staff/volunteers through nursery's Policy Development Process.
- Input from any relevant staff/volunteers' surveys or through staff/volunteers' meetings.
- Feedback from parents/ guardians.
- Curriculum content- long term planning.
- Issues identified in annual reviews or reviews of progress on Individual Care Plans/Personalised Provision Maps, mentoring and support.

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### 10 Action Planning

This policy is supported by an action plan, the progress of which is monitored and evaluated by Management. The action plan that identifies the equality objectives for the nursery arising from this scheme as:

- Clear allocation of responsibility.
- Clear allocation of resources, human and financial.
- Clear timescales.
- Expected outcomes and success criteria.
- Specified dates for review.

The effectiveness of this action plan will be evaluated and reflected in:

- Our self-evaluation.
- Our work towards quality standards marks.
- Discussions with network partners and area specialists.

### 11 <u>Publishing the Single Equality Policy</u>

To meet statutory requirements, the Friends of Little Children (FLC) will:

Publish this policy on our website.

Place an electronic copy of the policy in the staff area of nursery's computer system.

Raise awareness of the policy through our newsletters, staff/volunteers' meetings, and other communications.

Ensure paper copies are made available on request.

Ensure support is offered to children and parents where English is not their primary language to assist in understanding the content of this policy.



### Appendix 1 Equality and the law

This policy demonstrates our proactive approach in ensuring equality for children, employees and those visiting or providing additional services in our nurseries. It is designed to meet the duties and legislative requirements for race, disability, gender, religion / belief, and sexual orientation as stated in the Equality Act 2010 (and amendment order 2012) and act upon the government progress report findings (2012). The act supersedes or strengthens the following acts and regulations:

- The Equal Pay Act 1970
- The Sex Discrimination Act 1975
- The Race Relations Act 1976
- Race Relations (Amendment) Act (2000)
- The Disability Discrimination Act 2005, 1995
- Disability Equality Duty 2005
- The Employment Equality (Religion & Belief and Sexual Orientation) Regulations 2003
- The Employment Equality (Age) Regulations 2006
- The Equality Act 2006 Part 2
- The Equality Act (Sexual Orientation) Regulations 2007

Our Single Equality Policy and Action Plan have also been informed by additional statutes of law such as the Education and Inspections Act 2011, 2007.

The Friends of Little Children (FLC) nursery recognises there is also a need to address bullying and discriminatory incidents, as these issues are prevalent in race, disability, gender, and homophobic incidents. Therefore, this policy should be read in conjunction with our Anti-Bullying policy, Anti-Bullying Protocol and any local authority documentation formally adopted by Management.



## Overview of previous equalities legislation which has been harmonised and strengthened by the Equality Act 2010:

• Race Relations Act (RRA) 1976/2000

Sets out the statutory positive duty to promote racial equality, promote good race relations and eliminate unlawful racial discrimination.

Sex Discrimination Act (SDA) 1975 (and Regulations 1999), Gender Equality
 Duty 2007

Sets out the statutory positive duty to promote gender equality and eliminate unlawful gender discrimination.

• Employment Equality (religion or belief) (sexual orientation) Regulations 2003 extended to education, Equality Act (Part 2) 2007

Sets out that it is unlawful for schools to discriminate against a person:

- in the terms on which it offers to admit him/her as a pupil.
- by refusing to accept an application to admit him/her as a pupil, or where he/she is a pupil of the establishment.
- in the way in which it affords him/her access to any benefit, facility, or service.
- by refusing him/her access to a benefit, facility, or service.
- by excluding him/her from the establishment.
- by subjecting him/her to any other detriment.



Disability Discrimination Act (DDA) 1995/2005 Sets out a statutory positive duty to promote equality of opportunity for disabled people-pupils, staff, parents, carers, and other people who use our nurseries or may wish to and eliminate unlawful discrimination. The Disability Discrimination Act 2005 (DDA) defines a disabled person as someone who has *"a physical or mental impairment which has a substantial or long-term adverse effect on his or her ability to carry out normal day-to-day activities".* The DDA 2005 has also extended the definition of disability as follows:

- People with HIV, multiple sclerosis, and cancer (although not all cancers) are deemed disabled before they experience the long-term and substantial adverse effect on their activities.
- Section 18 has been amended so that individuals with a mental illness no longer must demonstrate that it is "*clinically well-recognised*", although the person must still demonstrate a long-term and substantial adverse impact on his/her ability to carry out normal day-to-day activities.

