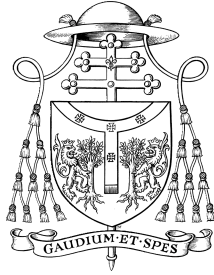


WESTMINSTER DIOCESE EDUCATION SERVICE



The Appointment of Staff in Catholic Schools in the Diocese of Westminster

Guidance for Governing Bodies

May 2000

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Introduction

This guidance deals with issues surrounding the recruitment and appointment of staff insofar as they are distinctive to the work of Roman Catholic voluntary aided schools' governing bodies. It does not deal in detail with important issues such as pay and conditions, allowances, licensed teachers, unqualified teachers, the appointment of teachers from overseas, job-share and so on. Nor does it deal with such matters as qualification, registration, health/physical capacity or fitness on educational grounds. Advice on these matters is usually available from the LEA or the organisation/consultancy that normally provides the school with personnel advice.

It replaces WDES guidance issued in September 1996, which is now withdrawn. It complements more detailed WDES guidance on the appointment of headteachers, which is issued to schools when such a vacancy arises.

In a Roman Catholic voluntary aided school, the governing body is normally the employer of all the staff working at the school. This may not apply to certain categories of staff, such as those employed to cook and serve school meals, those employed by contractors carrying out specific services, such as grounds maintenance. Staff employed to support specific, named pupils with statements of special educational needs, whose employment ends if the pupil no longer attends the school, are nevertheless normally still the employees of the governing body.

The legal requirements concerning the staffing of voluntary aided schools are set out in Schedule 17 of the School Standards and Framework Act 1998. This Schedule is attached to this guidance as annex 1 for ease of reference.

This guidance may be consulted on the Diocesan web site www.westminsterdiocese.org.uk

A. Preliminary Considerations.

Types of appointment.

A1 For certain types of appointment, slightly different legal requirements apply. The categories are:

- Headteacher and deputy headteacher
- Other teachers
- Non-teaching staff
- Staff employed by the Local Education Authority (LEA)

These are dealt with separately in the guidance that follows.

A2 In addition, the 'appropriate diocesan authority' may be accorded certain rights in civil law and Church law accords rights to the diocesan bishop. In Roman Catholic schools in the Diocese of Westminster, an officer of the WDES normally exercises these rights through participation in the following appointments:

- Headteacher and deputy headteacher;
- Head of Religious Education (RE);
- Teacher of RE (Secondary);
- RE co-ordinator (Primary);
- Chaplain.

The current (May 2000) arrangements for contacting the WDES are shown in annex 7. These are liable to change from time to time; variations are announced in WDES Bulletins.

The rights accorded to the appropriate diocesan authority and the rights of the diocesan bishop apply, regardless of trusteeship.

Advisory Rights for the Chief Education Officer.

A3 Most schools are familiar with the arrangement whereby an officer from the LEA assists the governing body with certain categories of appointment, normally in the person of a personnel officer or an adviser. In some cases, both might be involved in different capacities, whilst in others, the chief education officer (CEO) might wish to be involved personally.

A4 Prior to September 1999, advisory rights were normally accorded to the Chief Education Officer (CEO) by virtue of a clause added to the school's articles of government. In substitution for this provision, paragraph 2 of Schedule 17 to the *School Standards and Framework Act, 1998*, now requires the governing bodies of voluntary aided schools to decide whether to accord advisory rights to the CEO in respect of the **appointment and/or dismissal**

- ◆ of head and deputy headteachers alone, or
- ◆ of all teachers at the school.

In the absence of an agreement between the governing body and the CEO, the Secretary of State for Education and Employment may impose such advisory rights.

A5 Both the Catholic Education Service (CES) and the Westminster Diocese Education Service (WDES) are firmly of the view that advisory rights should be accorded to the CEO in all cases. Whilst the governing body alone is responsible for making the final decision in respect of an appointment, the LEA invariably offers expertise in both personnel procedures and matters of professional competence. Where a governing body is minded to refuse advisory rights, prior consultation with the Director of the Schools Administration Department is strongly recommended. In the case of senior appointments (head and deputy headteacher) the CEO is entitled to receive information about candidates and to make representations which must be considered.

Advisory Rights for the Appropriate Diocesan Authority.

A6 Where a governing body accords advisory rights to the CEO, the same rights are automatically exercisable by the 'appropriate diocesan officer'. These are in addition to and separate from the rights accorded to the diocesan bishop in Church law.

Appointment of Panels.

A7 In a voluntary aided school, the governing body is normally the employer of all staff working at the school. The governing body as a whole must decide how it will discharge its employer functions. For appointments, this may be by delegation to a panel, or to an individual, for example, the headteacher. For the avoidance of doubt, the governing body must be explicit in deciding and recording in the minutes of a full meeting which categories of staff may be appointed by a panel and which by an individual.

A8 The extent to which the authority of the governing body is delegated will normally depend upon the seniority or significance of the post to be filled. For head and deputy headteacher appointments, the governing body of a voluntary aided school must either appoint a panel of at least three of its members or involve the whole governing body in the process. Where the procedure is progressed by a panel, the panel may not make the appointment, but must make a recommendation to the governing body. (See section D for more detailed guidance on head and deputy headteacher appointments).

A9 In appointing a panel to deal with staff appointments, a governing body should bear in mind that members might need to be available at short notice and during the working day. Experience of making appointments or a willingness to undertake some specific training in recruitment and selection procedures should also be a factor.

The headteacher, whether a governor or not, should be a member of every appointment panel, but may not take the chair. The headteacher has a professional duty to participate in the selection and appointment of all staff of the school, other than the appointment of his or her successor.

Determination of Staff Complement and Links to the School Development Plan

A10 Whilst not a statutory requirement, any vacancy which arises provides an opportunity for the governing body to review progress towards its strategic objectives. It is not axiomatic that where a member of staff leaves, he or she should be replaced in the same role, or even replaced at all. In some cases, for example following the resignation of the headteacher or the clerk to the governing body, governors are legally required to declare a vacancy and initiate steps to fill it. In most cases, however, governors may wish to consider whether a replacement is needed, in the light of pupil numbers, or other constraints, or whether a replacement might be sought with different skills or experience. A committee with delegated authority to make appointments should always ensure that it does so with regard to the school development plan, or other policies. Where there is doubt, the matter should always be referred back to the full governing body.

A11 Many school development plans include 'shadow' staffing structures, that is, the structure the governing body wishes to move towards as opportunities arise. A published shadow structure can give a clear, advance indication to the school community that where vacancies arise, they may not be filled with an exact replacement, or may not be filled at all.

A12 Where the governing body is contemplating staffing reductions, whether by voluntary or compulsory means, reference should be made to the *Model Staffing Review Policy* published by the Catholic Education Service (020 7828 7604).

B. Documentation

An important part of the process of selection and recruitment is the production of certain key documents. The following are normally considered to be essential and should be prepared at least in outline before the appointment process begins.

Job Description

B1 The job description sets out the general and specific duties of a post. For some posts the general elements are prescribed, for example, the duties of a teacher, as set out in the *Schoolteachers Pay and Conditions Document*. For most teaching posts, it is desirable to add features which are specific to a particular appointment.

B2 For certain posts in Catholic schools, the Education Board of Westminster Diocese requires the inclusion of certain text. The posts are

- Headteacher;
- Deputy headteacher;
- Head of the religious education (RE) department/RE co-ordinator;
- RE teacher (secondary);
- Chaplain.

The prescribed wording is set out in Annex 2.

B3 In Catholic schools, it is strongly recommended that the first element of the job description for every post is a requirement to support and promote the school's mission statement. This does not mean that every employee must be a Roman Catholic. All employees, however, must be able to demonstrate sympathy with and a readiness to promote the aims and ethos of the school.

B4 This is desirable first, because it is good practice to have a document that sets out clearly what an employee is expected to do. Second, it is the essential document to be used in any statutory question of salary determination or appraisal of performance.

B5 It is not essential to complete every aspect of a job description before a post is filled. The governing body should, however, set down those aspects of the post that it knows must be done by the successful applicant and state which aspects will be negotiated later. For example, in appointing a deputy headteacher, the governing body may wish to allocate responsibility for a particular curriculum area to the post, but leave exactly which area open to negotiation.

Person Specification

B6 The governing body must determine a person specification, in consultation with the headteacher for every post, other than a temporary appointment which is not expected to exceed four months.

Prior to appointment, the person specification is a more important document than the job description. It sets out the qualifications, experience skills and personal qualities expected of the applicant. It is this document which a candidate studies carefully to judge whether to apply for the post and to which detailed reference is made in the letter of application. The person specification is a key document used by the selection panel and its advisers to decide which applicants to call to interview. Applicants who are not selected for interview may be told why their application failed by reference to the person specification.

Suggested person specifications for certain categories of post are included in Annex 2.

Selection Criteria.

B7 The selection criteria distil the elements of the job description and the person specification into a document which the selection panel will use to decide which applicant (if any) to appoint. They distinguish between characteristics that are essential and those that are desirable. Essential characteristics are those, without which, the candidate will not be considered.

B8 Whilst the panel should circulate the job description and person specification to the applicants, it is suggested that the selection criteria are retained for its own use. The panel should bear in mind, however, that the criteria might be required for scrutiny by a subsequent employment tribunal.

Application Form

B9 Standard application forms for all grades of posts within Catholic schools are available from the Catholic Education Service (CES) (020 7828 7604) or from the WDES. Schools are at liberty to customise the header of either form to make it specific to the school, but should not alter any other part without the consent of the CES or WDES as appropriate.

B10 It is strongly recommended that these forms be used. It essential that the standard forms issued by another employer (e.g. the LEA) are not used. These invariably wrongly name the employer, fail to ask important questions (such as *are you a practising Catholic?* and *do you have the CCRS or equivalent?*) and do not give space to name a priest as a referee. In some cases, LEA forms state that applicants will be considered regardless of gender, race *creed and sexual orientation*, which may not accord with criteria for selection in Catholic schools.

Model Contract

B11 It is important to state that all appointments will be subject to the CES model contract of employment. Contracts for all categories of post are available from the CES and most LEAs are content to issue CES contracts on behalf of governing bodies. In all cases, it is advisable to allow the applicants

to have sight of the contract, before an offer of appointment is made, for the avoidance of doubt.

B12 In the matter of a contract between a voluntary aided school and its employees, LEA model or pro-forma contracts must not be used.

