

Equality and Human Rights Commission

Making fair financial decisions

A briefing note for Further and Higher Education Institutions

The recent economic downturn will have a significant impact on all public authorities. Many will be under continued pressure to deliver public services, while reductions are sought in the overall level of public spending.

Since 2009, Further and Higher Education Institutions (FEIs and HEIs) have been subject to significant financial constraints in order to meet the targets set by the government in relation to efficiency savings.

The Equality and Human Rights Commission (the Commission) understands that this has resulted and continues to result in many FEIs and HEIs having to take difficult and often unpopular decisions including budget cuts, reorganisations and relocations, redundancies, and service reductions.

The Commission has received an increasing number of reports in recent months regarding the way these decisions are being taken. From the evidence we have received, we are concerned about the approach that some institutions are taking to make those decisions, and the extent to which institutions are demonstrating that they are complying with their public sector equality duties.¹

We therefore felt that it was appropriate to remind FEIs and HEIs of their duties to eliminate discrimination and harassment and promote race, gender and disability equality in their activities. The equality duties are legal obligations which should remain a priority, even in times of economic difficulties. The duties are also an invaluable tool that can

¹ See <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/what-are-the-public-sector-duties/> for details

aid decision-making and help ensure that decisions do not create or perpetuate inequality.

In the current economic climate, this means FEIs and HEIs need to be particularly vigilant to ensure that the decisions they take to save money minimise unfairness and do not have a disproportionately negative effect on people from different ethnic groups, disabled people, and men or women including trans men and trans women. For example, closing down childcare services is likely to have a disproportionately adverse impact on the number of women able to take on or carry on with their studies; reducing support services to your students may have a disproportionately adverse impact on disabled students; reducing language support for international students might have a disproportionately adverse impact on the number of non-native English speakers a college has.

In order to do this, FEIs and HEIs have to:

- carry out robust equality impact assessments (EIAs), and
- consult and involve relevant stakeholders as part of the decision-making process.

When carrying out an EIA, it is essential to consider the potential inter-relationship of policies and, where this is the case, to bring into the EIA process those responsible for designing/amending those policies as early as possible. The equality duties mean that as an employer and service provider, you have to promote equality between people from different ethnic groups, disabled people, and men and women including trans men and trans women. This requirement is in relation to the whole of your workforce and all your service users.

In this context, it is important when considering the impact of employment practices (and indeed services, policies and so on), that you ensure you are able to consider the potential impact on equality as a

whole, as opposed to simply in relation to one group of people. Unless, you build this type of consideration into your impact assessments in some way you may potentially take action which would widen an existing disparity between different groups based on their gender, race or disability and so not be able to meet the requirements of the public sector equality duties overall.

This is why the Commission would recommend for FEIs and HEIs to always carry out EIA using:

1. A 'whole workforce approach' when making decisions about personnel including for example redundancies or pension schemes.

Example: An authority runs different pension schemes for different categories of staff. If changes to one are being considered, the actual or potential effect of other schemes on equality in the workforce overall (not just those directly affected by the change) will need to be considered to ensure that inequalities between different categories of worker are not perpetuated or made worse.

2. A 'whole services approach' when making decisions about reducing or closing services such as courses or student support services.

Example: A university is considering cutting the number of language and technology courses it provides. The university is aware that language courses are mainly undertaken by women while technology courses are mainly undertaken by men. If changes to one are being considered, the actual and potential effect on equality of both proposals will need to be considered to ensure that inequalities between different equality groups, particularly men and women in this instance, are not perpetuated or made worse.

EIAs should also:

- Consider the impact on existing staff and students as well as potential new ones.
- Be supported by internal equality data as well as local, regional and national research, particularly when internal data is scarce.
- Include a sufficient level of detail on the representations made by those service users and employees likely to be affected by the efficiency-saving options considered.
- Inform the decision-making process – they therefore need to be presented alongside efficiency-saving options to the decision-making bodies of FEIs and HEIs.
- Consider how any adverse impact identified through the EIA process can be mitigated.

The Commission would like to stress that it is essential for the decision-making bodies of FEIs and HEIs to ensure that EIAs are robust and that the negative impact on particular groups identified is considered thoroughly while making decisions affecting its workforce and/or service users.

Failure to carry out robust EIAs is likely to result in FEIs and HEIs taking important decisions without fully assessing the potential negative impact of those decisions with regards to race, disability and gender and without considering all the options open to them and therefore missing potential opportunities to:

- mitigate any negative impact identified
- advance equality and/or human rights, and
- foster good relations.

For example, FEIs and HEIs considering cutting their childcare services should envisage working in partnership with their local authorities² to keep their services open as part of the options they can implement to mitigate any impact they identified regarding their staff and students.

The Commission would like to stress that FEIs and HEIs failing to carry out robust EIAs might also expose themselves to costly and reputation-damaging legal challenges.³

The public sector equality duties do not prevent authorities making these decisions, provided that decisions are taken in accordance with the duties. Should a public authority be unable to avoid any potential negative impact which arises as a result of the decision, this must be explained and be a key consideration of future action, such as considering the effect of the decision when the financial situation has improved.

The Commission has recently published new guidance (available at <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/guidance-and-codes-of-practice/general-guidance>) on how to incorporate equality impact assessment into policy-making and review, and further guidance on the duties and financial decisions. Public authorities should find this guidance relevant to complying with the single equality duty as the forthcoming Equality Bill is likely to still require that public authorities demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives, and how these have led to greater equality.⁴

² Since 1 April 2008, local authorities have a statutory duty under Section 6 of the Childcare Act 2006 to secure sufficient childcare to enable parents to work, or to undertake education and training leading to work.

³ See, for example, the case of Harrow Council in our guidance on 'the public sector duties and financial decisions'.

⁴ With regard to race, gender, gender reassignment, disability, religion and belief, sexual orientation and age.

