



Equality Challenge Unit

**Equality Bill: Making it work. Policy proposals for specific duties – a consultation**

**Consultation response on behalf of Equality Challenge Unit**

## **About Equality Challenge Unit**

Equality Challenge Unit (ECU) supports the higher education sector to realise the potential of all staff and students, whatever their race, gender, disability, sexual orientation, religion and belief, or age, to the benefit of those individuals, higher education institutions (HEIs) and society.

ECU was established in 2001 to promote equality for staff employed in the higher education sector. Our role was expanded in 2006 to cover equality and diversity issues for all students.

We work in partnership with HEIs and sector organisations, undertaking projects and research and providing practical support and guidance.

## **ECU response**

ECU held two consultation events in London and Leeds, attended by over 125 delegates from higher education institutions, who provided us with their responses to the questions raised. ECU later invited other representatives from the higher education sector to send their responses via email.

The comments submitted to ECU and gathered during the consultation events have informed ECU's submission to the consultation on behalf of the higher education sector.

ECU also held a consultation event in Wales, attended by a number of Welsh higher education institutions. Although the scope of this consultation does not include Wales, ECU would like to acknowledge the input of the Welsh higher education sector into our final submission.

We have limited our response to those questions where there are particular implications for the higher education sector, or where we consider that we have particular relevant experience. We have not therefore addressed those questions that fall outside the scope of our work.

All institutions that were represented at the events or provided individual responses directly to ECU are acknowledged below:

- Anglia Ruskin University
- AP LAW Solicitors
- Association of University Administrators
- Bath Spa
- Birkbeck College
- Bournemouth University
- Brunel University
- Buckinghamshire New University
- Cardiff University
- Catholic Education Service for England and Wales
- Central School of Speech and Drama
- City University
- Conservatoire for Dance and Drama
- Coventry University
- De Montfort University
- Durham University
- Edge Hill University
- Edinburgh Napier University
- Guildhall School of Music and Drama
- Higher Education Funding Council for England
- Imperial College
- Institute of Cancer Research
- Institute of Education, University of London
- King's College London

- Kingston University
- Lancaster University
- Leeds Metropolitan University
- Liverpool John Moores University
- London Business School
- London Metropolitan University
- London School of Hygiene & Tropical Medicine
- London South Bank University
- Loughborough University
- Middlesex University
- National Association of Disability Practitioners
- Newcastle University
- Northumbria University
- National Union of Students
- Open University
- Oxford Brookes University
- Queen Mary, University of London
- Roehampton University
- Rose Buford College
- Royal College of Art
- Royal College of Music
- Royal Northern College of Music
- Royal Veterinary College
- School of Oriental and African Studies
- Sheffield Hallam University
- South West Strategic Health Authority
- Southampton Solent University
- Staffordshire University
- Swansea University
- Thames Valley University
- The Arts University College at Bournemouth
- The Chaplaincy, University of Leeds
- The University of Sheffield
- Trinity University College Carmarthen
- UCAS
- University College London
- University of Birmingham
- University of Bolton
- University of Bolton
- University of Bradford
- University of Brighton
- University of Bristol
- University of Cambridge
- University of Central Lancashire
- University of Chester
- University of East London
- University of Exeter

- University of Hertfordshire
- University of Huddersfield
- University of Hull
- University of Leeds
- University of Lincoln
- University of London
- University of Manchester
- University of Nottingham
- University of Oxford
- University of Plymouth
- University of Reading
- University of Salford
- University of Sheffield
- University of Sunderland
- University of Sussex
- University of the Arts
- University of the West of England
- University of Wales Institute, Cardiff
- University of Wales, Newport
- University of Winchester
- University of Wolverhampton
- University of York
- York College
- York St John University

## **Full response**

### **Coverage**

**Q1: Do you think the criteria set out above are the right ones? Please give your reasons.**

NA

**Q2: Are there any other criteria we should use? If so, what do you suggest?**

NA

## **Enforcement and setting equality objectives**

**Q3: Do you agree that public bodies should have a specific duty to publish equality objectives with reference to the relevant evidence and their wider general Equality Duty obligations?**

Yes, ECU believes that HEIs should publish both SMART (Specific, Measurable, Agreed, Realistic and Time bound) and flexible equality objectives, together with the relevant evidence and detail the ways in which these meet their wider general Equality Duty. These objectives should also form, or feed into, part of an HEI's Key Performance Indicators (KPIs).