B13 At the insistence of the Bishops' Conference of England and Wales, the CES model contract includes the following provision:

Clause 4(iii)

- (a) *You are to have regard to the Roman Catholic character of the school and not to do anything in any way detrimental or prejudicial to the interest of the same.*
- (b) *If required you are to instruct the Holy Scriptures and the Doctrines of the Roman Catholic Church in accordance with the principles and subject to the discipline thereof to the satisfaction of the Diocesan Religious Inspector or other appointed representative of the Ordinary, at the time or times appointed for religious instruction, such children as are entrusted to you and to be present at such religious examinations of the children as may be directed to be held by the governing body.*

B14 It has been successfully argued in the courts that a Catholic school governing body may legitimately include a contractual obligation as so described. The position is now made explicit by section 60(5) of the *School Standards and Framework Act, 1998*.

(5) *If the school is a voluntary aided school-*

- (a) *Preference may be given, in connection with the appointment, remuneration or promotion of teachers at the school, to persons-*
 - (i) *whose religious opinions are in accordance with the tenets of the religion or the religious denomination specified in relation to the school under section 69(4), or*
 - (ii) *who attend religious worship in accordance with those tenets or*
 - (iii) *who give, or are willing to give religious education at the school in accordance with those tenets; and*
- (b) *Regard may be had, in connection with the termination of the employment of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with upholding the tenets of the religion or the denomination so specified.*

B15 Ideally, the majority (if not all) staff in a Catholic school will be practising Catholics. If a suitable Catholic teacher cannot be found, the person appointed should be able to demonstrate sympathy with the Roman Catholic character of the school. Clause 4(iii)(a) of the contract should be brought to the attention of all teachers before appointment, since all are bound by it, whether Catholic or

not. Clause 4(iii)(b) may be deleted if the teacher will never be called upon to teach religion.

B16 The contract and other particulars of employment must be handed to the employee within two months of the date the employment begins. Any particulars, which are not described in the contract, should be set out explicitly in a covering letter, which forms part of the contract. Any subsequent amendments are also to be set out in a supplementary letter.

Temporary and Fixed-term Contracts.

B17 Schools use temporary contracts to fill vacancies in circumstances such as

- Cover for maternity leave
- Cover for long term leave of absence
- To fill a post with fixed term funding
- To cover a vacancy whilst a post is being advertised
- Where there is a project that is time limited.

B18 It is proper in circumstances such as these for a governing body to make temporary appointments but there can be implications, which need to be considered, for example,

- The best qualified and most experienced candidates for a post may not apply for a temporary position;
- The termination of a temporary or fixed term appointment is a dismissal and must be managed as such
- A series of separate temporary contracts between the same employer and an employee may confer full employment protection rights (including recourse to an employment tribunal after two years continuous employment).

B19 When considering the need for a fixed term appointment, governing bodies should have a clear and definite reason for such an arrangement. Such reason(s) should be made explicit to the applicant from the outset. Any contractual documentation, include letters offering the post, should clearly state the start and end dates of the contractual period, as well as the nature of the post being offered. A temporary post-holder should be advised of any change in the circumstances affecting the contract, e.g. an earlier than expected return from maternity leave by the permanent post holder.

B20 On the termination of a temporary contract, a teacher may, in certain circumstances make a claim for redundancy payments. The size of such payments can be considerable.

B21 Governing bodies are also advised to note that for the purposes of computing redundancy payments, teachers may also include previous continuous service in other maintained schools.

Part-time Contracts.

B22 The employment of staff on part-time contracts is regulated by the *Employment Protection (Part Time Employees) Regulations, 1995*. The Regulations cover any employee who has been in continuous employment for two years or more, regardless of the number of hours per week and extend employment rights to such persons. These employment rights, particularly the right to claim unfair dismissal, redundancy payments and the right to extend maternity leave, were previously only available on completion of five years continuous service at between 8 to 16 hours per week or two years continuous service at 16 hours per week or more.

B23 It is important to note that, for the purpose of claiming unfair dismissal, two years continuous service with the same employer is required. Previous service in a community school maintained by the same LEA may count as continuous service in some circumstances. For the purposes of gaining entitlement to redundancy payments, the employee must have completed two years continuous service with any organisation covered by the Redundancy Payments Order. In effect this means that, for the purposes of entitlement to redundancy payments, service in other maintained schools, whatever their status will satisfy the criterion of continuity of service. Headteachers and governing bodies are strongly advised to obtain the advice of the LEA or other professional personnel advisers before entering into temporary or fixed term appointments so that the consequences are fully understood.

Non-Teaching Staff Contracts

B24 At national level, organisations representing local government employers and the relevant trades unions have reached agreement in merging pay and certain conditions of service. Previously, there were distinct differences between those employed as manual workers and those employed on APT&C conditions.

B25 In many areas, the new 'Green Book' conditions are now in place, and most LEAs operate a new, common approach.

B26 The CES has produced a standard contract for all non-teaching staff employed by governing bodies in voluntary aided schools. LEA contracts must not be used for staff employed by the governing body

B27 For existing staff, there is no obligation to issue the new contracts. However, all staff appointed after 1 September 1999 should be issued with the new contracts, which are available from the CES.

B28 Mid-day supervisors should no longer be issued with the pink contracts, previously issued by the CES but should be appointed on the CES non-teaching staff contract.

C. The Appointment Process.

Planning the Process

C1 For appointment to all staff positions, it is important to plan the process and check key dates before it begins. This is particularly important for teaching positions, since the conditions of service of a school teacher determine the dates before which a teacher must resign from one position before taking up another. These dates are

- 31 May to take up an appointment on 1 September;
- 31 October to take up an appointment on 1 January;
- 28/29 February to take up an appointment at the beginning of the summer term.

C2 If the person submitting a resignation is a headteacher, each of these dates is brought forward by one calendar month, thus, 30 April for September, 30 September for January and 31 January for the summer term.

C3 These constraints can create difficulties when arranging the dates for placing advertisements and holding interviews, not least because of the coincidence of half term holidays. It is therefore important to fix dates for the final submission of applications, short listing and interviewing before the advertisement is placed. Where the governing body appoints a panel to help fill a vacancy for head or deputy headteacher, it is particularly important that the date and time of the governing body meeting needed to receive and consider the panel's recommendation is fixed at a suitable time.

The following sections deal with the different categories of appointment to which different requirements apply.

Headteacher and Deputy Headteacher Appointments.

C4 The governing body must notify the LEA in writing of the vacancy before taking any further steps. The WDES must also be notified, according to the arrangements included with this guidance on a loose leaf. The steps to be taken, described in the following paragraphs, are summarised on a diagram included as Annex 3.

C5 Before the process begins, the governing body must decide whether it wishes to appoint a panel or deal with the process as a full governing body. If this requirement is not met, it will not be possible to confirm an appointment.

C6 In the case of **headteacher** vacancies, if the position has not been filled or will not be filled before a substantive appointment can be made, the governing body must either make an acting appointment or make arrangements to engage an acting headteacher. If there is no suitable internal candidate for the acting position, 'making arrangements' may mean inviting the LEA and/or the WDES to negotiate the secondment of a suitable acting headteacher from another school.

*Further detailed guidance on filling a **headteacher** vacancy is available from the WDES. It is issued to the governing body chairman only when a vacancy arises and is useful to have to hand before the process begins.*

C7 For headteacher and deputy headteacher vacancies, three key meetings are normally required. The first is to appoint the panel (unless the whole governing body is to be involved), plan the process, fix the dates and prepare the key documentation, including in particular, the advertisement, the job description and the person specification. The second is to consider which, if any, of the applicants to call for interview and to plan the interview process. The third is to interview suitable applicants and, if a suitable candidate for appointment is found, to make a recommendation to the governing body.

C8 **The Advertisement:** For head or deputy head teacher vacancies, the governing body must advertise the vacancy in such publications circulating in England and Wales as they see fit. The normal location is the *Times Educational Supplement*, which is published each Friday. The *TES* normally requires completed text no later than midday on the Monday preceding publication, although advertising agencies (if used) may operate slightly different time limits. A suitable Catholic publication, such as *the Catholic Teachers' Gazette*, may be used *in addition* to the *TES*.

For other vacancies, any suitable local or national publications may be used.

C9 The advertisement should include the name of the school and the maintaining LEA, the title of the post and the salary range within which the appointment will be made. The advertisement should state whether a practising Roman Catholic is required or preferred. Other text may be added to personalise the advertisement, but without over-crowding (and adding to the cost). It should not include any statement that implies that the LEA is to be the employer or that the governing body is fully committed to LEA practice which may not be appropriate or relevant (for example, '*this LEA is an equal opportunity employer*'). It is recommended that the statement *The governing body has adopted the Equal Opportunities Statement of the Diocese of Westminster* be included.

C10 **The Selection of those to be called to Interview:** The selection panel (or governing body) together with the CEO (or appointed representative) and the Director of the WDES (or appointed representative) must select such candidates as they see fit for interview. Matching the qualifications, experience and personal qualities of the applicants to the person specification best does this. If an applicant is not selected for interview, the reasons should be founded in a mis-match with the person specification. However, there is nothing to prevent the selection of a candidate for interview who does not meet the criteria as set out, but who appears to have other strengths.

C11 The selection panel must notify the LEA in writing of the names of those selected for interview. If the CEO has not been accorded advisory rights, the panel must supply further information, usually in the form of copies of the

application form and supporting statement, which will allow the CEO to determine whether the candidates are suitable.

C12 The LEA then has a period of 14 days in which it may make written representations to the panel that any of the applicants is not suitable for appointment. The LEA may make any representations it sees fit, but may prevent an appointment only where the person to be appointed

- Lacks the health and/or physical capacity for teaching
- Has been barred from teaching by the Secretary of State for Education and Employment on the grounds of misconduct or
- Lacks the necessary professional qualifications required to be a teacher.

C13 For head and deputy headteacher vacancies, it is essential that the person appointed is a practising Roman Catholic in good standing with the Church. Applicants are invited to provide the name of a priest who will confirm this. It is strongly recommended that this be checked before any candidate is called to interview. Contacting the named priest, in writing if there is time, before the short listing meeting best does this. If time is short, it may be done by telephone, but must always be confirmed in writing. The professional referees should be contacted immediately after shortlisting.

C14 The Interview and Appointment of the selected candidate: The selection panel (or governing body) must interview the candidates selected for interview. Detailed advice on the procedures which may be used to interview a headteacher are published separately by the WDES.

