

Equality and Diversity: Responsibilities and Challenges

A Short Guide for members of
Governing Bodies of Higher Education
Institutions

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Bodies of Higher Education Institutions

Equality and Diversity in Higher Education



Foreword

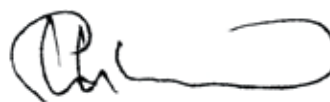
The Higher Education Equal Opportunities Network and the Equality Challenge Unit publish guidance and advice on the full range of equality and diversity topics. The five publications that make up this new series complement existing advice on different aspects of legislation and policy in order to engage all those who work in higher education to think about our responsibilities for building a positive culture of diversity within our institutions. To promote positively equality and diversity and to take steps actively to make sure that discrimination does not occur, are now established requirements of the new legislation that has been put in place since 2000 covering each of the equality and diversity strands. This positive duty is both the most important and one of the most testing obligations the legislation places on public bodies. As they respond to the new legislative environment, higher education institutions are seeking to tackle the root causes of inequalities that affect both staff and students.

In the context of a large body of legislation, this series of publications is timely as issues of equality and diversity move up the higher education agenda. But, it is not only the legislation that is driving this agenda. It is clear from the work done for this project that institutions that have long been aware of the moral case for equality now also recognise that their success depends on building organisational cultures that

value diversity. They see the obvious and tangible benefits in being organisations in which staff and students wish to work and study and in which all are able to achieve to the best of their abilities. A positive diversity dynamic generates the energy on which organisations thrive. Drawing on the resources of a diverse society strengthens performance. Creating a workplace culture based on fair treatment and a positive view of diversity encourages high levels of commitment.

The University of Wolverhampton was pleased to support this joint HEEON and ECU project to produce guidance documents, which is funded by the Higher Education Funding Council for England. The project relied on the full participation and support of all the partners and exemplifies partnership working. The project combined the efforts, skills and contributions of many, has been grounded in real experience and has built a sense of ownership in the sector. The five publications are addressed to all levels of HEIs, including Governors, Members of Council, managers, equality specialists and anyone with an interest in how the sector is developing the equality and diversity agenda.

I hope that you find these documents useful in providing you with practical advice and support.



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Introduction

1. The purpose of this guide is to:
 - i. highlight some of the key challenges presented by equality and diversity in the higher education sector
 - ii. provide members of governing bodies of higher education institutions (HEIs) with a short overview of the legislative framework covering discrimination issues and inform them of their responsibilities
 - iii. outline a set of key questions for members of governing bodies to be used as an aid in fulfilling their legal responsibilities, and
 - iv. provide examples of action that can be taken to support equality processes.
2. The rapid expansion of the higher education sector, changing ethnic profile of the UK population and increase in numbers of international students over the last 30 years have created a diverse student population and HEIs have adjusted to attract and accommodate it. Now, a significant number of students are not school leavers; about 16 per cent are from minority ethnic backgrounds; and women outnumber men.
3. A key challenge for HEIs is to operate equitably and efficiently in a diverse society. From this flows a further challenge, namely how does the institution embed in all its activities, functions and ethos a clear commitment to equality and diversity? Members of governing bodies have a responsibility to ensure legislative compliance, but going beyond minimum compliance can contribute towards the HEI being a destination of choice for both staff and students.
4. There is a strong business case to be made for developing and promoting equality and diversity and the need to attract and retain talented people is one of the most powerful reasons for HEIs to take full account of them. Positive working cultures reduce the risk of complaints to courts or tribunals and the provision of an environment in which students feel welcome and valued will aid retention, develop a good institutional ethos and make them more likely to respond positively to the National Student Survey.



5. As a member of a governing body you should be concerned about equality and diversity because:
 - i. the law places duties on your institution and you have governance responsibilities for its conduct
 - ii. your role in the development of the institution presents an opportunity to discharge your responsibilities in a way that enhances the effectiveness and reputation of the organisation
 - iii. you are in a position to help the institution reach the highest levels of fairness, dignity and respect while recognising the opportunities provided in our diverse society.



