

# NEW **NATIONAL EQUALITY** **AGREEMENT**

## **Briefing for FE branches in England**

September 2012

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### **ACTION**

**Ask your employer to adopt this new jointly agreed equality agreement**

**Keep your regional office and UCU's national equality team informed of progress. If you want additional help and support when negotiating the policy, contact your regional official or the Equality Unit at**

**[eqadmin@ucu.org.uk](mailto:eqadmin@ucu.org.uk)**

## Equality Briefing

This briefing has been produced to help branches progress equality in the workplace and focuses on the new joint agreement on equality in further education colleges. **The AoC circulated this new Equality Agreement to their members in their Employment Briefing 39/12 on 24 May 2012.**

Branches are urged to :

- raise the new agreement with their employer through their local consultation and negotiating arrangement
- persuade the employer to adopt the model agreement and agree to develop their own equality policies
- agree mechanisms for implementation and review involving the trade unions
- keep your regional office informed so UCU can monitor progress and support branches effectively.
- Check UCU's website for further advice and guidance on progressing equality.

The agreement is available as an appendix to this briefing document.

The local implementation of this agreement is a priority for UCU and help is available for branches who may want support or further advice.

A commentary with additional information about some aspects of the agreement is set out below.

### **New national agreement on equality**

UCU has signed up to a new national joint agreement on guidance for equality. This agreement is for all FE colleges in England and Wales and has been agreed with the Association of Colleges. It replaces the following previous FE agreements:

- Joint agreement on guidance on equality in employment in further education colleges
- Joint agreement on guidance for disability in employment in further education colleges
- Joint agreement on guidance on gender equality in employment in further education colleges
- Joint agreement on guidance on race equality in employment in further education colleges
- Joint agreement on guidance on religion or belief equality in employment in further education colleges
- Joint agreement on guidance on sexual orientation in employment in further education colleges

- Joint agreement on guidance on transgender equality in employment in further education colleges

This joint agreement on guidance should also be cross-referenced against other relevant joint agreements including:

- Adoption Leave
- Compassionate Leave, Time off for Fertility Treatment and Dependants Leave
- Equal Pay
- Harassment and Bullying
- Maternity Leave
- Parental Leave
- Paternity Leave

The driver for this proposal was the Equality Act 2010 which has brought together much of the equality legislation into one Act.

You should also be aware of the range of other legislative provisions that relate to equality in employment, including:

- Section 12 of the Employment Act 1989, which exempts male Sikhs from wearing protective headgear in certain circumstances
- Pensions Act 1995
- Protection from Harassment Act 1997
- Human Rights Act 1998
- Gender Recognition Act 2004
- Civil Partnership Act 2004
- Crime and Security Act 2001, which created an offence of religiously aggravated harassment.

## **Background**

In early 2011 the AOC proposed that the following joint agreements be integrated into one agreement. The trade union side of the AOC equality working group had concerns about this proposal including:

- there was a concern that in translating the existing documents into one, some aspects of each agreement would be lost.
- although there were similarities across the existing documents, there were differences which would not sit easily in one agreement.
- the trade unions main priority was for the existing agreements to be adopted across colleges and for improvements to be made. This exercise would not improve the situation locally.

The trade union side secured the following:

- no aspects of the existing agreements have been lost and any new rights in the Equality Act are included in the new agreement. There are appendices on disability and trans equality.

- that the next step would be to review the new equality agreement and negotiate improvements.
- issues already identified by the trade union side are: impact of the abolition of the Default Retirement Age, colleges undertaking equal pay audits and flexible working for all staff.

## **The agreement**

The agreement reflects difficult negotiations, has changed significantly over the last year and now reflects what the trade union side wanted. The agreement has been carefully analysed by the trade union side to ensure no aspects of previous agreements has been lost. The agreement reflects the best of each of the previous agreements including a strong emphasis on advancing and progressing equality rather than a compliance approach. UCU has been clear all along that our participation in this exercise is to create a new dialogue on equality and for our members the critical issue is that the agreement is adopted by their college.

The next steps for the trade union side of the AOC equality working party is to open discussions on improving the agreement.

## **2. The next section highlights some aspects of the agreement**

### **a. Creating an inclusive environment at work**

An important part of the agreement is the that it clearly acknowledges that discrimination exists and that no one should suffer discrimination at work. Sections 1 – 3 make this commitment clear and 3.3 – 3.6 states:

- ***The College will seek not only to eliminate discrimination, but also to provide a positive working environment free from discrimination, harassment and victimisation, where all employees are treated with respect and dignity.***
- ***The aim is to create a positive and inclusive ethos where issues of discrimination and stereotyping can be discussed openly; with a shared commitment to challenging and preventing discrimination (whether overt or covert), to respecting diversity and difference, and to encourage good relations between different groups.***
- ***Discriminatory behaviour against employees will not be tolerated, whether that behaviour comes from other employees, students or third parties, such as employers, contractors or members of the public.***
- ***In ensuring that the College's commitments are fully effective, and that all employees are committed to them, Colleges should work locally in partnership with recognised trade unions, staff equality groups and with employees, including those who identify with a protected characteristic, in the development and implementation of equality policies and objectives.***

The environment at work is critical in progressing equality for all groups. The Public Sector Equality Duty will support this intention including monitoring and reviewing progress made in advancing equality at work.

## **b. Public Sector Equality Duty (section 4)**

The public sector equality general duty applies to all colleges and universities in England, Scotland and Wales. Scotland and Wales have their own specific duties.

The general duty also applies to contractors who are in the process of 'exercising public functions'. That means private companies, charities, social enterprises and other voluntary organisations delivering public services must give due regard to the general duty.