Objectives should be drawn from evidence of discrimination and equality of opportunity. These should include reviews of functions (for example Governance and Management and Estates), consultation on the impact assessment of these functions, and sector-wide and external evidence. In this way the process is transparent, evidence based, and not simply based on targets that are easy to measure and achieve.

However, it is important to note that action on equalities should not be limited to fulfilling a number of named objectives; the purpose of the duties is to ensure that equality on named grounds is mainstreamed through all the functions of the HEI.

**Q4: Do you agree that public bodies should set out the steps they intend to take to achieve their equality objectives?**

Yes, this could be achieved through accessible, transparent action plans that are publicly available in alternative formats.

**Q5: Do you agree that public bodies should be required to implement the steps they have set out for themselves within the business cycle period unless it would be unreasonable or impractical to do so?**

Yes, with steps and objectives streamlined into the business/corporate plan. If there are decisions made not to implement any steps these should be made public when the decisions are made. This decision should be arrived at through consultation, and HEIs should clearly set out reasons for not deciding to take a particular step. This is particularly relevant to HEIs as equality proposals often have to go through a series of committees for approval before they can be sent to the governing body.

**Q6: Do you agree that public bodies should be required to review their objectives every three years? If not, what time-period do you suggest instead?**

No, we recommend that priority equality objectives should be revised at least every three years although the objectives should be reviewed every year to

ensure relevance and prevent staleness. The review should assess success in applying the general equality duties, not just the specific duties

**Q7: Do you agree that public bodies should set equality objectives taking into account priority areas set by the relevant Secretary of State?**

In our view it would not be helpful for strategic equality outcomes to be set by Government. We consider that proper mainstreaming can only take place if organisations identify and develop their own outcomes. The higher education sector consists of a hugely diverse group of organisations with different priorities, audiences and functions. It would be very difficult to identify one set of equality outcomes that would be meaningful or relevant to each of those organisations.

If it is intended that the equality outcomes were set by reference to the sector as a whole and not individual institutions, then there would be less of a sense of ownership by institutions. One of the strengths of the equality duties is that they require individual public bodies to think for themselves about equality and identify their own priorities.

If equality priorities are to be evidence-driven, the evidence emerging from the different types of HEIs will vary widely. By way of example, a campus institution located away from a city is likely to find it harder to attract black and minority ethnic (BME) students so that ensuring a balance in the participation of BME staff and students may be much more of a priority than for a metropolitan university where numbers of BME students may already be high. Their priorities are likely to lie elsewhere.

An individual approach would not prevent Government from intervening, or making representations if it considers that not enough is being done in a particular area. For example, the then Department for Education and Skills provided a useful intervention in relation to the impact of gender and race on degree results, where it followed up a report they had commissioned (published in January 2007 entitled Ethnicity and Degree Attainment) by a requirement for action that has now led to an important project being conducted by Equality Challenge Unit and the Higher Education Academy to address this issue.

**Q8: Do you agree that public bodies should not be required to set equality objectives in respect of each protected characteristic?**

All objectives should be set in respect of evidence of most need, however without any specific mechanisms for obtaining an evidence base for all the characteristics (religion and belief and sexual orientation), we believe that objectives in this area will be omitted. It may be beneficial, therefore, for a specific duty to prescribe the development of this evidence base (see question 25).

In the short term, however, HEIs are concerned that the omission of key areas or protected grounds in objective setting would lead to a hierarchy of

equalities and the narrowing focus of work. Therefore, by setting equality objectives as a default measure in relation to each of the protected grounds, or by publicly outlining why a decision that is arrived at through consultation is not set, it is possible to ensure that each ground is adequately considered on a regular basis.

## **Reporting on progress**

**Q9: Do you agree that public bodies should be required to report annually on progress against their equality objectives, but that the means by which they do so should not be prescribed in legislation?**

ECU agrees that reports on progress should be published annually and integrated as part of the institution's corporate strategy plan, although this should not prevent additional reports from being added to reports relating to particular services or functions.

