

Equality, Diversity and Governance

Updated to include information on the Equality Act 2010

Brief guide for governors and clerks in colleges of further education





Contents

Introduction	3
Vision and values	4
Equality legislation and the equality 'wheel'	5
Monitoring the impact of policy and practice	8
Monitoring progress and performance	8
Workforce recruitment and development	10
Governor recruitment and development	11
Ofsted inspection of equal opportunities	13
Annual progress reporting	13
Looking to the future	14
Conclusions	14

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Introduction

Governors and clerks have a significant role in creating and maintaining an inclusive organisation where all can work, learn and reach their full potential.

This briefing introduces the concepts of equality and diversity (E&D), and explains why these should be central to an organisation's mission, values and culture. It highlights equality policies, schemes and action plans that should be in place, as well as processes for monitoring and improving progress and performance. It provides an overview of the legal duties and the inspection of equal opportunities. It will be of interest to all governors and clerks.

This briefing updates the LSIS Equality, Diversity and Governance briefing published in December 2009 by including an overview of the Equality Act 2010 ('the Act').

Questions are posed throughout this briefing to help governors examine practice in their own organisation

We hope this briefing proves useful in raising awareness and stimulating debate among governors and clerks about their role and responsibility in relation to E&D.



Vision and values

The difference between E&D

Although the two terms are linked, they have a different emphasis.

Equality is about creating a fairer society where everyone can participate and have the opportunity to fulfil their potential – to live as equal citizens in society free from discrimination and harassment.

Diversity is about respecting, valuing and celebrating aspects that make us unique as individuals - recognising that we contribute to society because of these aspects, not in spite of them.

The business case for diversity

All good providers want the very best for their staff, irrespective of background, identity and circumstance. They strive to create a culture and ethos of inclusion and respect. Embedding E&D throughout the organisation will help it to

- **recruit from the widest pool of applicants to attract and retain the most talented staff**
- **create a confident, skilled and highly motivated workforce**
- **achieve high success rates and outcomes from inspection**
- **become the employer and provider of choice in the locality.**

Q Do all governors understand and appreciate the business case for diversity?

Celebrating diversity

Having visible signs that equality and diversity is valued helps raise awareness, foster an inclusive organisational ethos and create a culture of confidence and respect. One organisation, for example, invited a celebrity Paralympic basketball player to launch the organisation's Disability Equality Scheme at an all staff training event. Another celebrates different culture through regular food, dance, art and drama

events. One organisation holds an annual faith day, celebrating different religions.

Q Does your organisation recognise and celebrate events important to people from diverse backgrounds, such as Black History Month, EID, and Holocaust Memorial Day?

Q What other activities such as exhibitions and displays, help celebrate diversity and promote equality?

Mission

Governors play an active role in setting the strategic direction of the organisation, using their powers to reflect and respond to local conditions and government priorities.

Q Is there a clear and shared vision of E&D among governors?

Q Have governors clearly aligned this vision to organisational mission and corporate objectives?

Q Do governors regularly review the strategic purpose and direction in relation to the community the organisation serves?

Q Does the organisation have good external partnership arrangements, for example with churches, mosques, synagogues, temples and disability support groups?

The Equality Act 2010, in force from October 2010, introduces the term 'protected characteristic' to refer to aspects of a person's identity explicitly protected from discrimination. Nine are identified:

