

Education inspection framework

Equality, diversity and inclusion statement

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Introduction

This document sets out our consideration of how the new education inspection framework will enable Ofsted to fulfil the requirements of the Equality Act 2010, including the public sector equality duty (PSED) set out in section 149 of the Equality Act 2010.

The PSED requires Ofsted, when exercising all its functions including those of Her Majesty's Chief Inspector under section 109(2) of the Education and Skills Act 2008, to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This statement was published in draft form as part of the consultation, 'Education inspection framework: inspecting the substance of education'.

We have now updated this statement in light of feedback received through the consultation. We have set out our assessment of the equality, diversity and inclusion implications of the new framework. This statement is published alongside our response to the consultation and the final inspection framework and handbooks.

Education inspection framework

The education inspection framework (EIF) will replace the current common inspection framework (CIF) that has been in place since 2015. The EIF and the associated remit-specific inspection handbooks will, together, set out the criteria against which all education providers¹ will be inspected.

Changes to the common inspection framework

The new framework is intended to address a number of issues that we have identified with the CIF and its relationship with the wider accountability system.

Those particularly relevant to equalities, diversity and inclusion are:

- **Narrowing of the curriculum** – As set out in the three phases of our published curriculum research carried out during the academic years 2017/18 and 2018/19, we have raised concerns that the curriculum (the body of knowledge that we intend to pass on to the next generation) has come second to performance measures and preparation for tests and examinations. In many cases, this means that too many learners,² often the most disadvantaged and those with special educational needs and/or disabilities (SEND), are not given access to a broad, rich and deep curriculum. This can result in unlawful discrimination, contrary to the Equality Act 2010. These issues relating to the narrowing of the curriculum are affecting all learners, including those across the spectrum of protected characteristics.
- **Some learners not having equal access to high-quality education** – We have raised concerns publicly that the current system leads to schools placing pressure on parents to remove low-attaining pupils from the school roll in order to protect the school's progress scores and examination results. In early years, our concern is that nurseries are deterred from taking on children with SEND, thereby depriving them of the same opportunities for education that are available to others. In further education and skills, our concern is about the number of learners who do not go on to access further education, or do not complete their course of study, or are being entered for

¹ The framework applies to the inspection of: maintained schools and academies under section 5; non-maintained special schools (as approved by the Secretary of State under section 342 of the Education Act 1996); pupil referral units; non-association independent schools; further education colleges, sixth-form colleges and independent specialist colleges; independent learning providers; community learning and skills providers; employers funded by the Education and Skills Funding Agency to train their own employees; higher education institutions providing further education; providers of learning in the judicial services; National Careers Service – careers advice and guidance; and registered early years settings.

² The term 'learners' is used for expediency throughout this document to encompass in a single word those attending education, skills and registered early years settings. It should be read as including: 'children' in early years provision, 'pupils' in all schools, 'students' in sixth forms and colleges, 'apprentices', 'trainees' and 'adult learners' in the range of further education and skills providers. Greater distinction is made in each of the inspection handbooks.

inappropriate qualifications. Overall, we are concerned that these practices are likely to disproportionately affect the most disadvantaged and those with SEND.

The EIF

In addition to the overall effectiveness judgement, the framework includes four key judgement areas for all education remits:

- quality of education
- behaviour and attitudes
- personal development
- leadership and management.

The framework is intended to address the issues outlined above in the following ways.

- **A sharper focus on the substance of education: the curriculum.** The quality of education judgement is intended to address a number of our concerns about curriculum narrowing and the over-focus on data. It is intended to provide a holistic view of the quality of education, bringing together curriculum leadership, teaching, assessment and the outcomes that learners achieve. It is intended to enable us to better recognise those providers whose good practice in building knowledge and skills in their learners may not always be reflected in outcomes. Likewise, it will enable us to identify providers where learners achieve good results but may be achieving them at the expense of a broad, deep and rich education for all. Ofsted will also bear in mind where the curriculum needs to be amended to meet the needs of those learners with SEND.
- **Equal access to high-quality education for all learners.** The criteria make clear how important it is that high-quality education is available to **all** learners. This means that we will consider whether education providers offer inclusive education, for example:
 - whether schools and early years providers are inclusive of children with SEND
 - whether schools are removing some children from their rolls solely to improve published outcomes
 - whether colleges and other further education providers are doing all they can to ensure that all learners are able to complete their courses
 - whether the curriculum available for the most disadvantaged learners is ambitious and meets their needs.

How will the EIF impact on those with protected characteristics and the three PSED aims?

We have considered how the framework, remit-specific inspection handbooks and consequent inspection practice could have an impact on individuals or groups of people with protected characteristics. We also considered whether the EIF meets the three limbs of the PSED.

Our intention is to ensure that inspection is better able to play its part in advancing equality, diversity and inclusion. Given the framework's focus on high-quality education for all, we believe that it will have a positive impact on all learners, including those with protected characteristics.