C15 Where a selection panel conducts the interviews and determines that a suitable candidate for appointment has been found, it must recommend the candidate for appointment to the governing body. The governing body either accepts the recommendation or directs the panel to repeat the procedure. It cannot substitute another candidate for the one recommended. Where the governing body conducts the interviews, it may make an appointment immediately.

C16 A selection panel may not recommend a candidate who has been identified by the LEA as unsuitable unless it has considered the representations and made a response in writing. The governing body must be supplied with both written documents. In order to avoid these procedural difficulties, it is strongly recommended that the CEO is accorded advisory rights and is represented at both the short-listing and the interview.

C17 Reserved headship. In the case of voluntary aided schools where the trustee is a religious congregation, paragraphs 6 to 8 of Schedule 17 of the School Standards and Framework Act are replaced by the following provisions:

- The governing body shall notify the Major Superior of the vacancy in writing.
- The Major Superior may propose one or more candidates for interview.
- The governing body must appoint one of the candidates proposed, unless the person nominated does not meet the staff qualification requirements or there is another good cause.

The Appointment of Teachers other than Head and Deputy Headteachers.

C18 The appointment of teachers other than head and deputy headteachers is governed by paragraphs 10-19 of Schedule 17 of the School Standards and Framework Act, 1998. The Schedule appears in full as Annex 4 of this document.

For any appointment likely to exceed four months in duration, the governing body must

- Draw up a specification for the post and
- Send a copy of the specification to the LEA

(At this stage, the LEA may nominate for consideration any person employed by the LEA or employed at a maintained school within the LEA, subject to the consent of the governing body that employs the person.)

- Advertise the vacancy, unless an appointment can be made from within the school or from amongst those nominated by the LEA, in a manner that will bring it to the attention of those qualified to fill it.
- Interview such persons as they see fit and, if a suitable candidate is available, make an appointment.

C19 Any person appointed must meet all the staff qualification requirements that are applicable to the post.

The governing body may delegate these duties to

- One or more governors
- The headteacher or
- One or more governors and the headteacher working together.

C20 For appointments not exceeding four months or where the person appointed is unlikely to remain in the post for more than four months, the governing body may make such arrangements as it sees fit, provided any person appointed meets the staff qualification requirements for the post. There is also no requirement to issue a contract for such appointments. This would cover the situation where, for example, a teacher was seconded from employment elsewhere to cover a vacancy. In such cases, a letter setting out the terms of the secondment is essential.

Non-Teaching Staff Appointments.

C21 All persons appointed must meet the staff qualification requirements for the post. The headteacher must be consulted if not otherwise involved in the appointment. Beyond these basic requirements, the governing body has wide discretion to determine the terms of employment, subject, however, to general employment law and established good practice.

The Appointment of Chaplains.

C22 Detailed guidance on the appointment of chaplains to Roman Catholic schools in the Diocese of Westminster is attached as Annex 4.

Appointment of Head of RE, RE Co-ordinator and Teacher of RE (Secondary).

C23 Some suggested documentation that might be used in connection with these appointments is attached as part of Annex 2.

D Discrimination.

Governing bodies have a duty to ensure that the law with regard to discrimination is observed. In some cases, detailed advice may be required. The following general principles will, however, cover the majority of situations:

(i) Sex Discrimination.

- 1 The definition of sex discrimination is contained within the *Sex Discrimination Act, 1975*.
- 2 Sex discrimination occurs where an employer (or other legal entity such as a local education authority) treats a person less favourably than another on the grounds of sex. This would be *direct discrimination*. *Indirect discrimination* occurs where the conditions applied to a post are such that, without justification, only a person of a particular sex could meet them. For example, to specify that applicants must be of a certain height might, without justification, exclude a greater proportion of one sex than another might.
- 3 Complaints of direct discrimination must be able to prove that they have been less favourably treated than a person of the opposite sex has and that the treatment was on the grounds of sex. The employer's motive is irrelevant.
- 4 Complainants of indirect discrimination must be able to prove that the proportion of women (or men) who can comply with a specified condition, is smaller than the number of men (or women) who can comply, that there is no justification and that the condition when applied would be to the complainant's detriment.
- 5 Care is needed throughout the recruitment procedure to ensure that unjustified gender specific language is eliminated and that the person specification, job description and conditions of service do not discriminate unjustly.
- 6 In schools, gender discrimination may be justified where, for example, the supervision of toilets or changing rooms is an essential feature of the job, or the position is mainly concerned with the welfare of one sex and requires a teacher of that sex for authenticity. It is also justifiable to state in an advertisement that applications are particularly welcome from one sex because that sex is under-represented in the school. It is not justifiable, however, to discriminate subsequently against those who apply.
- 7 Care is needed when asking questions at interview to ensure that they do not give the impression of discriminatory motive. Questions of a discriminatory nature should not normally be asked. This does not mean that there are certain questions that should never be asked. A question,

which might be unfair in one situation, might be justifiable in another. It is invariably fair to ask candidates what provision they intend to make for the care of dependants, if that is likely to impact on the performance of their duties. It is blatant discrimination, however, to ask a single woman if she intends to marry in the near future and draw the conclusion that she should not be appointed because of the future possibility of maternity leave. If discriminatory questions are asked, a careful note should be kept of what is said and of the justification for the question(s).

- 8 A successful complaint was brought against a governing body by a woman who had satisfactorily filled the position of acting caretaker but was not appointed because of a concern that she might not be able to manage heavy ladders if the need arose. Another successful case was brought where, pending the amalgamation of an infant and a junior school the infant headteacher (female) was not short-listed, although she was demonstrably better qualified than her junior (male) counterpart.
- 9 Other cases are less clear. In one, a teacher was promoted on condition that she took an after school club. She later discontinued the club because of child-care commitments and was demoted. She claimed and the employment tribunal agreed that this was direct discrimination. The court of appeal, however, held that although the governing body was applying a condition with which a smaller number of women than men could comply, it was justified in doing so because there was a reasonable and justifiable need to run the activity.
- 10 Under section 3 of the Sex Discrimination Act, it is unlawful to discriminate against a person of either sex on the grounds of marital status.

(ii) Race Discrimination.

- 1 The definition of race discrimination is set out in the *Race Relations Act, 1976*. The definitions and other provisions are much as the same as for sex discrimination, but applied to race or a racial group.
- 2 Race discrimination can be justified, particularly in the sphere of entertainment where, for example, an actor is required to play a particular role. However, there are few circumstances in a school where race discrimination can be justified. One may be where a person is required to raise the attainment of pupils from a particular racial group and a teacher is sought from that group to provide authenticity and a role model. Where a person from a particular racial group is required, the justification should be explicit in all the documentation, particularly the advertisement.
- 3 It should be noted that, under current law in England and Wales, Sikhs are regarded as a racial group whilst other religious communities such as Muslims and Jews, are not.

(iii) Disability Discrimination.

- 1 The *Disability Discrimination Act, 1995*, introduced rights for disabled people not to be discriminated against in employment. The Act does not apply to employers with fewer than 20 employees (although they are encouraged to have regard to its provisions).
- 2 The Act provides a right to individuals not to receive less favourable treatment on the grounds of disability. This applies to recruitment, promotion, training, and conditions of employment and termination. An act of discrimination is unlawful unless the employer can justify the less favourable treatment. Employers are required to consider reasonable adjustments to the physical environment and working conditions to give the disabled person genuine equality of opportunity with employees who are not disabled. Stereotyped assumptions about the capabilities of disabled persons will not be admitted.

(iv) Religious Discrimination.

- 1 By virtue of section 60(5) of the *School Standards and Framework Act, 1998*, the governing body of a Roman Catholic voluntary aided school may give preference in connection with the appointment, remuneration and promotion of **teachers** to persons
 - Whose religious opinions are in accordance with the tenets of the Roman Catholic Church or
 - Who attend religious worship in accordance with those tenets or
 - Who give or are willing to give religious education at the school in accordance with those tenets.

Please note that this provision applies only to teachers.

- 2 Where a governing body wishes to give preference to Catholic applicants, or to consider only Catholic applicants, it should say so in the advertisement. An applicant subsequently not appointed on the grounds of his or her not being a Catholic might be open to question if the requirement had not been clearly stated in all the documentation, especially the advertisement.
- 3 For staff other than teachers, it is acceptable to state in an advertisement that preference will be given to applicants in sympathy with the Roman Catholic character of the school and to question this at interview. There is never a need to appoint a person where there is evidence that the person is indifferent or hostile to the school's ethos. It should not be assumed, however, that indifference or hostility is necessarily present simply because the person belongs to a different religious tradition.

- 4 It is a requirement of the diocesan bishop that any person appointed to be head or deputy headteacher; RE co-ordinator; head of RE department or a secondary RE teacher in a Roman Catholic school in the Diocese of Westminster must be a practising Roman Catholic in good standing with the Church. This requirement must be set out clearly in all the documentation relating to the post. The stricture may be relaxed in connection with the appointment of teachers to 'acting' roles, providing there is no suitable Roman Catholic candidate, the person selected is in sympathy with the ethos and aims of the school and the approval of the chairman of the diocesan Education Board is given.

These points are amplified in paragraph 5 of the *Memorandum on the Appointment of Teachers to Catholic Schools*, issued by the CES in January 2000, attached as annex 5.

(v) Equal Pay

- 1 The question of equal pay is dealt with in the *Equal Pay Act, 1970* and *Equal Pay (Amendment) Regulations, 1983*.
- 2 All employees are deemed to have an equality clause in their contract. Men and women are expected to receive equal treatment if they do similar work, related work considered equivalent or work of equal value.
- 3 For a complaint to be brought under the Equal Pay Act there must be a 'comparator', i.e. another employee of the same employer performing like work at the same time. However, under EU legislation, an employee or former employee may be able to succeed in a complaint if it can be shown that a predecessor or successor of a different sex was employed at a higher salary for comparable work, without good cause. Good cause might include, for example, difficulty in recruiting a successor, causing the governing body to raise the pay as an incentive to recruitment, or as part of assimilation from pay received in a previous post.

Annex 1.

Schedule 17 to the School Standards and Framework Act 1998.

STAFFING OF FOUNDATION, VOLUNTARY AIDED AND FOUNDATION SPECIAL SCHOOLS

Introductory

1. - (1) In this Schedule "the school" means a foundation or voluntary aided or foundation special school.