Reporting should be accessible, transparent and available in a number of different formats.

Whether or not legislation prescribes the form of the report, HEIs should be advised on the minimum components of a report to enable it to assess compliance.

## Reporting important equality data

**Q10: Do you agree that public bodies with 150 or more employees should be required to publish their gender pay gap, their ethnic minority employment rate and their disability employment rate? We would welcome views on the benefits of these proposals in encouraging public authorities to be more transparent.**

Yes, but this is a considerable regression on the current specific duties for monitoring and analysis as a way of identifying priorities for action. Of particular concern to the higher education sector is a lack of any specific reporting requirement on students, for example on application, registration, attainment, and withdrawal.

Reporting employment rates and the pay gap only on the characteristics stated, unless justified, may lead to a hierarchy of characteristics, and regress on the current commitments HEIs have developed. Under the Joint Negotiating Committee for Higher Education Staff Agreements, for example, HEIs have committed to taking actions to address the pay gaps that exist as a result of all protected characteristics.

Monitoring is an essential way of securing relevant evidence on which relevant action planning can be based, and the results of initiatives measured. Without monitoring, or with the regressed proposals stated, there is a considerable risk of the extent of disadvantage being concealed.

The higher education sector, perhaps more than other sectors, has taken its legal obligation to monitor seriously. Extensive data is collected which then informs planning and funding. For example, HEFCE allocates disability premium to HEIs to help them fulfil the anticipatory reasonable adjustment duty of the Disability Discrimination Act on the basis of the number of disabled students at an institution who are in receipt of DSA.

Further data reveals marked inequalities: for example only 4.8% of professors and heads of departments are BME, and 17.5% are female (please see the ECU publication [Equality in higher education: statistical report 2008](#)). These stark statistics then inform the development of priorities, and the impact of initiatives can be measured against them.

For example:

- The Arts University College at Bournemouth's monitoring of new enrolments from BME groups was around 10.5% in 2007/08, against 11.6% in 2006/07 (of those with known data). This compares against a total of 7.4% reported in 2006, and 4.6% in 2005, and is now in line with the national BME admissions rate to creative arts and design courses of approximately 11.1%. This improvement has been linked to a number of initiatives employed by the University College such as outreach activities and better representation of BME groups in marketing material. Without the appropriate monitoring procedures and the opportunity to compare the figures against national data, the University College would not have

discovered the lower numbers of BME admissions and would not have been able to act on the discrepancy.

- Buckingham New University's monitoring of students led to the review of mitigating circumstances policy and supported the subsequent impact assessment of the revised policy

Whilst ECU believes that the collection of unnecessary data should be avoided, and there should be no room for data collection for its own sake, a requirement to report on more extensive, relevant, equality data will encourage HEIs to be transparent, and benchmark against each other.

**Q11: Do you agree with the proposal to use the overall median gender pay gap figure? Please give your reasons. If not, what other method would you suggest and why?**

ECU does not support the proposal to use the overall median gender pay gap figure alone. The use of the overall median figure will mask the disparities that exist within and between academic and non academic staff in the higher education sector. For example, 42.3% of academics are female and 57.7% are male but only 17.5% of female academics are a head of department or professor. In relation to professional and support staff, 49.7% of managers are female and 50.3% are male (figures from ECU's report 'Equality in Higher Education: Statistical Report 2008').

ECU recommends that HEIs are required to report on the median pay gap between and within pay bands as well as the overall median pay gap. This will ensure greater transparency and accountability within the sector. In addition, ECU recommends that public sector institutions continue to be encouraged to conduct Equal Pay Reviews in line with the statutory Code of Practice on Equal Pay. This is particularly important for the higher education sector as HEIs committed to introducing a single pay spine for staff working in the sector under the 2001 JNCHES Agreement. Following the introduction of the single pay spine, HEIs have used equal pay reviews to help safeguard against pay discrimination occurring.

**Q12: Do you have any evidence of how much it would cost to produce and publish this information, and of what the benefits of producing and publishing this information might be?**

We have no evidence of the cost of publishing this data, however HEIs collect pay data information as part of an annual monitoring exercise required by the funding body, HEFCE.