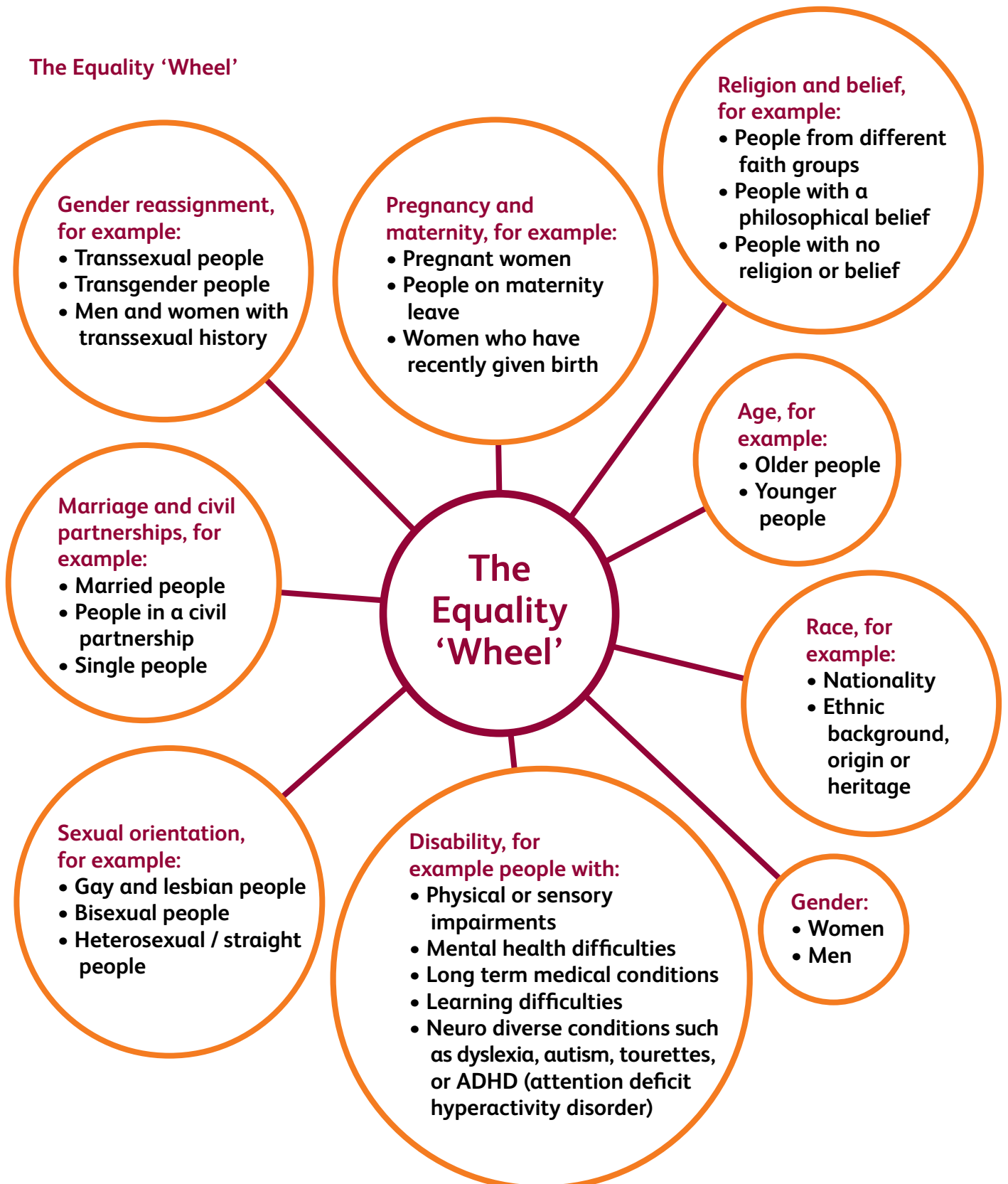
- Race
- Disability
- Gender
- Age
- Sexual orientation
- Religion and belief
- Gender reassignment
- Pregnancy and maternity
- Marriage and civil partnership

Equality legislation and the equality 'wheel'

Governing bodies carry the ultimate responsibility, under the law, for ensuring that their organisation meets the requirements of equality legislation.

All nine protected characteristics are covered in the employment duties of the Act. The protected characteristic of marriage and civil partnerships is not included in the education duties of the Act.

The Equality 'Wheel'



Public sector duties to promote race, disability and gender equality are replaced and extended in the Equality Act 2010 by a new Public Sector Equality Duty.

In force from April 2011, this duty will require organisations to give due regard to:

- **eliminate discrimination, harassment and victimisation**
- **advance equality of opportunity**
- **foster good relations.**

The new duty will cover eight of the nine protected characteristics (only the first 'arm' of the new duty will apply to marriage and civil partnerships).

Equality legislation covers all aspects of policy and practice for actual and potential staff and learners. It also covers people using the services and facilities of the organisation, such as parents, visitors, customers and contractors.

Q Have governors attended training that has made explicit the roles and responsibilities of governors in relation to equality legislation?

Equality policies, schemes and action plans

An effective equality and diversity policy enshrines the right to a work or learning experience that promotes equality and inclusion and is free from discrimination and harassment.

Q Have governors and clerks agreed an up-to-date equality and diversity policy that explicitly considers all 'protected characteristics' of the Equality Act 2010?

Q How have governors satisfied themselves that this policy is effectively implemented?

Q Have governors helped set the vision and values of the organisation in relation to E&D?