### • Education and Inspections Act 2006

The Education and Inspections Act sets out the duty to promote community cohesion. By 'community cohesion' the nursery is endorsing and adopting the definition provided by Alan Johnson, 2006, as: \*working towards a society in which there is a common vision and sense of belonging by all communities; a society in which the diversity of people's backgrounds and circumstances is appreciated and valued; a society in which strong and positive relationships exist and continue to be developed in the workplace, in schools and in the wider community.\*



### Appendix 2 Discrimination - Guidance

### **Tackling and Eliminating Discrimination**

Harassment on account of race, gender, disability, or sexual orientation is unacceptable and is not tolerated within the nursery environment.

All staff are expected to deal with any discriminatory incidents that may occur in line with the nursery's protocols. They are expected to know how to identify and challenge prejudice and stereotyping; and to support the full range of diverse needs according to a child's individual circumstances.

Racist and homophobic incidents and other incidents of harassment or bullying will be initially managed by the member of staff present, escalating to the Head of the Nurseries/ Management where necessary. All incidents however will be reported to the Head of the Nurseries. Racist incidents will be reported to Management.

### What is a discriminatory incident?

Harassment on grounds of race, gender, disability, sexual orientation, or other factors such as socio-economic status, can take many forms including verbal or physical abuse, name calling, exclusion from groups and games, unwanted looks or comments, jokes, and graffiti. A racist incident is defined by the Stephen Lawrence Inquiry Report (1999) as:

*'any incident which is perceived to be racist by the victim or any other person'.* FLC will embed the principals of this charter mark.

### Types of discriminatory incident

Types of discriminatory incidents that can occur are:

- Physical assault against a person or group because of their colour, ethnicity, nationality, disability, sexual orientation, or gender.
- Use of derogatory names, insults, and jokes.
- Racist, sexist, homophobic or discriminatory graffiti.
- Provocative behaviour such as wearing racist, sexist, homophobic or discriminatory badges or insignia.
- Bringing discriminatory material into the nursery.
- Verbal abuse and threats.
- Incitement of others to discriminate or bully a victim because of their race, disability, gender, or sexual orientation.
- Discriminatory comments during discussion.
- Attempts to recruit others to discriminatory organisations and groups.
- Ridicule of an individual for difference e.g. food, music, religion, dress etc.
- Refusal to co-operate with other people on grounds of race, gender, disability, or sexual orientation.



### **Types of Discrimination**

### **Direct discrimination**

Direct discrimination occurs when a person is treated less favourably than you treat (or would treat) another person because of a protected characteristic. For someone to show that they have been directly discriminated against, they must compare what has happened to them to the treatment a person without their protected characteristic is receiving or would receive. A person does not need to find an actual person to compare their treatment with but can rely on a hypothetical person if they can show there is evidence that such a person would be treated differently. There is no need for someone claiming direct discrimination because of racial segregation or pregnancy or maternity to find a person to compare them self to:

- Racial segregation is deliberately separating people by race or colour or ethnic or national origin and will always be unlawful direct discrimination.
- To claim pregnancy or maternity discrimination a female must show that she has been treated unfavourably because of her pregnancy or maternity and does not have to compare her treatment to the treatment of someone who was not pregnant or a new mother.

### Discrimination based on association.

Direct discrimination also occurs when a person is treated less favourably because of their association with another person who has a protected characteristic (other than pregnancy and maternity). This might occur when a person is treated less favourably because their sibling, parent, carer, or friend has a protected characteristic.

### Discrimination based on perception.

Direct discrimination also occurs when a person is treated less favourably because you mistakenly think that they have a protected characteristic.

### Discrimination because of pregnancy and maternity

It is discrimination to treat a woman (including a female pupil of any age) less favourably because she is or has been pregnant, has given birth in the last 26 weeks or is breastfeeding a baby who is 26 weeks or younger.