We believe that the protected characteristics that are of particular relevance to EIF are:

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

Eliminating discrimination and advancing equality of opportunity

The framework is intended to contribute to these aspects of the PSED in the following ways.

- The quality of education judgement criteria are clear that the entitlement to a high-quality education applies equally to **all** learners.
- The personal development judgement makes clear the importance of a provider's curriculum extending beyond the academic to include its work in preparing learners for life in modern Britain. It specifically highlights the important role that education providers play in equipping learners to be respectful citizens, developing their understanding of and appreciation for diversity, celebrating what we have in common and promoting respect for the different protected characteristics as defined in law.
- The leadership and management judgement criteria include the extent to which leaders have a clear and ambitious vision for providing that high-quality, inclusive education for all.
- The leadership and management criteria also include the extent to which those with responsibility for governance ensure that the provider fulfils its legal duties. This includes those under the Equality Act 2010 and, where applicable, the PSED.

Special educational needs and/or disability

During both our formal and informal consultation with stakeholders, we have been asked how the new framework will benefit learners with SEND and whether special schools or education providers that have high proportions of learners with SEND will be able to be judged good or better.

We consider that the framework will be a force for improvement in the education available for learners with SEND. We are also clear that special schools and mainstream provision that has high proportions of learners with SEND will be able to be judged good or better.

The criteria are clear that the expectation is that all learners receive a high-quality education. Inspectors will assess whether/when it is appropriate for the curriculum for learners with SEND to be amended to meet their age, aptitude and ability. We are emphasising the importance of the curriculum that is designed for learners with SEND being ambitious and meeting their aspirations.

We have identified that the heightened emphasis on curriculum in the EIF (explained above) may cause some concern among education providers that have a high proportion of learners with SEND. The criteria are clear that our expectation is that all learners will receive a high-quality education. They include a requirement that the curriculum designed for learners with SEND, or other disadvantage, should be ambitious and amended appropriately to meet their needs.

All the remit-specific inspection handbooks set out the ways in which provision for learners with SEND will be taken into account in inspections for each remit. The school inspection handbooks (maintained schools and non-association independent schools) explain how the EIF will apply to special schools and SEND provision in mainstream schools. The further education and skills inspection handbook sets out how we intend to inspect and report, in a coherent and inclusive manner, on the provision for learners with SEND and high needs in the further education and skills remit.

We have acknowledged in the EIF that providers must, pursuant to section 20 of the Equality Act 2010, make reasonable adjustments for learners with SEND. This may include amending the curriculum and adjusting the provision of information to individual learners. It may also include reasonable adjustments in applying behaviour policies.

By setting out clearly how the EIF will apply to SEND provision, we intend to be a force for improving the education available for all learners with SEND, while ensuring that no provider will be placed at a disadvantage in terms of inspection judgements simply because they have a high proportion of learners with SEND.

Religion and belief

We are often asked whether schools delivering a specialist faith curriculum are able to be judged good or better. We have, therefore, considered whether the heightened

emphasis on curriculum in the EIF may have a disproportionate impact on learners who attend education provision that has a religious character.

In maintained schools that are designated as having a religious character,³ Ofsted is not able to comment on the quality of denominational education, religious education (RE) and collective worship.⁴

Some maintained schools and non-association independent schools that have a religious character offer a specialist curriculum to learners, including specialist faith-based curriculums, and we will continue to recognise their autonomy to do so. However, it is important that, where schools offer a specialist education, pupils study a broad curriculum alongside it. This approach is supported by our research and inspection experience, and is also a requirement of the independent school standards.

Following consultation, in non-association independent schools, inspectors will assess a school's entire provision, including any specialist curriculum offered by the education provider when reaching judgements under the EIF in the following areas: overall effectiveness; behaviour and attitudes; personal development; and leadership and management.

When reaching the new quality of education judgement, inspectors will use the non-specialist curriculum as their primary source of evidence. However, the non-association independent school inspection handbook explains that inspectors will work with leaders to understand how the curriculum as a whole is structured, and where they can find evidence that the quality of education criteria are shown.

We believe that this approach is appropriate and will not disadvantage learners who attend provision that has a religious character; the intention is to ensure that learners in all education provision have access to high-quality education. We also consider that the approach will not disadvantage providers offering a specialist religious curriculum.

The 'good' grade descriptors for personal development set clear expectations about preparing learners for life in modern Britain and their understanding of fundamental British values. Consequently, we have been asked by some working in non-association independent faith schools whether it is possible to reconcile the requirement to ensure learners are prepared for life in modern Britain, including respect for all protected characteristics with their ability to teach the tenets of their faith.

³ A school with religious character – often called a faith school – is designated under section 69(3) of the School Standards and Framework Act 1998 (www.legislation.gov.uk/ukpga/1998/31/contents). In a faith school, pupils are educated in the context of the principle of a religion. It is normal for there to be a formal link with a religious organisation.