Equality schemes and action plans are effective tools to drive forward equality and eliminate discrimination. Under previous equality legislation, colleges should have published a three-year:

- **Race Equality Policy and Action Plan**
- **Disability Equality Scheme and Action Plan**

• **Gender Equality Scheme and Action Plan**

Many colleges chose to incorporate the above into a three-year Single Equality Scheme (SES) and Action Plan,

The Equality Act 2010 removes the legal requirement to have such a scheme in place. However, organisations will now need to develop and publish their equality objectives, alongside evidence of engagement activities. For further information, see the LSIS briefing 'The New Equality Act 2010; what does it mean for the Further education and skills sector?'

Q Have the outcomes of engagement activities and data analysis been made transparent to governors? Is there a clear link between the evidence gathered and the action taken?

Q How have people in the organisation, including under-represented groups such as disabled staff and learners from black and minority ethnic backgrounds, contributed to the selection of equality objectives?

Q Do equality objectives focus on achieving specific tangible improvements in equality?

Q Are equality objectives explicit within, and clearly aligned to organisational strategic priorities, business, development and quality improvement plans?

Discrimination and harassment

Well-known and robust policies and procedures provide an effective mechanism for dealing with, and eliminating discrimination and harassment.

Q Are there well-known and clear procedures for reporting and dealing with incidents of bullying, discrimination and harassment including racism, homophobia, sexism, transphobia, disablism, religious intolerance and ageism?

Research indicates that 48% of gay and lesbian people experience harassment at work. 60% of young people experience homophobic bullying at school, and many contemplate suicide as a result.

(Stonewall, 2007)

Q Are governors confident that these are implemented effectively?

Q Are governors and clerks confident that all learners and staff are protected from bullying, harassment and discrimination, including staff based at sites separate from the main campus, and learners based with employers?

However, to be truly effective, the above policies must be accompanied by an inclusive organisational culture and ethos so that people feel safe to raise a complaint or concern. The Centre for Excellence in Leadership (CEL) report 'Succession planning and race equality 2008' highlights two contrasting experiences at different providers:

'A student called me a 'Paki bitch' in front of the whole class. He was expelled on the spot. That sent an electric message across the whole

college. I have never had any further trouble.'

'I find that I wouldn't dream of complaining about things that I would insist my students complained about...I have not complained about my deputy constantly making jokes about my 'suntan'. I feel stupid even talking about it now, but in fact it really upsets me. He does it to undermine me. I could actually discipline him myself, but I know this would send messages out to the college that I was "difficult" and I want to avoid this ... so I put up with it.'

Q How well are learners prepared for living and working in a diverse multicultural society? For example, do all students have opportunities during tutorial sessions to explore the impact of discrimination and harassment, and their role in preventing this happening? Is E&D explicitly embedded within curriculum planning and teaching and learning for all subject areas?



Monitoring impact of policy and practice

The race, disability and gender promotional duties have required colleges to carry out Equality Impact Assessments (EIAs).

EIAs help ensure that policies, procedures, plans and practices are designed from the start with E&D in mind. Organisations should have made good progress in

- carrying out EIAs on their 'back catalogue' of policies, procedures, plans and practice
- embedding the EIA process in all policy review and decision-making activities.

The Equality Act 2010 has changed the terminology to call this activity 'equality analysis'. The change is to encourage providers to focus more attention on properly analysing the effects of equality and diversity on existing or new policy and practice, and less attention on completing a document, which can be an end in itself.

Although equality analysis is generally operational in nature, governors should satisfy themselves that the process is taking place in a proactive and meaningful manner.

Q Are governors aware of the progress the organisation has made on carrying out equality analysis of their 'back-catalogue' of policy, procedures, plans and practice?

Q What processes do governors have in place to ensure that all new policies, plans, decisions and changes are assessed for impact in relation to E&D? For example, do governors insist on seeing evidence of equality analysis before approving a revised policy or a new plan or strategy?

Monitoring progress and performance

Most colleges routinely gather and use information including information about:

- staff recruitment and career development, such as equality data on applications, job offers, training opportunities, retention rates, promotions, disciplinary and grievance proceedings and redundancies

- Learner recruitment and attainment, such as equality data on attendance figures, retention, success and progression rates, participation rates in trips and enrichment activities, and learner feedback.

Organisations should gather both quantitative and qualitative information from a wide range of sources using a variety of different methods.