Legislative overview and key responsibilities

6. The governing body of an HEI is legally responsible for ensuring that the institution complies with disability, gender, race, age, sexual orientation and religion and belief legislation. This means that neither the institution as a whole nor any individual governor should discriminate and/or disadvantage individuals, communities or groups on these grounds. Table 1 describes how someone can be discriminated against in each of these equality 'strands'.

Table 1: Summary of equality legislation¹

	Direct discrimination	Indirect discrimination (The wording in respect of indirect discrimination is taken directly from the relevant legislation).
Age	A person is treated less favourably than other people on grounds of age or apparent age.	<p>1. A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but:</p> <ul style="list-style-type: none"> (i) which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and (ii) which puts B at that disadvantage and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim. <p>(2) A comparison of B's case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.</p> <p>("Age group" means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages).</p>
Disability	A disabled person is treated less favourably than someone who is not disabled on the grounds of their disability.	<p>1. Less favourable treatment</p> <ul style="list-style-type: none"> (i) where a disabled person is treated less favourably for a reason relating to their disability, and (ii) the treatment cannot be justified. <p>2. The duty to adjust:</p> <p>A person discriminates against a disabled person if he fails to comply with the duty to make reasonable adjustments.</p>

¹ This table is an amended version of the one that appears in RAE 02/2005 *Equality briefing for panel chairs, members and secretaries*



Race*	A person is treated less favourably than other people on racial grounds.	<ol style="list-style-type: none"> 1. A person discriminates against another if he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but: <ol style="list-style-type: none"> (i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it, and (ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied, and (iii) which is to the detriment of that other because he cannot comply with it. 2. A person discriminates against another if he applies a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins to that other person: <ol style="list-style-type: none"> (i) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons, (ii) which puts that other at that disadvantage, and (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.
Religion or belief	A person is treated less favourably than other people on grounds of his or her religion or belief.	<p>A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same religion or belief as B, but:</p> <ol style="list-style-type: none"> (i) which puts or would put persons of the same religion or belief as B at a particular disadvantage when compared with other persons, (ii) which puts B at that disadvantage, and (iii) which A cannot show to be a proportionate means of achieving a legitimate aim.

<p>Sex**</p>	<p>A man or woman is discriminated against when he or she is treated less favourably than a woman or man would be, respectively.</p>	<ol style="list-style-type: none"> 1. A person discriminates against a woman [or a man] if he applies to her [or him] a requirement or condition which he applies or would apply equally to a man [or woman] but: <ol style="list-style-type: none"> (i) which is such that the proportion of women [or men] who can comply with it is considerably smaller than the proportion of men [or women] who can comply with it, and (ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and (iii) which is to her [or his] detriment because she [or he] cannot comply with it. 2. A person discriminates against a woman [or a man] if he applies to her [or him] a provision, criterion or practice which he applies or would apply equally to a man [or a woman], but: <ol style="list-style-type: none"> (i) which is such that it would be to the detriment of a considerably larger proportion of women than of men, [or men than of women], and (ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and (iii) which is to her [or his] detriment.
<p>Sexual orientation</p>	<p>A person is treated less favourably than other people on grounds of his or her, actual or perceived, sexual orientation.</p>	<p>A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same sexual orientation as B, but:</p> <ol style="list-style-type: none"> (i) which puts or would put persons of the same sexual orientation as B at a particular disadvantage when compared with other persons, (ii) which puts B at that disadvantage, and (iii) which A cannot show to be a proportionate means of achieving a legitimate aim.



- * The Race Relations Act 1976 was amended by the EU Race Directive in 2003. This has resulted in an anomaly in that the amendment refers to persons of the same race or ethnic or national origins, while the original Act, which has not been repealed, refers to persons of the same colour or nationality.
- ** Wording has been added, denoted by square brackets, which does not appear in the Act. This is to make explicit the fact that the Act covers men as well as women.
7. In addition to the legislation that prohibits discrimination in the above areas, HEIs are bound by positive duties in respect of race, disability and gender (from April 2007). This requires HEIs *inter alia* to promote equality of opportunity and good relations between people of different racial groups; promote equality of opportunity between disabled people and other people and promote positive attitudes towards disabled people; and promote equality of opportunity between men and women and eliminate unlawful discrimination and harassment, including for transsexual, in higher education.
 8. Each HEI in England should have a Race Equality Policy, a Disability Equality Scheme and a Gender Equality Scheme (by 30 April 2007)². Briefly, a Race Equality Policy should set out relevant functions and policies; arrangements for assessing and consulting on proposed policies, monitoring policies for adverse impact and publishing the results of the assessments. Disability Equality Schemes should say how disabled people have been involved in their development and which methods are being used for assessing the impact of policies on disabled people. They should provide details about the arrangements for gathering information in relation to employment and delivery of education and an action plan should be produced that states how the information will be used. The HEI's Gender Equality Scheme should contain gender equality objectives using information that has been collected on the effect of its policies and practices on male and female employees and students.