It is direct sex discrimination to treat a woman less favourably because she is breastfeeding a child who is more than 26 weeks old.

### Indirect discrimination

Indirect discrimination occurs when you apply a provision, criterion, or practice in the same way for all persons or a particular group, but this has the effect of putting persons sharing a protected characteristic within the general group at a particular disadvantage. It doesn't matter that you did not intend to disadvantage the person/s with a particular protected characteristic in this way. What does matter is whether your



action does or would disadvantage such person/s compared with persons who do not share that characteristic.

'Disadvantage' is not defined in the Act, but a rule of thumb is that a reasonable person would consider that disadvantage has occurred. It can take many different forms, such as denial of an opportunity or choice, deterrence, rejection, or exclusion.

'Provision', 'criterion' or 'practice' are not defined in the Act but can be interpreted widely and include:

- Arrangements (for example, for deciding who to admit)
- The way that education, or access to any benefit, service or facility is offered or provided.
- One-off decisions
- Proposals or directions to do something in a particular way.

Indirect discrimination will occur if the following four conditions are met:

- 1. You apply (or would apply) the provision, criterion, or practice equally to all relevant persons, including a particular person with a protected characteristic, and
- 2. The provision, criterion or practice puts or would put persons sharing a protected characteristic at a particular disadvantage compared to relevant persons who do not share that characteristic, and
- 3. The provision, criteria, practice, or rule puts or would put the person at that disadvantage, and
- 4. You cannot show that the provision, criteria of practice is justified as a 'proportionate means of achieving a legitimate aim'.

### What is a 'proportionate means of achieving a legitimate aim'?

To be legitimate the aim of the provision, criterion or practice must be legal and nondiscriminatory and represent a real objective consideration. In the context of nursery education, examples of legitimate aims might include:

- Maintaining academic and other standards.
- Ensuring the health, safety, and welfare of children.

Even if the aim is legitimate the means of achieving must be proportionate. Proportionate means 'appropriate and necessary', but 'necessary' does not mean that the provision, criterion, or practice is the only possible way of achieving the legitimate aim.



Although the financial cost of using a less discriminatory approach cannot, by itself, provide a justification, cost can be considered as part of FLC's justification, if there are other good reasons for adopting the chosen practice.

The more serious the disadvantage caused by the discriminatory provision, criterion, or practice, the more convincing the justification must be.

In a case involving disability, if you have not complied with your duty to make relevant reasonable adjustments it will be difficult for you to show that the treatment was proportionate.

### Discrimination arising from disability.

Discrimination arising from disability occurs when you treat a disabled person unfavourably because of something connected with their disability and cannot justify such treatment.

Discrimination arising from disability is different from direct discrimination. Direct discrimination occurs because of the protected characteristic of disability. For discrimination arising from disability, the motive for the treatment does not matter; the question is whether the disabled person has been treated unfavourably because of something connected with their disability.

Discrimination arising from disability is also different from indirect discrimination. There is no need to show that other people have been affected alongside the individual disabled person or for the disabled person to compare themselves with anyone else.

Discrimination arising from disability will occur if the following three conditions are met:

- you treat a disabled person unfavourably, that is putting them at a disadvantage, even if this was not your intention, and
- this treatment is because of something connected with the disabled person's disability (which could be the result, effect, or outcome of that disability) such as an inability to walk unaided or disability-related behaviour, and
- you cannot justify the treatment by showing that it is 'a proportionate means of achieving a legitimate aim'. This is explained above.

### Knowledge of disability

You will need to show that:

- You did not know that the disabled person had the disability in question, and
- You could not reasonably have been expected to know that the disabled person had the disability.



• The unfavourable treatment would not amount to unlawful discrimination arising from disability.

If your agent (someone who undertakes tasks on your behalf) or employee knows of a person's disability, you will not usually be able to claim that you do not know of the disability.

### **Relevance of reasonable adjustments**

By acting quickly to identify and put in place reasonable adjustments for disabled persons, you can often avoid discrimination arising from disability, although there may be cases where an adjustment is unrelated to the unfavourable treatment in question.