(2) References in this Schedule to a vacancy in any post include a prospective vacancy in the post, and references to a person's absence are to his absence, or prospective absence, from the school.

(3) References in this Schedule to staff qualification requirements are to any requirements with respect to-

- (a) qualifications,
- (b) registration,
- (c) health and physical capacity, or
- (d) fitness on educational grounds or in any other respect,

of teachers or other persons employed, or otherwise engaged to provide their services, in work that brings them regularly into contact with persons who have not attained the age of 19 which for the time being apply under regulations under section 218 of the Education Reform Act 1988 (regulations relating to employment of teachers etc.) or section 19 of the Teaching and Higher Education Act 1998 (induction training).

Advisory rights of chief education officer

2. - (1) This paragraph applies where-

- (a) the governing body of the school have agreed with the local education authority to accord to the authority's chief education officer advisory rights in relation to the appointment, engagement or dismissal of teachers at the school, or
- (b) in default of such agreement, the Secretary of State has determined that it would be appropriate that such advisory rights should be accorded to the chief education officer.

(2) Advisory rights accorded by an agreement or determination under subparagraph (1) shall be framed by reference to the rights conferred on the chief education officer by the following paragraphs of this Schedule and may relate to the appointment and engagement or dismissal, or both to the appointment and engagement and to the dismissal, either-

- (a) of head teachers and deputy head teachers alone, or
- (b) of all teachers at the school.

(3) During any period when an agreement or determination under sub-paragraph (1) is effective, the chief education officer shall be entitled to exercise such of the rights conferred on him under the following paragraphs of this Schedule as are accorded to him by virtue of the agreement or determination.

(4) The chief education officer shall not be entitled to exercise any of the rights so conferred except in accordance with sub-paragraph (3).

(5) The agreement of a governing body for the purposes of sub-paragraph (1)(a) must be given in writing and may only be withdrawn by notice in writing to the local education authority.

(6) A determination by the Secretary of State for the purposes of sub-paragraph (1)(b) may be withdrawn at any time (without prejudice to a further determination for those purposes).

(7) References in this Schedule to the chief education officer of the local education authority include any officer of the authority nominated by the chief education officer.

Appointment of head teacher and deputy head teacher

3. Paragraphs 4 to 8 apply in relation to the filling of a vacancy in the post of head teacher or deputy head teacher of the school (but paragraphs 6 to 8 so apply subject to paragraphs 29 and 30).

4. The governing body shall notify the local education authority of the vacancy in writing before taking any of the steps mentioned in paragraphs 5 to 8 (or, in a case where paragraph 29 or 30 applies, any of the steps falling to be taken under that paragraph).

5. - (1) Where the vacancy is in the post of head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with paragraphs 6 to 8 before the date on which it falls vacant, the governing body shall either-

- (a) appoint a person as acting head teacher, or
- (b) exercise their power under sub-paragraph (4).

(2) Where the vacancy is in the post of deputy head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with paragraphs 6 to 8 before the date on which it falls vacant, the governing body may-

- (a) appoint a person as acting deputy head teacher, or
- (b) exercise their power under sub-paragraph (4).

(3) A person shall not be appointed under sub-paragraph (1) or (2) unless he meets all the staff qualification requirements, which are applicable in relation to his appointment.

(4) Instead of making an appointment under sub-paragraph (1) or (2) the governing body may for the purpose of filling the vacancy-

(a) engage, or

(b) make arrangements for the engagement of, a person to provide his services as acting head teacher, or (as the case may be) acting deputy head teacher, otherwise than under a contract of employment.

(5) No person shall be engaged under sub-paragraph (4) unless he meets all the staff qualification requirements applicable in relation to the head teacher or (as the case may be) deputy head teacher at the school.

(6) In sub-paragraph (1) the reference to paragraphs 6 to 8 includes a reference to paragraph 29 or 30; and in sub-paragraph (2) the reference to paragraphs 6 to 8 includes a reference to paragraph 30.

6. The governing body shall advertise the vacancy in such publications circulating throughout England and Wales as they consider appropriate.

7. - (1) The governing body shall appoint a selection panel consisting of at least three of their members to perform the functions conferred on them by this paragraph.

(2) The selection panel shall-

(a) select for interview such applicants for the post as they think fit and, where the post is that of head teacher, notify the local education authority in writing of the names of the applicants so selected,

(b) interview such of those applicants as attend for the purpose, and

(c) where they consider it appropriate to do so, recommend to the governing body for appointment one of the applicants interviewed by them.

(3) Any decision of the selection panel shall be taken by a vote representing an absolute majority of all the members of the panel (whether or not taking part in the vote).

(4) If, within the period of 14 days beginning with the date when they receive a notification under sub-paragraph (2)(a), the authority make written representations to the selection panel that any of the applicants selected by the panel is not a suitable person for the appointment, the panel shall not recommend that person to the governing body for appointment unless the panel have-

(a) considered those representations, and

(b) notified the authority in writing of their response to the representations; and when making such a recommendation the panel shall supply the governing body with a copy of those representations and of the panel's response to them.

(5) If the panel do not recommend a person to the governing body, or the governing body do not approve their recommendation, the governing body-

(a) may, if they think fit, re-advertise the vacancy in the manner required by paragraph 6, and

(b) whether or not they re-advertise the vacancy, may require the panel to repeat the steps mentioned in sub-paragraph (2).

(6) Where the chief education officer has no advisory rights under paragraph 2 with respect to the appointment of head teachers and deputy head teachers, the selection panel's notification under sub-paragraph (2)(a) shall be accompanied by such information relating to each of the persons selected for interview as will enable the authority to determine his suitability for the appointment.

(7) In determining whether a person is suitable for appointment as head teacher the authority shall have regard to any guidance given from time to time by the Secretary of State.

8. Where the governing body approve a recommendation of the selection panel, the governing body shall appoint the person recommended by the panel unless he does not meet any staff qualification requirements which are applicable in relation to his appointment.

9. - (1) The governing body may, in connection with any absence of the person for the time being holding the post of head teacher or deputy head teacher of the school, take either of the steps mentioned in paragraphs (a) and (b) of sub-paragraph (1) or (as the case may be) (2) of paragraph 5.

(2) For the purposes of this paragraph-

(a) paragraph 5(3) shall apply in relation to any appointment made by virtue of sub-paragraph (1) above as it applies in relation to any appointment made by virtue of paragraph 5(1) or (2); and

(b) paragraph 5(4) and (5) shall apply in connection with any such absence as is mentioned in sub-paragraph (1) above as they apply for the purpose of filling any such vacancy as is mentioned in paragraph 5(1) or (2).

Appointment of other teachers

10. Subject to paragraph 11, paragraphs 12 to 15 apply in relation to the filling of a vacancy in any teaching post (whether full-time or part-time) at the school, other than the post of head teacher or deputy head teacher.

11. - (1) Paragraphs 12 to 15 do not apply in relation to any temporary appointment or engagement to fill a vacancy in any such post as is mentioned in paragraph 10-

(a) for a period not exceeding four months, or

(b) where it appears to the governing body that the period for which the person appointed or engaged will act in the post in question will not exceed four months.

(2) Where it appears to the governing body in the case of any post that it would be appropriate for such an appointment as is mentioned in sub-paragraph (1) to be made, they may appoint a person to the post on such terms as to the duration

of the appointment as they think fit.

(3) A person shall not be appointed under sub-paragraph (2) unless he meets all the staff qualification requirements, which are applicable in relation to his appointment.

(4) Where it appears to the governing body in the case of any post that it would be appropriate for such an engagement as is mentioned in sub-paragraph (1) to be made, the governing body may-

(a) engage, or

(b) make arrangements for the engagement of,

a person to provide his services as a teacher at the school otherwise than under a contract of employment.

(5) Any engagement under sub-paragraph (4) shall be on such terms as to the duration of the engagement as the governing body may specify; but no person shall be engaged under that sub-paragraph unless he meets all the staff qualification requirements applicable in relation to a teacher in the post in which he would be acting as a temporary teacher.

12. Before taking any of the steps mentioned below, the governing body shall-

(a) determine a specification for the post in consultation with the head teacher, and

(b) send a copy of the specification to the local education authority.

13. - (1) The local education authority may nominate for consideration for appointment to the post any person who appears to them to be qualified to fill it and who at the time of his nomination either-

(a) is an employee of theirs or has been appointed to take up employment with them at a future date, or

(b) is employed by the governing body of a foundation, voluntary aided or foundation special school maintained by them.

(2) No person who is employed at any school maintained by the authority shall be nominated by the authority under sub-paragraph (1) without the consent of the governing body of the school.

14. - (1) The governing body may advertise the vacancy at any time after they have sent a copy of the specification for the post to the local education authority in accordance with paragraph 12, and shall do so unless they appoint to the post either-

(a) a person nominated by the local education authority under paragraph 13, or

(b) a person who is already employed to work at the school.

(2) Where the governing body advertise the vacancy, they shall do so in a manner likely in their opinion to bring it to the notice of persons (including employees of the authority) who are qualified to fill it.

15. - (1) Where the governing body advertise the vacancy, they shall-

(a) interview such applicants for the post and such of the persons (if any) nominated by the local education authority under paragraph 13 as they think fit, and

(b) where they consider it appropriate to do so, appoint to the post either one of the applicants interviewed by them or a person so nominated by the authority;

and the person so appointed shall be employed by the governing body under a contract of employment.

(2) If the governing body are unable to agree on a person to appoint to the post, they may repeat the steps mentioned in sub-paragraph (1)(a) and (b), with or without first re-advertising the vacancy in accordance with paragraph 14(2).

(3) A person shall not be appointed under this paragraph unless he meets all the staff qualification requirements, which are applicable in relation to his appointment.

16. - (1) The governing body may, in connection with any absence of the person for the time being holding any such post as is mentioned in paragraph 10-

(a) engage, or

(b) make arrangements for the engagement of,

a person to provide his services as a teacher at the school otherwise than under a contract of employment.

(2) No person shall be engaged under sub-paragraph (1) unless he meets all the staff qualification requirements applicable in relation to a teacher in the post in which he would be acting as a temporary teacher.

17. The governing body may, in relation to a particular vacancy or absence or a vacancy or absence of a kind specified by them, delegate any of their functions under paragraphs 11 to 16-

(a) to one or more governors,

(b) to the head teacher, or

(c) to one or more governors and the head teacher acting together.