The benefits of producing such information would be that the public body can easily and cheaply identify areas where particular minorities are excluded and they can then take remedial action. In relation to gender-related pay differentials the production of this data would enable the public body to identify areas of unequal pay and to correct them before any legal action is taken against them.

**Q13: Do you agree with the proposal not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty? If not, what other data do you think should be reported on?**

No, the proposed reduction in the monitoring requirement will make it even more difficult to demonstrate that evidence has been taken into account. We recognise the difficulty in obtaining hard data in all areas, whilst it may be easy to record information on gender, age and race, it can be difficult in relation for some impairments, for example mental health problems and learning difficulties, for sexual orientation and religion or belief, there may also be issues of privacy or other reluctance and there can be no obligation to disclose. HEIs, and other public bodies, need to create culture in which people feel safe to disclose.

This does not prevent public bodies asking for information in relation to these areas with the clear caveat that this is not a requirement but the information will be used to better target its employment (or other) policies. We would also recommend that use be made of other data, for example, questionnaires, surveys or reports that can be commissioned into particular areas where it is difficult to obtain hard statistics.

As highlighted in questions 10 and 11, ECU believes further reporting on student progression, more detailed pay gap and employment information will be required to give substance to the current proposals.

## **Demonstrating impact**

**Q14: Do you agree with the move away from an emphasis on describing process, to requiring public bodies to demonstrate how they have taken evidence of the impact on equality into account in the design of their key policy and service delivery initiatives and the difference this has made?**

ECU agrees that there should be a greater emphasis placed on the outcomes of considering the impact of policy design on equality. ECU also agrees that institutions should be able to adapt the process of assessing the impact of policies to their own needs. However, ECU recommends that the general duty does contain some underpinning procedural requirements for impact assessment. The lack of any process is likely to result in HEIs being unsure about what is expected of them and whether or not the process that they have in place is compliant with the law. A lack of underpinning procedural requirements could also diminish the perceived importance of impact assessment and in turn the embedding of impact assessment in policy design. Subsequently, it could prove counter productive to remove processes altogether.

## **Involvement and consultation**

**Q15: Do you agree that public bodies should have a specific duty – when setting their equality objectives, deciding on the steps towards their achievement and reviewing their progress in achieving them to take reasonable steps to involve and consult employees, service users and other relevant groups who have an interest in how it carries out its functions – or where appropriate their representatives; and in particular take reasonable steps to consult and involve the protected groups for whom the duty is designed to deliver benefits?**

We consider the current consultation and involvement use of evidence, and transparency elements of the disability equality duty as essential, and that these should be the principles upon which HEIs should undertake their equality work.

In our view, the proposed consultation and involvement principle is a dilution of that contained within the disability equality duty. As noted, the disability equality duty's very strong requirement to involve disabled people in all key decisions has presented a challenge to the higher education sector but is vital in helping to achieve equality.

An exercise carried out by the Disability Rights Commission in monitoring quality Disability Equality Schemes has shown that HEIs will require further support with integrating the involvement principle into the way they operate. It has also served to remind us that the meaningful involvement of disabled people may be a medium- to long-term project for some institutions.

To help HEIs begin this process, ECU has produced guidance for the higher education sector on involving disabled people which can be found at this link: <http://www.ecu.ac.uk/publications/involving-disabled-people>. We feel that the rigorous specific duties contained within the disability equality duty have the potential to be very successful at creating equality for disabled people, and we would like to see other areas 'levelling up' to them.

## Procurement

**Q16: Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?**

Mainstreaming equality through procurement processes is a vital way forward, as it can help promote equality objectives in the private sector. One way this has been taken forward in the sector is through the Proc-HE resource, Equality in Purchasing, which has developed a method by which users of the resource can 'rate' contractors in relation to their adherence to equality principles

The sector would benefit from clear guidance and training to be provided to all functions within HEIs. Different functions will be involved in different procurement practices, for example accommodation, and all staff should be given equality and diversity training.

