

STATUTORY AND LOCAL AUTHORITY POSITION FOR MAINTAINED SCHOOLS ON:

- **ADVERTISING HEADTEACHER AND DEPUTY HEADTEACHER POSTS**
- **INTERVIEWING A SINGLE CANDIDATE**

Dear Colleagues,

The following guidance is provided to clarify statutory requirements and the Local Authority's (School Improvement and HR) advice on relevant matters. It is applicable only to Maintained Schools.

Decisions relating to these matters lie with the Governing Body of each school.

However, the Local Authority (LA) has certain powers and discretions where it disagrees with the actions of a Governing Body and these are set out in the relevant sections below.

Advertising

Legal Source: School Staffing Regulations 2002, as amended 2009.

The governing body must notify the local authority in writing of (*Regulation 15(1) and 27(1)*).

The governing body must advertise any such vacancy or post [headships and deputy headship] in such manner as it considers appropriate unless it has good reason not to. (*Regulations 15 and 26*)

Requirement to Advertise

School Staffing Regulations Non-Statutory Guidance:

- 5.11 *It is recommended that the governing body seeks advice from their local authority and diocesan authority, before deciding not to advertise.*
- 5.12 *The appointment process should be conducted in a fair and open manner that does not contravene any discrimination legislation... A decision not to advertise should only be taken if the governing body can demonstrate there is good reason not to and that it does not leave them open to challenge. All*

decisions should be documented fully, as the governing body will need to demonstrate that it has acted reasonably if it is challenged.

Local Authority Advice

The Local Authority considers that there are limited occasions when it may be appropriate not to advertise – predominantly in cases where not advertising would avoid a redundancy situation (e.g. restructuring of leadership team, the amalgamation of two schools) and where appropriate succession plans are in place and are fully documented.

Risks of Not Advertising

- Failure to attract the best possible field of candidates.
- Discrimination claims from potential applicants who were deprived of the opportunity to apply. Such claims would be on the basis that the individual had been discriminated against on the grounds of a protected characteristic under the Equality Act (i.e. the school gave the job to a female without advertising and a male who feels he is better qualified claims that he was discriminated against on the grounds of gender)

LA Powers and Discretions

The Local Authority is unlikely to meet any costs associated with a claim where:

- a) it was not consulted on the decision not to advertise; and/or,
- b) the LA advised that there was no good reason not to advertise. Any such advice will be documented.

Where to Advertise

School Staffing Regulations Non-Statutory Guidance:

5.12 ... The governing body should consider the most appropriate way of advertising the post. It should decide the best way of reaching its target audience, taking into consideration the type of media to be used and the level of exposure the advertisement will receive.

Local Authority Advice

The Local Authority considers that as a minimum, the posts should be advertised on the Essex Schools Jobs website (www.essexschoolsjobs.co.uk) which has a national and international audience. Schools may of course also advertise in any other media that they consider appropriate e.g. TES, Jobscene, specialist publications such as the Catholic Teachers Gazette.

The only exception might be in an amalgamation where there are two substantive post holders and therefore a potential redundancy situation – in this case the LA will usually support a ring fence advert to those post-holders.

Risks

- Failure to attract the best possible field of candidates.
- Discrimination claims from potential applicants who were deprived of the opportunity to apply. Such claims would be on the basis that the individual had been discriminated against on the grounds of a protected characteristic under the Equality Act (i.e. the vacancy was advertised in a very narrow way which deprived certain individual/groups access to it)

LA Powers and Discretions

The Local Authority is unlikely to meet any costs associated with a claim where:

- a) The post was not advertised in at least one medium which is readily accessible nationally e.g. www.essexschoolsjobs.co.uk or TES.

Interviewing a Single Candidate

This matter relates to whether Governing Bodies should proceed with interviews where there has only been one applicant or where only one candidate is shortlisted.

Legal Source and Guidance

There is no legal source or statutory guidance in respect of this matter.

Local Authority Advice

- Applicants should be shortlisted on the basis that they meet the selection criteria which were pre-determined by the Governing Body.
- Short-listed applicants should be interviewed to further test them against the selection criteria and where selection criteria are fully met, the person should be appointed.
- On this basis there is no reason why a Governing Body should not interview a single applicant, and where appropriate, appoint them.
- However, it is recognised that Governing Bodies may prefer to have other candidates with whom to compare.
- It is perfectly legitimate to re-advertise where only one application is received or only one applicant can be short-listed. In these circumstances, the Governing Body must determine how they will treat previous applicants.
 - Previous applicants who did not meet the minimum selection criteria and were not shortlisted should either be advised they were unsuccessful or invited to re-apply (if they were borderline and it is considered that they may be able to produce a better application).
 - Previous applicants who did meet the selection criteria should be advised that their application will be taken forward and re-considered alongside other applications. They should not usually be guaranteed an interview at

this stage - although it is likely they will be short-listed in the second round unless there are significant numbers of better applicants.

- If a single applicant were interviewed and not appointed, it would not normally be appropriate to re-consider them in a second round. If they were not appointed, this would be because they did not fully meet the selection criteria. Comparing them to new applicants would not alter this position. Where a number of applicants all fully meet all of the selection criteria, an employer will select the best of those. However, it is not good practice to appoint someone who is better than the rest, if that person does not themselves meet the criteria.

If you have any queries please contact either Nicki Harris, Schools HR Manager, or Helen Edwards, Strategic Lead for School Recruitment.

Yours Sincerely,



Helen Edwards
Strategic Lead for School Recruitment



Nicki Harris
Schools HR Manager