Advice of chief education officer on appointments of teachers

18. - (1) The chief education officer shall be entitled to attend, for the purpose of giving advice-

(a) all proceedings (including interviews) of the governing body, and of any selection panel appointed under paragraph 7, relating to appointments or engagements to which any of the provisions of paragraphs 4 to 9 or 29 and 30 apply, and

(b) all proceedings (including interviews) of the governing body, and of any persons to whom any functions of the governing body under paragraphs 11

to 16 are delegated, relating to appointments or engagements to which any of the provisions of paragraphs 11 to 16 apply.

(2) The chief education officer shall be entitled to offer such advice as he considers appropriate with respect to-

(a) the appointment of a head teacher or deputy head teacher or the appointment or engagement of an acting head teacher or an acting deputy head teacher, or

(b) any matter arising in connection with any such appointment or engagement.

(3) Any advice given by the chief education officer to-

(a) the governing body,

(b) any selection panel appointed under paragraph 7, or

(c) any persons to whom any functions of the governing body under paragraphs 11 to 16 are delegated,

with respect to any matter, which relates to an appointment or engagement and falls to be determined by them shall be considered by them before determining that matter, whether or not the advice was given at their request.

(4) This paragraph has effect subject to paragraph 2(3) and (4).

Advice of head teacher on appointments etc. of teachers

19. - (1) Except in relation to the appointment of a head teacher-

(a) paragraph 18(1) applies in relation to the head teacher (if not otherwise entitled to be present at the proceedings there mentioned) as it applies in relation to the chief education officer, and

(b) paragraph 18(3) applies in relation to advice given by the head teacher as it applies in relation to advice given by the chief education officer.

(2) Paragraph 18 shall have effect for the purposes of sub-paragraph (1) above as if sub-paragraph (4) of that paragraph were omitted.

Appointment of non-teaching staff

20. - (1) Except in a case where the governing body and the authority agree that the appointment of a person to work in a non-teaching post at the school should be made by the authority-

(a) any such appointment shall be made by the governing body; and

(b) the person appointed shall be employed by the governing body under a contract of employment on such terms as they think fit.

(2) Before making an appointment under this paragraph the governing body shall consult the head teacher (where he would not otherwise be involved in the decision to make the appointment).

(3) No person shall be appointed to work in a non-teaching post at the school,

whether-

- (a) by the governing body, or
 - (b) by the authority,
- unless he meets all the staff qualification requirements which are applicable in relation to his appointment.

Conduct and discipline of staff

21. - (1) The regulation of conduct and discipline in relation to the staff of the school, and any procedures for giving members of the staff opportunities for seeking redress of any grievances relating to their employment, shall be under the control of the governing body.

(2) The governing body shall establish-

- (a) disciplinary rules and procedures (including such rules and procedures for dealing with lack of capability on the part of members of the staff), and
 - (b) procedures such as are mentioned in sub-paragraph (1);
- and shall take such steps as appear to the governing body to be appropriate for making them known to members of the staff.

(3) In determining the capability of members of the staff the governing body shall have regard to any guidance given from time to time by the Secretary of State.

(4) If the Secretary of State determines that any prescribed rules and procedures are to apply to the school or to any class or description of school to which the school belongs-

- (a) the governing body shall act in accordance with those rules and procedures in determining the capability of members of the staff; and
- (b) in the event of any inconsistency, those rules and procedures shall prevail over any rules and procedures established by the governing body under sub-paragraph (2)(a).

LEA report on performance of head teacher

22. - (1) Where the authority have any serious concerns about the performance of the head teacher of the school-

- (a) they shall make a written report of their concerns to the chairman of the governing body at the same time sending a copy to the head teacher; and
 - (b) the chairman of the governing body shall notify the authority in writing of the action that he proposes to take in the light of the report.
- (2) In determining whether to make a report under this paragraph the authority shall have regard to any guidance given from time to time by the Secretary of

State.

Suspension

23. - (1) Both the governing body and the head teacher shall have power to suspend any person employed to work at the school (whether or not he is employed by the governing body) where, in the opinion of the governing body or (as the case may be) the head teacher, his exclusion from the school is required.

(2) The governing body or head teacher shall, when exercising that power, immediately inform the head teacher or (as the case may be) governing body.

(3) A suspension under this paragraph may only be ended by the governing body.

(4) The governing body shall, on ending such a suspension, immediately inform the head teacher.

(5) In this paragraph "suspend" means suspend without loss of emoluments.

Dismissal

24. - (1) Before making a decision that a person employed to work at the school should have his contract of employment with the governing body terminated or should not have that contract renewed, the governing body shall-

(a) make arrangements for giving that person an opportunity of making representations as to the action they propose to take (including, if he so wishes, oral representations to such person or persons as the governing body may appoint for the purpose), and

(b) have regard to any representations made by him.

(2) The governing body shall also make arrangements for giving any person in respect of whom they have made such a decision an opportunity of appealing against the decision before they give effect to it.

(3) Where their decision is that a person should have his contract of employment terminated, then, subject to any such appeal, the governing body shall give effect to their decision by-

(a) giving the person in question such notice terminating his contract of employment as is required under that contract;

(b) terminating that contract without notice if the circumstances are such that they are entitled to do so by reason of his conduct.

(4) Nothing in this paragraph shall be read as referring to a person who-

(a) is due to cease to work at the school by reason of the termination of his contract of employment by effluxion of time; and

(b) has not been continuously employed at the school for a period of two years or more (within the meaning of the Employment Rights Act 1996).

25. - (1) The head teacher (except where he is the person concerned) and the chief education officer of the local education authority shall be entitled to attend, for the purpose of giving advice, all proceedings of the governing body relating to such a decision as is mentioned in paragraph 24(1).

(2) The governing body shall consider any advice given by a person who is entitled to attend such proceedings under this paragraph before making any such decision.

(3) Sub-paragraph (1), so far as relating to the chief education officer, has effect subject to paragraph 2(3) and (4).

26. The governing body are not required to comply with paragraph 24 in relation to the making of such a decision as is mentioned in sub-paragraph (1) of that paragraph in a case where-

(a) the termination or non-renewal of the contract of employment of the person in question is required by virtue of regulations under section 218 of the Education Reform Act 1988 or section 19 of the Teaching and Higher Education Act 1998, or

(b) the person in question is a teacher who is subject to a conditional registration, suspension or prohibition order made under Schedule 2 to the 1998 Act (disciplinary powers of General Teaching Council).

Staff employed by LEA

27. - (1) Nothing in paragraph 24 applies in relation to a person employed by the authority to work at the school.

(2) Paragraphs 25 to 29 of Schedule 16 apply in relation to the dismissal or withdrawal from the school of any member of the staff who is employed by the authority as they apply in relation to the dismissal or withdrawal from a school to which that Schedule applies of a person who is employed to work at the school.

(3) Any regulations in force under paragraph 30 of that Schedule shall apply to any person who is, or is to be, employed by the authority to work at the school solely in connection with the provision of meals as if it were a school to which that Schedule applies.

Advisory rights for appropriate diocesan authorities

28. - (1) This paragraph applies to a voluntary aided or foundation school which is a Church of England, Church in Wales or Roman Catholic Church school.

(2) If the school is a voluntary aided school, the appropriate diocesan officer shall have the same advisory rights in relation to the appointment, engagement

or dismissal of teachers at the school as are for the time being exercisable by the chief education officer in accordance with paragraph 2(3).

(3) If the school is a foundation school, the governing body may agree with the appropriate diocesan authority to accord to the appropriate diocesan officer-

(a) with respect to all teachers at the school, or
(b) with respect to any particular description of such teachers,
the same advisory rights in relation to their appointment, engagement or dismissal as are exercisable by the chief education officer in accordance with paragraph 2(3).

(4) The agreement of the governing body for the purposes of sub-paragraph (3) must be given in writing and may only be withdrawn by notice in writing to the appropriate diocesan authority.

(5) In paragraphs 18 and 25, as they apply to a school within sub-paragraph (2) or (3) above, references to the chief education officer accordingly include the appropriate diocesan officer, so far as necessary for giving effect to any advisory rights exercisable by him under this paragraph.

(6) In this paragraph "the appropriate diocesan officer" means such person as the appropriate diocesan authority may nominate.

Appointment of head teachers for schools of Roman Catholic religious orders

29. - (1) This paragraph applies to a voluntary aided school if the trustees under a trust deed relating to the school are also the trustees of a Roman Catholic religious order.

(2) Subject to sub-paragraph (6), sub-paragraphs (3) to (5) shall have effect in relation to the filling of a vacancy in the post of head teacher of the school, in place of paragraphs 6 to 8.

(3) The governing body shall notify the Major Superior of the vacancy in writing.

(4) The governing body shall-

(a) interview such persons who are members of the order as are proposed as candidates for appointment to the post by the Major Superior; and
(b) appoint to the post one of the persons so interviewed by them unless, by virtue of sub-paragraph (5) or otherwise, they have good reason for not making any such appointment.

(5) No person shall be appointed under sub-paragraph (4)(b) if he does not meet any staff qualification requirements, which are applicable in relation to his appointment.

(6) If no appointment is made by the governing body under sub-paragraph

(4)(b), paragraphs 6 to 8 shall have effect in relation to the filling of the vacancy.

(7) In this paragraph-

"the Major Superior" means the Major Superior of the order;

"the order" means the order mentioned in sub-paragraph (1);

"Roman Catholic religious order" means a Roman Catholic religious institute or society of apostolic life.

Selection procedures involving whole governing body

30. - (1) If the governing body of a voluntary aided school so determine (and paragraph 29 does not apply), sub-paragraphs (2) to (6) below shall apply in relation to the filling of a vacancy in the post of head teacher or deputy head teacher of the school, in place of paragraphs 7 and 8.

(2) No selection panel need be appointed by the governing body under paragraph 7(1), but the following provisions, namely-

(a) paragraph 7(2)(a) and (b),

(b) paragraph 7(3), and

(c) paragraph 7(6),

shall apply to the governing body or (as the case may be) to any decision of that body taken by virtue of this paragraph as it applies to a selection panel or (as the case may be) to any decision of such a panel taken under paragraph 7.

(3) If, within the period of 14 days beginning with the date when they receive a notification under paragraph 7(2)(a) (as it applies in accordance with sub-paragraph (2) above) the local education authority make written representations to the governing body that any of the applicants selected by them is not a suitable person for appointment to the post of head teacher, the governing body shall not appoint that person unless they have-

(a) considered those representations, and

(b) notified the authority of their response to the representations.