⁴ Inspectors may, however, gather evidence from anywhere relevant (including RE lessons and assemblies) to evaluate pupils' spiritual, moral, social and cultural education, personal development and/or behaviour and attitudes.

We acknowledge the freedom of these schools to educate their pupils on their faith. We are equally clear that this must be done alongside ensuring that learners are educated about the protections and rights that are afforded to all those with protected characteristics under British law.

Race

A considerable body of evidence⁵ shows variation in the educational performance of different ethnic groups. That performance also varies between stages and phases of education. For example, some groups perform well at primary school but less so at secondary school. We are also mindful of evidence that shows certain groups of learners, including some racial groups, are disproportionately represented among those excluded from school.

An important element of the inspection methodology under the EIF is that inspectors will investigate whether all learners are benefiting from the curriculum, or whether some are missing out. If they are, inspectors will consider whether those learners have things in common – in some cases, this may be race. Nevertheless, we believe that it is best to consider learners as people. Considering them principally through the lens of individual protected characteristics fails to recognise that individual learners may have multiple protected characteristics. It can also drive unhelpful practices in providers.

The EIF is intended to be a force for improvement in the education available for all learners, including those from all ethnic groups. The criteria are clear that the expectation is that all learners receive a high-quality, ambitious education; that providers are inclusive of all learners; and that all providers must be meeting their statutory duties, including those under the Equality Act 2010.

The school inspection handbook matches closely the Department for Education's statutory guidance on exclusions. It is clear that exclusions must be legal and justified. Inspectors will ask schools to provide records and analysis of exclusions.

Sex

We have previously been challenged in situations where segregation on the basis of sex has contributed to a provider being judged inadequate.

It is unlawful for schools to segregate pupils on the basis of any protected characteristic, including sex. This is unless it can be shown to be justified under the Equality Act 2010 for the purposes of positive action to alleviate a disadvantage associated with a certain characteristic.⁶

If unlawful segregation is taking place, inspectors will report this in the leadership and management section of the inspection report. A school is unlikely to be judged

⁵ For example, www.gov.uk/government/publications/ethnicity-gender-and-social-mobility

⁶ Further detail can be found in the section 5 inspection handbook.

better than requires improvement for leadership and management if it is segregating pupils unlawfully.

If the school has genuine and imminent plans to reintegrate pupils, a judgement of requires improvement will normally be appropriate. If plans to reintegrate pupils are not genuine and imminent, the grade is likely to be inadequate for leadership and management.

We believe that the approach will act as a force for improving provision, to ensure that all learners have access to high-quality education.

Developing good relations

The EIF is intended to have a positive impact on all learners, thereby encouraging good relations between all learners in the following ways.

- The behaviour and attitudes judgement criteria include:
 - the extent to which relationships among learners and staff reflect a positive and respectful culture
 - whether leaders, teachers and learners create an environment where bullying, peer-on-peer abuse or discrimination are not tolerated
 - the speed and effectiveness of the response to bullying, peer-on-peer abuse and discrimination if they do occur.
- The personal development judgement criteria include the extent to which the provision is:
 - developing learners' understanding and appreciation of diversity
 - celebrating what we all have in common
 - promoting respect for all the different protected characteristics as defined in the Equality Act 2010.

We believe that tackling these areas specifically through education inspection will enable us to act as a force for improvement in ensuring that all learners have a positive educational experience.

Sexual orientation and gender reassignment

As we have said, we believe that the new framework will be a force for improvement for all learners, including LGBT+ learners, by focusing on the extent to which the provider offers high-quality, ambitious, inclusive education for all learners.

During the consultation, some respondents noted that LGBT+ learners are more likely to be the subject of bullying or discrimination during their time in education. We recognise and share this concern. We believe that the final framework criteria will be a force for improvement on this.

The framework is clear that to be graded as good or better for behaviour and attitudes, a provider needs to create an environment where bullying and discrimination are not tolerated and, if they do occur, they are rapidly and effectively dealt with so as to prevent it spreading.

Similarly, to be graded as good or better for personal development, the provision is expected to develop learners' appreciation of diversity and promote respect for all the protected characteristics.

Monitoring and evaluation

We do not anticipate that the EIF will have a disproportionate impact on individuals or groups who share protected characteristics, although we recognise that there will be areas of impact. We have considered fully and appropriately all aspects of the PSED. The intention of the EIF is to ensure that we are able to comply with our legal duties to advance equality, diversity and inclusion.

The consultation process provided the opportunity for all stakeholders and members of the public to raise any concerns they had about equality, diversity or inclusion. We have considered these carefully and made changes to the framework and inspection handbooks in response. We have also revised this statement.

We routinely gather and publish data about our inspection outcomes. Through this process, we will be able to monitor and evaluate whether any particular group is affected negatively once the EIF (in its final form) is implemented.



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Piccadilly Gate
Store Street
Manchester
M1 2WD

T: 0300 123 1231
Textphone: 0161 618 8524
E: enquiries@ofsted.gov.uk
W: www.gov.uk/ofsted

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