² The dates on which Gender Equality Schemes have to be published may be different for Scotland and Wales. Northern Ireland is covered by different legislation

The role of the governing body

9. Governing bodies should be concerned with equality and diversity outcomes and processes. Governors have a key leadership role in ensuring that their institution reaches the highest standards in these areas and their own actions can go some way towards setting the tone for the institution. This section provides questions for members of governing bodies to consider and actions they can take to support equality and diversity.

Outcomes

10. There is no single template for outcomes as HEIs will be at different stages of development and work within different contexts. Institutions that demonstrate their commitment to action on equality and diversity may find that an early outcome is an increase in complaints – this can be a positive sign that people believe that the institution is committed to addressing equality and diversity issues.
11. Some of the indicators may seem difficult to measure as they involve perceptions. In such cases you might find it helpful to ask the question “How would I know that the outcomes have been achieved?”

**Is your HEI able to show that:**

- it has a reputation as a good employer as well as being a comfortable and secure place to learn? (Evidence for this might come from a survey)
- students and staff from diverse backgrounds have successfully applied to the HEI? (Even if an HEI has not previously attracted people from a wide range of backgrounds, it can take steps to encourage non-traditional groups to apply wherever it is situated)
- it has removed discriminatory barriers to entry and progress?
- senior staff and governors are drawn from a wide and diverse pool?
- employee exit rates are similar for all groups?
- there is an understanding of diversity issues among staff?
- grievance and harassment procedures are transparent and well understood?
- complaints are handled effectively?
- procurement practices have led to more opportunities for a diverse supplier base, where appropriate? (This could include a requirement for suppliers to evidence their approach to equality and diversity)
- staff and students are confident about expressing their views and/or concerns relating to equality and diversity?

Process

12. The areas mentioned above should be incorporated in up-to-date policies at your institution and they should lay the groundwork for future developments. Action plans for all current equality/diversity strands should assist the implementation of the policies in those areas.

Has your institution:

- ensured that policies are monitored, evaluated and regularly reviewed, particularly when there is a legislative duty to do so?
- published a Race Equality Policy, Disability Equality Scheme and Gender Equality Scheme, and undertaken impact assessments in those three areas?
- consulted you and given you regular reports (at least annually) on equality and diversity developments, implementation and results?
- assisted the governing body in taking a high profile leadership role for equality and diversity issues?
- provided a sufficient level of resource to ensure the effective implementation of equality programmes?
- established clear accountability for equality policies and schemes and their implementation and that senior managers are committed to their success?
- established appropriate structures to assist in policy development, consultation and implementation?
- identified people responsible for the overall implementation of the equality and diversity strategy?
- ensured that all managers are aware of the contribution that they need to make?
- taken action, including provision of training programmes, to ensure there is increased awareness of equality and diversity issues at all levels of the organisation?
- planned events around diversity issues?



- devised procedures that provide for prompt, sensitive and fair consideration to be given in the event of alleged discrimination, harassment or bullying?
- analysed the range and extent of equalities complaints against it?
- communicated effectively at all levels and considered ways of consulting staff and service users where required on the equality issues that affect them?
- set clear and measurable objectives as part of the equality implementation programme?
- included an equality and diversity module in its induction programme for members of governing bodies?