(4) The governing body shall not appoint any person if he does not meet any staff qualification requirements, which are applicable in relation to his appointment.

(5) If the governing body do not appoint any person interviewed by them, the governing body-

(a) may, if they think fit, re-advertise the vacancy in the manner required by paragraph 6, and

(b) whether or not they re-advertise the vacancy, may repeat the steps mentioned in paragraph 7(2)(a) and (b) (as they apply in accordance with sub-paragraph (2) above).

(6) Paragraph 7(7) shall apply for the purposes of this paragraph.

Annex 2:

Job Descriptions.

The responsibility for preparing job descriptions rests with the governing body. However, in Catholic schools in the Diocese of Westminster, the Archbishop requires the insertion of the following text in the job description for headteachers and deputy headteachers:

1. RESPONSIBILITY FOR THE CATHOLIC PURPOSE AND IDENTITY OF THE SCHOOL

The headteacher [deputy headteacher] must understand the nature and purpose of Catholic education and know that his or her first responsibility is to establish and sustain the Catholic identity of the school and safeguard the teaching of the Church. He or she must ensure that this Catholic identity is reflected in every aspect of the life of the school. In particular in the curriculum, the day to day organisation of the school, staff development, staff and pupil relationships and the partnership between school, home, parish, local community, other schools, the LEA and other agencies. This duty provides the context for the proper discharge of all other duties and responsibilities.

2. LEADERSHIP IN CATHOLIC EDUCATION

The headteacher [deputy headteacher] is the leader [shares responsibility for the leadership of] a Catholic educating community and the discharge of this vital role requires a significant theological insight and a vision of the development of a Catholic secondary school. Each Catholic headteacher [deputy headteacher] has a responsibility to develop his or her understanding of this leadership role through regular reading and participation in appropriate courses, together with frequent reflection.

Job Descriptions for posts of Responsibility for Religious Education.

The following job descriptions have been developed over many years, in consultation between schools and RE advisers. Variations are permitted to meet particular circumstances only with the agreement of the RE adviser.

HEAD OF RELIGIOUS EDUCATION (Secondary)

JOB DESCRIPTION

Requirements at the personal level

- a Practising Catholic committed to Catholic education
- b Leadership skills, communication skills, relationship skills

Requirements to meet professional responsibilities as Head of Religious Education

Part One: To Ensure the Effective Teaching of the Catholic Faith Throughout the School, the candidate: -

- a is an experienced teacher in Religious Education in a Catholic School.
- b has appropriate background in theology(a theology degree is preferable)
- c is able to motivate and support Religious Education teachers, both specialist and non-specialist.
- d illustrates a commitment to ensuring the partnership of home and school
- e possesses ability to organise a syllabus for Religious Education which ensures sound Catholic teaching at all levels and offers continuity and certain progression throughout the years of secondary schooling.
- f is able to organise and manage the running of the Religious Education Department, including budgeting, compilation and maintenance of resources, drafting the Religious Education Department handbook, and the organisation of examination entry and coursework.
- g has ability to devise and support a substantial programme in Religious Education for the 16-19 age group.
- h is able to promote and sustain an effective system of pupil monitoring and evaluation of the work of the department, prepare for a Section 23 Inspection, and follow up the recommendations effectively.
- i can liaise effectively with other schools, agencies, special advisers and others in the Diocese of Westminster.
- j can liaise with the primary feeder schools to effect the proper continuity in Religious Education of pupils coming into the school.

Part Two To support the Promotion of the Catholic Aims and Purpose of the School

- a has ability to liaise with and assist the headteacher, senior team and the

whole staff in the provision and promotion of the specific aims and Catholic identity of the school.

b possesses the ability and vision to promote the liturgy and prayer life of the school including the organisation of retreats and away days.

c is able to promote and ensure the integration of Religious Education across the curriculum.

d demonstrates willingness to promote regular and sustained liaison with the diocese and with local parishes, with the priests, religious and others who visit the school regularly.

RE Co-ordinator (Primary)

Job Description

This job description is approved by the Westminster Diocese Education Service and should be used in the appointment of a primary RE co-ordinator in all Catholic primary schools in the diocese. Schools should contact their RE Adviser to involve her in the appointment, whether internal or external. There should be a primary RE co-ordinator in every school.

Personal Profile

The Primary RE co-ordinator should:

- ◆ be a practising Roman Catholic committed to Catholic Education
- ◆ have the leadership skills necessary to work with and support their colleagues
- ◆ have the CCRS (previously CTC or CRE) or equivalent theological background (see end of document for acronyms).

Role of the RE Co-ordinator

The post of the RE Co-ordinator is of prime importance in the school. In co-operation with the Head, the co-ordinator ensures that the Catholic life of the school is sustained, that the overall Christian aims of the school are achieved within the whole learning environment, and that all members of the school, staff and children, are supported in their faith journey.

The role of the RE co-ordinator is:-

1. To assist the Headteacher in securing and monitoring the delivery of the RE programme throughout the school.
2. To lead the staff by example through good classroom practice.
3. To encourage co-ordination between the class teachers and ensure continuity of working throughout the primary school.
4. To organise the resources for RE and assist colleagues, as appropriate, in their use, especially those resources related to the RE programme followed in the school.
5. To assist the headteacher in the development of liturgical/prayer life of the school involving pupils, clergy, staff, parents and governors.
6. to liaise with the Diocesan Religious Education Advisers.
7. To promote and co-ordinate in service in religious education; in particular to attend in service courses led by the Diocese and to organise meetings and

workshop sessions from time to time for staff and parents.

8. To encourage and foster links between home, parish and school; in particular to involve parents in the Religious Education of their children and enable them to share in the prayer life of the school.
9. To liaise as appropriate with clergy and others concerned to develop the Catholic life of the school.

*NB To see a more detailed outline of the role of primary RE Co-ordinator, pages 40 and 41 of the teacher's information section in any of the **Here I Am** volumes may be usefully consulted.*

CCRS - Catholic Certificate in Religious Studies

CRE - Certificate in Religious Education

CTC - Catholic Teachers Certificate

RELIGIOUS EDUCATION TEACHER (SECONDARY).

JOB DESCRIPTION

Requirements at the Personal Level

- a Practising Catholic committed to Catholic Education
- b Communication skills, relationship skills, potential leadership skills

Requirements to meet Professional responsibilities as an Religious Education teacher

Part One To contribute to the effective teaching of the Catholic faith throughout the School, the candidate:-

- a is already or is willing to become an experienced teacher in Religious Education in a Catholic School.
- b has appropriate background in theology
- c is able to work with and support fellow Religious Education teachers, both specialist and non-specialist.
- d illustrates a commitment to ensuring the partnership of home and school
- e possesses ability to assist organising a syllabus for Religious Education which ensures sound Catholic teaching at all levels and offers continuity and progression throughout the years of secondary schooling.
- f is willing to contribute to the organisation of the Religious Education Department, including budgeting, compilation and maintenance of resources, drafting the Religious Education Department handbook, and the organisation of examination entry and coursework.
- g has ability to deliver a substantial programme in Religious Education for the 16-19 age group.
- h is able to promote and sustain an effective system of pupil monitoring, prepare for a Section 23 Inspection, and follow up the recommendations effectively.
- i can liaise effectively with other schools, agencies, special advisers and others in the Diocese of Westminster.
- j can liaise with the primary feeder schools to effect the proper continuity in Religious Education of pupils coming into the school.

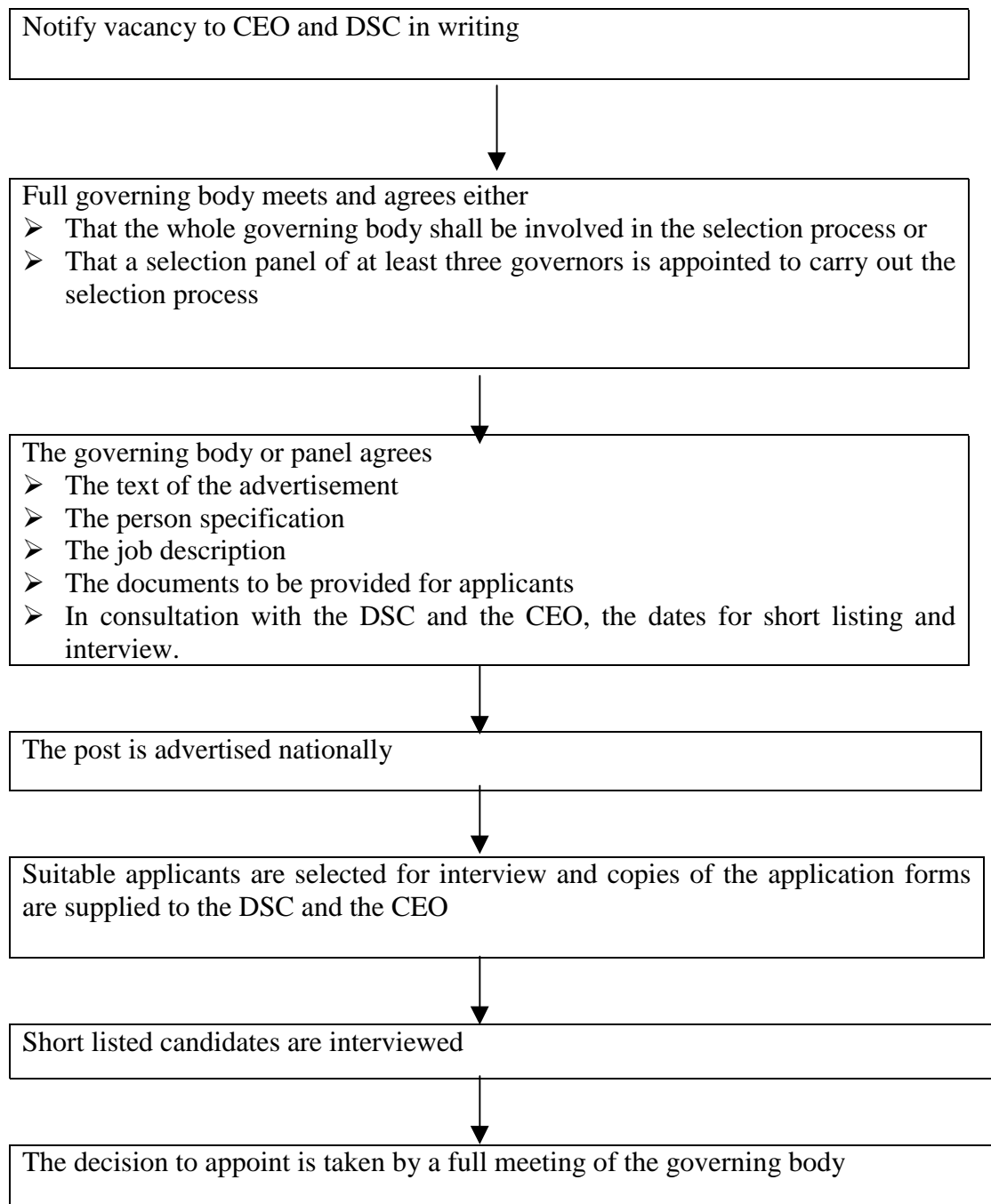
Part Two To support the Promotion of the Catholic Aims and Purpose of the School

- a has ability to liaise with and assist the headteacher, senior team, Head of RE and the whole staff in the provision and promotion of the specific aims and Catholic identity of the school.
- b possesses the ability and vision to contribute to the liturgy and prayer life of the school including the organisation of retreats and away days.
- c is able to promote the integration of Religious Education across the curriculum.

d demonstrates willingness to promote liaison with the diocese and with local parishes, with the priests, religious and others who visit the school regularly.