### **The General Duty**

**The Equality Duty has three main aims. It requires public bodies to have 'due regard' to:**

- **eliminate** unlawful discrimination, harassment, victimization and any other conduct prohibited by the Act.
- **advance** equality of opportunity between people who share a protected characteristic and people who do not share it; and
- **foster** good relations between people who share a protected characteristic and people who do not share it

The third of these three aspects is new and should have important implications in the workplace.

Having **due regard** means consciously thinking about the three aims of the Equality Duty as part of the process of decision making. This means that consideration of equality issues must influence the decisions reached by institutions such as how they act as employers, how they develop, evaluate and review policy or how they design services. Undertaking equality impact assessments is an excellent tool for demonstrating 'due regard'.

**Remember: the general duty is a positive duty and your employer should be moving beyond compliance to actively promoting and using the general duty.**

### **The specific duties**

The specific duties regulations are intended to support institutions to meet the requirements of the public sector equality duty. They are specific actions which public authorities need to do to comply.

Although the Equality Duty is Great Britain-wide, Scotland and Wales are able to set their own specific duties. The specific duties in Wales came in to force on 6 April 2011 and are more detailed retaining many aspects of the previous legislation. Colleges in both England and Wales are required to:

- 1) gather and publish information on staff, students and services
- 2) agree equality objectives
- 3) publish the objectives

**Your employer should have published its objectives and now be in the process of delivering them. UCU has produced a toolkit on the public sector equality duty which is available on the UCU website. There are also model letters which will also help branches in challenging employers who are not complying.**

### **c. The Equality Act 2010**

The Act brings in new language and concepts. The main concepts are:

#### **Protected Characteristics**

The Act identifies 9 protected characteristics

- ▶ age
- ▶ disability
- ▶ gender reassignment
- ▶ marriage and civil partnership
- ▶ pregnancy and maternity
- ▶ race
- ▶ religion and belief
- ▶ sex
- ▶ sexual orientation

#### **Prohibited Conduct which includes**

- direct discrimination
- indirect discrimination
- discrimination arising from disability
- discrimination by association
- discrimination by perception
- harassment
- victimisation
- failure to make reasonable adjustments in order to accommodate a person's disability

**The agreement explains what these mean and provides examples in appendix 3**

**d. Professional development (sections 10 -13)**

These are important sections to raise with your employer and with your members. Eliminating discrimination from recruitment, selection and training and development will move your college towards having a more diverse workforce at all levels and all types of jobs. Often job descriptions and job specifications include criteria and experience which are not actually necessary. Careful consideration of what is needed for a particular post and having transparent procedures for shortlisting and selection will give members confidence in recruitment and promotion situations. Section 13 details how colleges can use positive action to create more representative workforces.

**e. Disability and trans issues (appendices 1 and 2)**

**Appendices 1 and 2 provide more guidance on supporting disabled or trans members at work. Appendix 4 provides information on terms relating to gender identity.**

**Disability – new provisions**

Under the act a person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Under the Act a claimant does not have to show that their impairment affects a particular capacity such as mobility, speech, hearing or eyesight.

• ***Discrimination arising from disability***

It is discrimination to treat a disabled person in a particular way that, because of their disability, amounts to being treated unfavourably when the treatment cannot be shown to be justified. For example, if a disabled person is dismissed after a long period of disability related ill health there may be a claim of discrimination 'arising from disability'. For this to occur the employer must know, or could **reasonably be expected** to know, that the person has a disability.

• ***Reasonable adjustment***

The Act reinforces the duty to provide reasonable adjustments extending physical features of premises to any provision, criterion or practice such as altering the physical environment, working hours or working arrangements.

This is a **positive** duty which means employers are required to take active steps in order to reduce disadvantage. Disability leave is an example of a reasonable adjustment and this is detailed in appendix 1.

- ***Enquiries about disability and health***

The Act brings in new provisions which limit the circumstances when job applicants can be asked about their health prior to the job being offered. The allowed circumstances are, using health questions to

- i. decide whether there is a need to make any reasonable adjustments for the person in the selection process
- ii. decide whether an applicant can carry out a function that is essential to the job
- iii. monitor diversity among people making applications for the jobs
- iv. take positive action to assist disabled people
- v. assure the employer that a candidate has the disability where the job genuinely requires the jobholder to have a disability

## **Trans equality**

There is additional guidance available on UCU's website. The Forum for Sexual Orientation and Gender Identity in Post-School Education has published guidance on trans equality in post-school education (2012).

## **Other information**

Links to UCU advice and guidance

Disability leave briefing

[http://www.ucu.org.uk/media/pdf/m/l/Disability\\_Leave.pdf](http://www.ucu.org.uk/media/pdf/m/l/Disability_Leave.pdf)

Reasonable adjustments briefing

[http://www.ucu.org.uk/media/pdf/2/1/Reasonable\\_Adjustments.pdf](http://www.ucu.org.uk/media/pdf/2/1/Reasonable_Adjustments.pdf)

Trans guidance

[http://www.ucu.org.uk/media/pdf/i/5/forum\\_trans\\_guide\\_20121.pdf](http://www.ucu.org.uk/media/pdf/i/5/forum_trans_guide_20121.pdf)

Public Sector Equality toolkit

[http://www.ucu.org.uk/media/pdf/i/3/UCU\\_Equality\\_duty\\_toolkit.pdf](http://www.ucu.org.uk/media/pdf/i/3/UCU_Equality_duty_toolkit.pdf)

Equality reps toolkit

<http://www.ucu.org.uk/index.cfm?articleid=2131#org>

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