Actions governors can take to support equality and diversity

- ask for a presentation on future equality developments
- visit the equality and diversity department, or person responsible, for a brief presentation and questions
- interact with equality staff
- attend equality events
- join equality and diversity committees
- advertise vacancies on the governing body in a wide variety of places e.g. on websites of organisations like Disability Now that target under-represented groups
- meet external stakeholders and representatives from the local community
- analyse the processes used to recruit to the governing body
- ensure that equality issues are a regular agenda item at meetings of the governing body
- designate a member of the Governing Body as an 'equalities champion' and make them responsible for liaison with senior management on equality and diversity issues.



Appendix A

Equality strands: current coverage

Employment Equality (Age) Regulations 2006

Legislation outlawing age discrimination came into force in October 2006. Regulations cover employment and vocational training, including recruitment, promotion, perks and pay and termination.

Civil Partnership Act 2004

The legal relationship of civil partnership can be formed by two people of the same sex. It provides same-sex couples with parity of treatment as those of opposite-sex couples who enter into a civil marriage in a wide range of legal contexts.

Disability Discrimination Act 1995/SENDA 2001

Prohibits discrimination against disabled people in the areas of employment, the provision of goods, facilities, services and premises and education; and provides for regulations to improve access to public transport to be made.

Disability Discrimination Act 2005

Makes substantial amendments to the Disability Discrimination Act 1995 (see above). The 2005 Act places a general duty on public authorities, including HEIs, to promote disability equality and to have due regard to eliminate unlawful discrimination. HEIs are also subject to a specific duty under the 2005 Act. The specific duty provides a clear framework for meeting the general duty and includes the requirement to produce a Disability Equality Scheme. The Disability Equality Duty for the Public Sector came into force in December 2006.

Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660)

These regulations outlaw discrimination (direct discrimination, indirect discrimination, harassment and victimisation) in employment and vocational training on the grounds of religion or belief. The regulations apply to discrimination on grounds of religion, religious belief or similar philosophical belief and they implement the religious discrimination aspects of EC Equal Treatment Framework Directive 2000/78/EC.

Employment Equality (Sexual Orientation) Regulations 2003

These regulations outlaw discrimination (direct discrimination, indirect discrimination, harassment and victimisation) in employment and vocational training on the grounds of sexual orientation. The regulations apply to discrimination on grounds of orientation towards persons of the same sex (lesbians and gay men) and the same and opposite sex (bisexuals).

Equal Pay Act (as amended) 1970

This Act gives an individual a right to the same contractual pay and benefits as a person of the opposite sex in the same employment, where the man and the woman are doing like work; or work rated as equivalent under an analytical job evaluation study; or work that is proved to be of equal value.

Equality Act 2006

The Act received Royal Assent in February 2006. Its provisions include:

- the creation of the Commission for Equality and Human Rights (CEHR) which would give individuals suffering from discrimination easier access to support and provide employers and service providers with improved advice and information in a one-stop-shop; the purpose and functions of the CEHR will be defined in the Act;
- enabling legislation to be made to make discrimination unlawful on the grounds of religion and belief and sexual orientation in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions;
- creating a duty on public authorities to promote equality of opportunity between women and men ('the gender duty') and prohibit sex discrimination in the exercise of public functions. This will also include a specific duty on public bodies to produce a Gender Equality Scheme (comes into force in April 2007).

Gender Recognition Act 2004

The purpose of this Act is to provide transsexual people with legal recognition in their acquired gender. Legal recognition will follow from the issue of a full gender recognition certificate by a Gender Recognition Panel. In practical terms, legal recognition will have the effect that, for example, a male-to-female transsexual person will be legally recognized as a woman in English Law.

Human Rights Act 1998

This Act came fully into force on 2 October 2000. It gives further effect in the UK to



rights contained in the European Convention of Human Rights. The legislation made it unlawful for a public authority to breach Convention rights, unless an Act of Parliament meant it could not have acted differently. It also means that cases can be dealt with in a UK court or tribunal.

All UK legislation must be given a meaning that fits with the Convention rights, if that is possible.

Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000)

The Race Relations Act 1976 (RRA) makes it unlawful to treat a person less favourably than another on racial grounds. These cover grounds of race, colour, nationality (including citizenship) and national or ethnic origin.