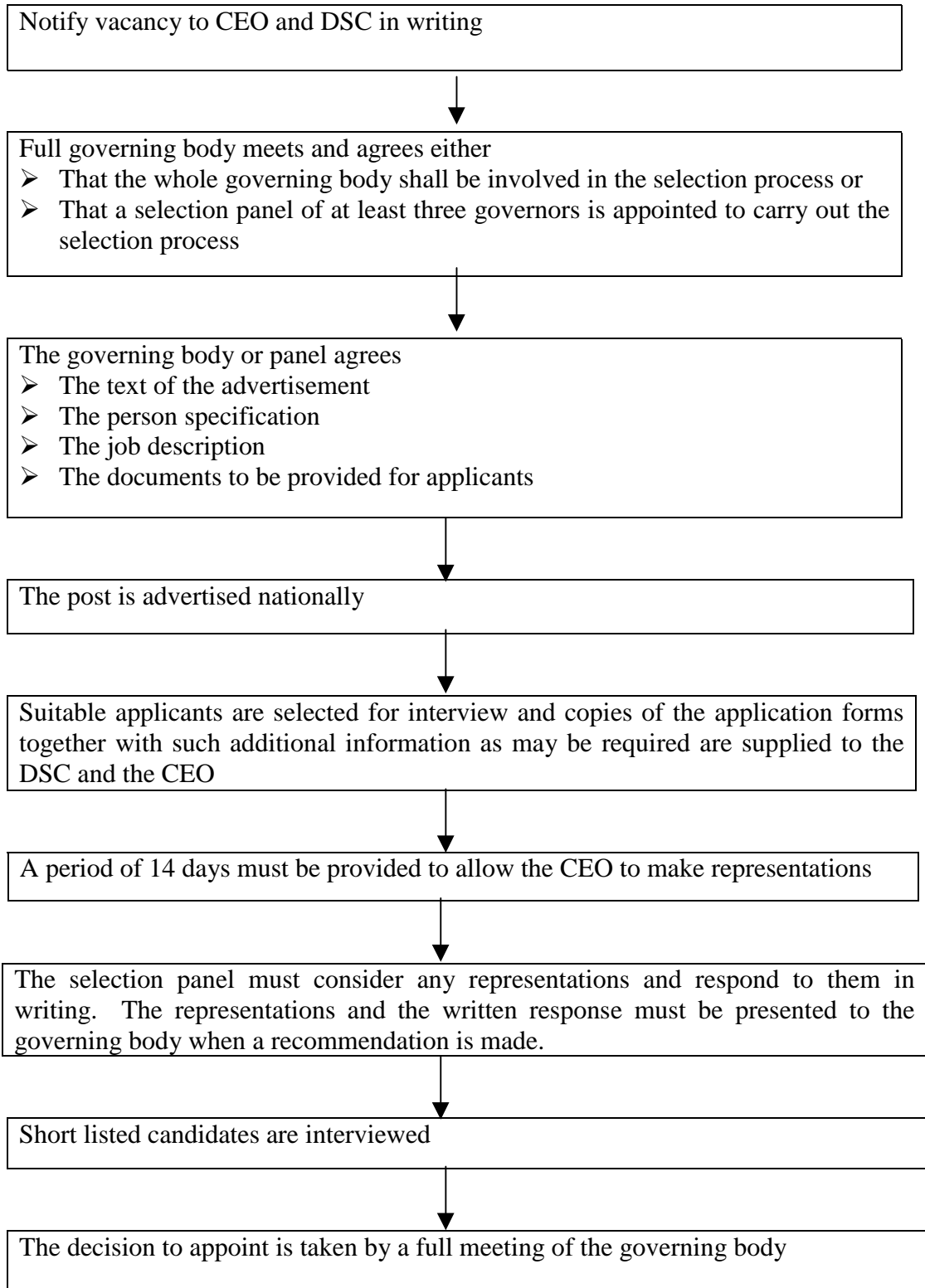
ANNEX 3

Procedure to be followed when a vacancy occurs for head or deputy headteacher and advisory rights have been accorded to the Chief Education Officer.



Procedure to be followed when a vacancy occurs for head or deputy headteacher and advisory rights have NOT been accorded to the Chief Education Officer..

(Please note that it is a requirement of the diocesan bishop that he be represented at all proceedings connected with headteacher and deputy headteacher appointments.)



DIOCESAN GUIDELINES FOR THE APPOINTMENT OF SECONDARY SCHOOL CHAPLAINS

1. NATURE

Chaplaincy needs may be served by a variety of persons. School chaplaincies may mean individual secular or regular priests or collaborative teams consisting of a number of consecrated persons, priests and laity, co-ordinated by individual lay or consecrated persons who may be either male or female. Prior to appointment, schools should draw up a school specific job description that sets out the duties of the post.

2. APPOINTMENT OF CHAPLAINS

Whenever a school has a chaplaincy need, the headteacher is asked initially to contact Mgr. Vladimir Felzmann, the Director of School Chaplains who, in the light of the facts presented to him, will discern and advise how best the school's specific needs can be addressed.

3. THE WORK OF CHAPLAINS

Although each school is unique and the chaplain's/chaplaincy team's strengths will vary, the core role of a chaplain is as follows:

- (a) To support the school in emphasising its spirituality and Catholicity as set out in the school's mission statement.
- (b) To support and encourage the school's pastoral care for the whole school, pupils staff and parents.
- (c) To promote, plan and organise the celebration of liturgies and co-operate with others in developing the school as a Christian community.
- (d) To assist in developing an awareness amongst potential school leavers about the provisions of chaplaincy at institutions of higher and further education.

4. IDENTIFICATION OF CANDIDATES FOR CHAPLAINCY

In the first instance the Director of School Chaplains will encourage a school to identify possible candidates for interview. If this proves difficult the Director and the school are asked to do their best to explore other possibilities to meet the need for chaplaincy.

5. APPOINTMENT OF CHAPLAINS BY SCHOOLS

In order to recognise the responsibilities of the governing body in law the process of appointment shall be:

For all clergy:

There shall be a contract for services in which the chaplain is accountable to the governing body through the headteacher, **although** not as an employee of the governing body. This contract must be agreed by the bishop and should be subject to a probationary year and also the need to meet normal requirements including satisfactory references, medical checks and statutory clearance by the police.

For diocesan clergy:

The appointment is to be made by the diocesan bishop (ordinary), subject to the agreement of the governing body after interview.

Other categories of chaplain are to be appointed by the governing body, but must be approved by the area bishop/episcopal vicar.

The process of selection should involve formal interview under arrangements determined by the governing body. For the purposes of appointment the procedure shall be the same as for those for other senior appointments in Catholic schools, adopted by the governing body.

Chaplains appointed in this category may be appointed as employees of the governing body under a contract of employment. Appointments are made subject to references, police and medical checks.

All newly appointed chaplains should undergo a period of induction conducted by an experienced chaplain or the Diocesan Director of School Chaplains.

For those chaplains not employed by the governing body, governors will need to ensure that appropriate insurance cover is taken out.

6. CONFIDENTIALITY

School chaplains have a unique relationship of trust with pupils and staff. Excluding knowledge received by priests under the seal of confession, the law regarding certain categories of information binds chaplains, in common with all others employed at a school. However, schools will be aware of the professional code of ethics that, in certain circumstances, constrains personnel from medical or social services from divulging to others information gained in the course of discussion with pupils. It is right that similar constraints should also apply to school chaplains.

Some sensitive issues relating to the welfare of pupils will fall within child protection procedures.

The degree of confidentiality in child protection work is governed by the need to protect the pupil. If a pupil confides in a member of staff, including a school chaplain, it is important to explain to the pupil that he/she has a responsibility to refer cases of alleged abuse to the appropriate agencies on a need to know basis.

Pupils may share other sensitive information in confidence with a school chaplain. In these circumstances, it is a matter of judgement for the chaplain as to whether or not it is in the best interests of the pupil to share this information with senior staff of the school or with others. It is therefore very important to advise chaplains not to promise total confidentiality to pupils when potentially sensitive matters are to be discussed. The over-riding principle in all these matters is the duty of care owed to the pupil by the school. The age of the pupil will almost certainly be a factor to be considered when deciding to inform other parties. However, parents and others have subordinate rights to be informed of matters affecting pupils. When faced with such difficulties, a chaplain should have access to advice on how to proceed either from within the school or from the Director of Chaplains.

7. IN SERVICE TRAINING AND SUPPORT

As part of the conditions of appointment a chaplain must agree to undertake to attend a minimum of one course a year as part of his/her in service training.

8. APPRAISAL OF PERFORMANCE

In monitoring the performance of chaplains, the headteacher may call upon the Diocesan Director of School Chaplains to assist in the evaluation of performance and to give further advice on how chaplains can be supported:

9. REMUNERATION

The governing body, in accordance with the terms of the contract, shall determine remuneration. In the case of regular and secular clergy the governing body is advised to contact the diocesan Financial Secretary as there could be income tax implications arising for the priest directly from his employment.