ECU has developed a practical resource on which to develop management agreements between HEIs and student accommodation providers on equality and diversity issues. This handbook contains a checklist for equality compliance and a reference guide for providers of student accommodation to support the provision of a positive, safe, and welcoming environment for all students. The publication is endorsed and sponsored by the [Association for Student Residential Accommodation \(ASRA\)](#) and the [Association of College & University Business Officers \(CUBO\)](#).

**Q17: Do you agree that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities?**

Yes. As part of current equality duties, public bodies have a duty to ensure that equality factors are considered as part of procurement activities. A service delivery choice should be made that complies most fully with the equality duty requirements. This may mean choosing the option to keep services in house.

**Q18: Do you agree that contracting authorities should be required to consider using equality-related award criteria where they relate to the subject matter of the contract and are proportionate?**

Yes, equality criteria should be included when contract compliance indicators are drafted.

**Q19: Do you agree that contracting authorities should be required to consider incorporating equality-related contract conditions where they relate to the performance of the contract?**

Yes, via the specification and conditions of contract. Contractors should be asked detailed questions about their equality policies and practices, and tangible evidence that they promote equality on their employment practices should be obtained

**Q20: What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?**

ECU believes that procurement contracts should be monitored regularly to ensure they are fulfilling equality duties, and relevant action taken if this is not happening. Equality groups should be involved in the development and monitoring of procurement policies and strategies.

**Q21: Do you support the proposal to establish a national equality standard which could be used in the procurement process? If so, do you believe this is achievable through a specific duty or is this better tackled through a non-legislative approach? Are there any practical issues that would need to be considered?**

In our view a light touch “Equality Standard” for private sector businesses will help them understand what is required of them when contracting services to public bodies. At the moment HEIs face a difficult task when engaging with private sector contractors in relation to equality issues. Compliance with an Equality Standard could then form a requirement for public sector procurement.

## Reporting duty

**Q22: Which of the four models:**

**(1) A requirement for relevant Secretaries of State to report every three years against the national equality priorities that they have set for their policy areas.**

**(2) A requirement for relevant Secretaries of State to include, in the third year of their department's annual reporting cycle, an expanded report covering the policy area for which they have the overview.**

**(3) To rely on reporting procedures attached to the Public Service Agreements covering equality.**

**(4) To require relevant Secretaries of State to report on how equality data is gathered and used across their relevant policy sectors.**

**do you consider achieves the best balance between joined-up working and senior accountability for equality outcomes, while avoiding unnecessary burdens? Please explain why.**

We would welcome the retention of the Secretary of State's reporting duties; however, all of the models proposed would amount to a regression from the current reporting requirements of the existing duties.

We believe that a 'bottom-up' informed approach such as the requirement of the Secretary of State to consult with relevant equality organisations prior to publishing a report every three years that gives an overview of the progress made by public authorities in a policy sector in relation to equality is appropriate here.

**Q23: Do you have any other suggestions how this duty could be remodelled to retain the valuable features of senior accountability and joined-up working, whilst avoiding unnecessary burdens?**

NA

**Q24: Are there any specific requirements, other than those that we have proposed, which you think are essential to ensure that public bodies deliver equality outcomes in an effective and proportionate manner?**

HEIs will need to set up systems for gathering evidence for the sexual orientation and religion and belief strands. With no requirement to set objectives or publish data on these areas it is unlikely that HEIs will go to the time, effort and expense of changing monitoring systems. Without this evidence base, it is hard to see how HEIs will be able to meet their other duties for these areas.

A further general comment; where possible, future language should be kept consistent with current legislation, for example, revise equality schemes/review equality schemes to avoid confusion.

**Q25: What role do you think the guidance from EHRC should play in helping public bodies implement the specific duties in a sensible and proportionate manner? What do you think it would be helpful for such guidance to cover?**

To ensure that momentum within the higher education sector is not lost, guidance needs to be available prior to the Equality Duty coming into force. This guidance should be accessible and practical and should be developed with the involvement of stakeholders who are representative of the higher education sector to ensure that scenarios relevant to higher education are included (for example, managing conflicting requirements of students with different protected characteristics in university halls of residents).

Any guidance produced must address issues faced by people from particular protected characteristics, be clear, accessible and practical. For example, HEIs would benefit from clear criteria on involving and consulting people who have a particular protected characteristic.