The Race Relations (Amendment) Act 2000 (RR(A)A) outlawed discrimination (direct and indirect) and victimisation in all public authority functions not previously covered by the RRA, with only limited exceptions. It also placed a general duty on specified public authorities to promote race equality and good race relations. HEIs are subject to specific duties and are required to produce a Race Equality Policy and undertake race equality impact assessments.

Sex Discrimination Act (as amended) 1975

Sex discrimination is prohibited against individuals in the areas of employment, education, in the provision of goods, facilities and services and in the disposal or management of premises. It applies to women and men of any age, including children.

The Act extends to include protection against discrimination on gender reassignment grounds in employment and vocational training.

Sex Discrimination (Gender Reassignment) Regulations 1999

The regulations prevent discrimination against transsexual people on the grounds of sex, in pay and treatment in employment and vocational training.

Appendix B

Sources of information – higher education sector organisations

Association of University Administrators – Equality Advisory Group (AUA)

www.aua.ac.uk

Tel: 0161 275 2063

Equality Challenge Unit (ECU)

www.ecu.ac.uk

Tel: 020 7438 1010

Higher Education Equal Opportunities Network (HEEON)

www.heeon.ac.uk

Tel: 07967 145270

Higher Education Funding Council for England (HEFCE)

www.hefce.ac.uk

Tel: 0117 931 7317

GuildHe

www.guildhe.ac.uk

Tel: 020 7387 7711

Universities UK

www.universitiesuk.ac.uk

Tel: 020 7419 4111

Universities and Colleges Employers Association (UCEA)

www.ucea.ac.uk

Tel: 020 7383 2444



Sources of information – statutory bodies

Disability Rights Commission (DRC)

www.drc-gb.org

08457 622 633

Commission for Racial Equality (CRE)

www.cre.gov.uk

Tel: 020 7939 0000

Equal Opportunities Commission (EOC)

www.eoc.org.uk

Tel: 0845 601 5901

Commission for Equality and Human Rights

www.cehr.org.uk

Sources of information – selected equality and diversity organisations

Advisory Conciliation and Arbitration Service (ACAS)

www.acas.org.uk

Tel: 08457 474747 (advisory service for large employers)

Chartered Institute of Personnel and Development (CIPD)

www.cipd.co.uk

Tel: 020 8612 6201

Employers Forum on Age (EFA)

www.efa.org.uk

Tel: 084 456 2495

Stonewall (Campaigning organisation, sexual orientation)

www.stonewall.org.uk

Tel: 020 7881 9440

Further reading

ACAS

Guidance on religion or belief and the workplace – employees (2005)

Guidance on age and the workforce – a guide for employers (2006)

Guidance on sexual orientation and the workplace (2005)

Advisory booklet – Tackling discrimination and promoting equality – good practice guide for employers (2005/06)

Available to download at www.acas.co.uk

Commission for Racial Equality

The duty to promote race equality: A Guide for Further and Higher Education Institutions (2002)

Race Relations (Statutory) Code of Practice: For the elimination of racial discrimination and the promotion of equality of opportunity in employment (2005)

Available to download at www.cre.gov.uk

Department for Education and Skills

Finding out about people's disabilities: a good practice guide for further and higher education institutions

Available from DfES Publications

Telephone 0845 602 2260

Textphone 0845 605 5560

Email dfes@prolog.uk.com

Disability Rights Commission

Good Practice Guide – a Governors Guide (2003)

Making the duty work: a guide to the Disability Equality Duty for Disabled People and their organisations (2006)

Available to download at www.drc-gb.org

Equal Opportunities Commission

Code of Practice: Gender Equality Duty – Great Britain (2006)

How to improve the gender balance of public bodies (2006)

Available to download at www.eoc.org.uk



Equality Challenge Unit

A – Z Equality & Diversity (AUA/HEEON/ECU) (2005)

Equality is Challenging – a booklet on age discrimination (2006)

Available to download at www.ecu.ac.uk

GuildHE

Getting to Grips with Being a Governor (SCOP) (2006)

Available to download at www.guildhe.ac.uk

The Inter Faith Network for the UK

Building Good Relations with People of Different Faiths and Beliefs

Available to download at www.interfaith.org.uk

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