If you fail to make an appropriate reasonable adjustment, it is likely to be very difficult for you to argue that unfavourable treatment is justified.

### **Reasonable adjustments**

FLC is familiar with the reasonable adjustments' duty, first introduced under the Disability Discrimination Act 1995. The reasonable adjustments duty under the Equality Act operates slightly differently and has been extended to cover the provision by a nursery of auxiliary aids and services; however, this element of the duty will not come into force until a later date yet to be confirmed. The object of the duty is the same: to avoid as far as possible by reasonable means, the disadvantage which a disabled person experiences because of their disability.

This duty sits alongside your duties and those of local authorities under Part 4 of the Education Act 1996. In some cases, the support a disabled child may receive under the special educational needs' framework may mean that they do not suffer a substantial disadvantage (see below) and so there is no need for additional reasonable adjustments to be made for them. In other cases, disabled children may require reasonable adjustments in addition to the special educational provision they are receiving. There are also disabled children who do not have special educational needs but still require reasonable adjustments to be made for the Education Act 1996 is one of the factors to be considered when you consider what it would be reasonable for you to have to do.

### What is the reasonable adjustments duty?

FLC nurseries is required to take reasonable steps to avoid substantial disadvantage where a provision, criterion or practice puts disabled children at a substantial disadvantage.

We owe this duty to existing children, applicants in relation to the following areas:

- Deciding who is admitted.
- The provision of education
- Access to any benefit, service, or facility.



The duty does not require our nurseries to make reasonable adjustments to avoid the disadvantage caused by physical features as this is covered by the planning duties.

Our nurseries cannot justify a failure to make a reasonable adjustment; where the duty arises, the issue will be whether to make the adjustment is 'reasonable' and this is an objective question for the tribunals to ultimately determine.

The duty is an anticipatory and continuing one that we owe to disabled children generally, regardless of whether you know that a particular child is disabled or whether you currently have any disabled children. We will not wait until an individual disabled child approaches us before we consider how to meet the duty. Instead, we will plan for the reasonable adjustments the nursery may need to make, regardless of whether we currently have any disabled children. By anticipating the need for an adjustment, we will be best placed to help disabled children who come to our nurseries. FLC is not expected to anticipate the needs of every prospective child, but we are required to think about and take reasonable and proportionate steps to overcome barriers that may impede children with different kinds of disabilities.

### What is a substantial disadvantage?

A disadvantage that is more than minor or trivial is called a 'substantial disadvantage'. The level of disadvantage created by a lack of reasonable adjustments is measured in comparison with what the position would be if the disabled child in question did not have a disability.

The nurseries will consider several factors when considering whether the disadvantage is substantial such as:

- The time and effort that might need to be expended by a disabled child.
- The inconvenience, indignity or discomfort a disabled child might suffer.
- The loss of opportunity, or the diminished progress a disabled child might make in comparison with his or her peers who are not disabled.

### The duty to change a provision, criterion, or practice.

These terms are not defined but in general they relate to how the education and other benefits, facilities and services are provided and cover all your arrangements, policies, procedures, and activities.

Where a provision, criterion, or practice places disabled children at a substantial disadvantage in accessing education and any benefit, facility, or service, you must take such steps as it is reasonable to take in all the circumstances to ensure the provision, criterion or practice no longer has such an effect. This might mean waiving a criterion or abandoning a practice altogether but often will involve just an extension of the flexibility and individual approach that most nurseries already show to their children.



### When is it reasonable for our nurseries to have to make adjustments?

A useful starting point when determining what a reasonable adjustment might be is to consider how to ensure that disabled children can be involved in every aspect of nursery life. Often effective and practical adjustments involve little or no cost or disruption.

Where disabled children are placed at a substantial disadvantage by a provision, criterion or practice or the absence of an auxiliary aid, the nursery must consider whether any reasonable adjustment can be made to overcome that disadvantage.

FLC nurseries does not expect disabled children or their parents to suggest adjustments but if they do, we will consider whether those adjustments would help to overcome the disadvantage and whether the suggestions are reasonable. It is good practice for nurseries to work with children and their parents/guardians in determining what reasonable adjustments can be made.