**Monsignor Vladimir Felzmann,
Diocesan Director of School Chaplains,
All Saints Pastoral Centre,
London Colney,
Herts AL1 1AF
tel. 01727 822010**

December, 1999

ANNEX 5

MEMORANDUM ON THE APPOINTMENT OF TEACHERS TO CATHOLIC SCHOOLS

A Guide for Governors

CES, January 2000

1 PURPOSE OF THE MEMORANDUM

This memorandum is addressed on behalf of the Bishops of England and Wales to the Governors of Catholic Schools. Its purpose is to help and guide Governors to fulfil their responsibilities concerning the appointment of teachers.

2 ESSENTIAL QUALITIES OF CATHOLIC TEACHERS

The preservation and development of the quality and distinctive nature of Catholic schools depends essentially on the faith, practice and standards of the teachers in the schools:

"Modern man listens more willingly to witnesses than to teachers and, if he does listen to teachers, it is because they are witnesses". (Pope Paul VI, 1974)

Governors of Roman Catholic Voluntary Aided and Independent Schools are the employers of the teachers, to whom they should give clear guidelines about the Catholic character, education and life of their school.

As the employers of the teachers in the school the Governors should issue the appropriate contract of employment and associated documentation as provided by the Catholic Education Service.

3 THE IDEAL FOR WHICH WE AIM

Everyone should appreciate the need to staff Catholic schools as far as possible with practising and well qualified Catholic teachers.

To find a Catholic teacher who combines personal conviction and practice of the faith with the required professional qualifications and experience, especially in specialised subjects, is therefore the ideal for which we aim.

Nevertheless, we acknowledge with gratitude the devotion and service given by many teachers who are not themselves Catholics in our schools and we recognise our obligations to them.

4 IMPLEMENTING THE IDEAL

Where no acceptable Catholic teacher, such as one who is Catholic only in name, has applied for a vacant post, it is often necessary or appropriate to re-advertise more widely. Only where an appointment cannot be delayed and there is no suitable Catholic applicant will Governors seek to appoint good and qualified teachers of other faiths whose personal and professional standards come nearest to the ideal. Governors should, of course, be careful not to appoint any teacher who is not in sympathy with or who does not respect the aims and objectives of a Catholic school, much less one who is hostile to the Catholic faith.

5 POSTS TO BE HELD ONLY BY CATHOLIC TEACHERS

The post of Head, Deputy Head and Head or Co-ordinator of Religious Education shall be reserved for practising Catholics *. Other senior pastoral posts, e.g. in Secondary Schools, Heads of Upper, Middle or Lower School, Pupil Counsellors and Teacher Mentors and in Primary Schools, Heads of Infant or Junior Departments, Pastoral Counsellors or Co-ordinators and Teachers Mentors, should wherever possible be held by practising Catholics. Advertisements for these posts should make clear from the outset that applications are invited in accordance with these requirements. [In the Westminster Diocese, this is extended to include secondary RE teachers]

6 RELIGIOUS EDUCATION DEPARTMENT

Secondary: The Religious Education Department in our Secondary Schools is of particular importance and should have at least parity of esteem with any other subject department. Governors are urged, in consultation with the Headteacher, to give the highest possible status to the Department and incentive allowance to its Head or Co-ordinator. This will encourage Catholic teachers to specialise in Religious Education and attract the best candidates. It is better to defer an appointment to the Department if, initially, a suitable applicant does not apply.

Primary: While the structures for the provision and organisation of Religious Education in our Primary Schools will be different from those of our Secondary Schools, Governors of Primary Schools must have the same concern for Religious Education, ensuring that it is properly organised, co-ordinated and taught. Its co-ordinator should again therefore have at least parity in status and remuneration with those of other curriculum areas.

7 REPRESENTATION AT SHORT LISTING AND INTERVIEW

At a meeting of the Governors held to consider the short listing or appointment of Headteachers or Heads of RE a representative of the Bishop should always be invited to be present. * A representative may be invited whenever senior posts with pastoral responsibility are being considered. (As is provided for at Schedule 17, Paragraph 28(2) of the

School Standards and Framework Act, 1998, such advisory rights must be granted where the Governing Body has afforded such rights to the Chief Education Officer of the LEA in these or all teaching appointments). *[In the Westminster Diocese, this is extended to include secondary RE teachers]

8 DELEGATION OF POWER OF APPOINTMENT

In the case of Voluntary Aided schools, when Governors delegate to a committee of the Governing Body and/or Headteacher their power and right of appointment of teachers, it is essential that the terms of reference for such delegation and the circumstances in which it may be exercised are made explicit.

Where the power of appointment is delegated to a committee, this should normally have at least three members, of whom two should be Foundation Governors. Appointment to the most senior posts should usually be reserved to the full Governing Body, as is provided for at paragraph 30 of Schedule 17 of the School Standards and Framework Act.

✉ VINCENT NICHOLS

January 2000

Chairman, Department for Catholic Education and Formation

ANNEX 6

STATEMENT FROM THE BISHOPS OF THE DIOCESE OF WESTMINSTER TO ALL GOVERNING BODIES AND TEACHERS IN CATHOLIC SCHOOLS IN THE DIOCESE: -

EQUALITY OF RACE AND OPPORTUNITY IN CATHOLIC SCHOOLS

The Bishops Conference of England and Wales in 1979 observed "**Through a long and constant process Britain has become irreversibly a multi-racial, multi-cultural society.**" In no part of the country is this truer than within our own Diocese of Westminster. From time immemorial groups from all parts of Europe and the nations of the world have come to settle in London, bringing with them all that is most precious, their families, their customs and their way of life. Within the Church this diversity is not a basis for division but the underlying and over-riding principle of our faith in Jesus Christ binds us together in a unifying brotherhood of understanding, love and mutual enrichment.

"You are, all of you, sons of God through faith in Christ Jesus. All baptized in Christ, you have all clothed yourself in Christ, and there are no more distinctions between Jew and Greek, slave and free, male and female, but all of you are one in Christ Jesus." Galatians 3: 26-29.

The Gospel itself leaves us in no doubt, that our belief in its values should place us in the forefront of the movement for racial justice and harmony, not in the rear.

There are many examples of good practice within our schools, which may be held up as examples of Christian inspiration; it is also regrettably true that there are others where a lack of awareness or an inability to address the issues concerned, give the appearance that the Catholic community is indifferent to the needs of the weakest and most vulnerable of their brethren.

Each school needs to take positive steps to examine its practice in this matter. Otherwise, it is all too easy to fall into a type of 'racism by default': the unspoken assumption is made that all pupils in the school share the same background and culture. When this assumption permeates the curriculum and organization of the school, alienation and disaffection readily set in among pupils of minority ethnic groups.

- The Bishops therefore wish to set out the following guiding principles for all the schools of the Diocese, which should be carefully considered by governors, parents and members of the teaching and non-teaching staff.
- All men and women are of equal importance in the sight of God and should be equally accorded the respect and dignity due to the children of God.

- It follows that the diversity resulting from age, gender, racial and social origins, culture and practice should be regarded as enriching the total Catholic community and not creating any order of esteem.
- Consequently all the members of the community, whatever their function, status or ability shall be held in equal esteem.
- No person should be recruited to the service of a Catholic school, unless he or she is fully aware of the aims and objectives of the Church and of the school in seeking to implement them.
- It is appreciated that teachers and other employees who are not members of the Roman Catholic Church give most loyal and valuable service to Catholic schools. Nonetheless in the first instance every effort should be made to recruit committed and practising Catholics, where vacancies exist.
- Age, sex, ethnic origin, disability, married or single status shall not be a consideration in the recruitment of staff, but simply the matter of qualification, experience and suitability to the proper discharge of relevant duties.
- Children who are admitted to the school and their families must be fully aware of the aims and objectives of Church and school and undertake to support them. This requirement must be considered in the light of the prescription of the law and incorporated in the criteria for admissions.
- Every child is to be held in equal esteem as a child of God. Their individual needs are to be carefully assessed and monitored in the light of their abilities, talents, previous and present experience and their full and appropriate entitlement to educational and spiritual provision made available to them.
- The overall structures and policies, as indeed the class and departmental structures and attitudes are to be evaluated and kept under constant review in order to see that no individual adult or child is subject in any way to prejudice or discrimination in terms of their membership of the school community.

The Catholic Church is uniquely placed to promote racial harmony among the people of God, who freely share a common baptism and are nourished by the same Eucharist. Schools should positively reflect this harmony within their communities and promote it by the following means;

- By joining together frequently in the celebration of the Eucharist.
- By preaching the principles of Christ's Gospel and observing them in the conduct of the school.
- By being alert to any incidence of racial prejudice by pupils or others.

- By ensuring that teaching materials do not themselves communicate racial prejudice or attitudes.
- By encouraging a pride in and a sharing of national customs and practice.
- By ensuring the whole curriculum is available to every pupil.
- By using material available from different national origins and histories to ensure an awareness of a whole-world curriculum.
- By encouraging pupils to benefit from the culture and practice of other nations.
- By preparing pupils to take their place in a multi-cultural and multi-racial society.
- By confirming the Christian message of equality of all in the Sight of God and the obligation of support to those of the Community who are weakest and most in need.

The Bishops ask that every school should carefully consider its policies and practice in the light of the above principles and recommend to governing body that they adopt this statement as their Equal Opportunities Policy.

September 1999

Annex 7.

Arrangements for Contacting WDES Officers in the event of a Vacancy.

These arrangements are current in May 2000 but are liable to change. Changes will be notified in the WDES Bulletin.

Post	Contact	Telephone
Secondary head or deputy head teacher	Joan Leith	07944 168004 or jleith@breathemail.net
Secondary head of RE, RE teacher (secondary), primary RE co-ordinator	Your Area RE Adviser	Area Office
Chaplain	Rev V. Felzmann	01727 822010
Primary Headteacher	Joan Leith	07944 168004 or jleith@breathemail.net
Primary Deputy Headteacher in the North and West Pastoral Areas	Joan Leith	07944 168004 or jleith@breathemail.net
Primary Deputy Headteacher in the Hertfordshire Pastoral Areas	Sr. Judith Russi	01727 826014
Primary Deputy Headteacher in the East and Central Pastoral Areas	Sr. Victoria Hummel	020 7426 0488
Primary RE co-ordinator, North Area	Anthony Clark	020 7798 9006