Q Do governors receive timely and efficient E&D reports that are sufficiently detailed to provide meaningful information? For example, are reports disaggregated by department or programme area? Do they cover staff and learners? Is qualitative and quantitative information included?

Q Do reports consider multiple discrimination or inequality, for example, monitoring the performance of disabled learners from black and minority ethnic backgrounds, or success rates of white working-class males?

Q Do reports evaluate the impact of additional support, for example for disabled learners and learners where English is not their first language?

Governors should be aware of three key pitfalls when considering equality reports:

- the danger of 'divorcing' equality and diversity information-gathering activities from general organisational self-assessment and quality improvement activities
- unreliable or invalid data. For example, if there are low staff disability disclosure rates, or high levels of ethnicity 'unknowns', then analysis of such data will be flawed
- inadequate action as a result of information gathering activities. Reports should be accompanied by robust plans to address equality gaps and drive forward improvements.



Q Are governors confident that E&D information is:

- **the result of embedding E&D within self-assessment and quality improvement activities**
- **valid and reliable**
- **owned by curriculum, HR and other managers?**

Q Are E&D reports accompanied by SMART action plans, to address issues and achieve real and sustained improvements?

Q Have governors agreed rigorous and challenging equality targets and ensured that these are closely monitored?

The report Equality and sexual orientation: the leadership challenge in FE, 2006 CEL made a strong case for monitoring by sexual orientation. Guidance issued by the Equality and Human Rights Commission has made explicit the expectation that providers will be proactive in either monitoring sexual orientation and religion and belief, or taking steps to engender a culture where people are happy to disclosure information of this nature. (Equality information and the equality duty: a guide for public authorities. Equality and Human Rights Commission Jan 2010).

Q Has the organisation considered monitoring staff and/or learners by sexual orientation and/or religion?

Learner involvement

All colleges should have a learner involvement strategy that empowers learners to have a voice in improving practice. E&D should be effectively embedded within learner voice activities.

For example, colleges will want to ensure that

- **the profile of course and council representatives matches the learner profile of the organisation, and have strategies in place to address any under-representation**
- **they capture the voice of vulnerable or under-represented learners**
- **they train course and council representatives to ensure they obtain feedback from all learners, and not just their 'mates'.**

Q Are governors confident that all learners have a voice, including for example, those of disabled or gay and lesbian learners, women on male-dominated courses and learners from black and minority ethnic backgrounds?

Carrying out equality analysis and gathering and using information to report on and improve practice are not separate activities. They link to ensure that an organisation continuously monitors the impact of its policies and practices to improve provision.

Workforce recruitment and development

Governors should oversee HR practice with individual governors involved in HR committees and boards.

Governors may be asked to sit on grievance and appeals panels.

Q How does the organisation's staff profile match the learner profile in relation to gender, race and disability? Is there any horizontal or vertical segregation?

Q Have governors agreed strategies to address equality imbalance in the workforce? Are these working? Have targets been identified against which progress can be tracked?

Q Has the organisation identified and implemented effective strategies to reduce any gender pay gap?

Governors also play an important role in the appointment of senior post holders. The LSIS report 'Risk and appointments in FE' 2008 contains challenging questions for the governing body that governors may find useful to explore.

Q Have governors explored strategies to ensure the recruitment of senior staff from the widest possible recruitment pool? For example, does the organisation have:

- **positive action strategies**
- **mandatory E&D training for those involved in recruitment and selection**
- **open and transparent decision-making processes?**

Research conducted by LSIS has established that there is considerable confusion and misunderstanding about the purpose of positive action strategies.

Q Are governors clear about the differences between positive action and positive discrimination? (See page 14 to request the governor fact sheet on positive action)

The governing body is legally liable for the actions of:

- **the organisation**
- **individual staff and learners**
- **agents, including contractors and visiting speakers.**

It may be possible to use as a defence that 'all reasonable practicable steps' were taken to prevent discrimination, including for example robust staff training on the legal duties. Training should not just 'raise awareness' of E&D, but also equip staff with the knowledge, skills and confidence to embed E&D in their job role and responsibility.

Q Have governors approved comprehensive staff development plans and resources that explicitly identify the need for regular and mandatory E&D staff training:

- differentiated by job role and responsibility (for example, training for teaching staff aimed at embedding E&D within curriculum planning and teaching delivery)
- incorporating support staff to ensure E&D is central to customer care: and
- including managers to embed E&D within self-assessment and quality improvement activities?

Q Have governors attended staff development events on E&D to obtain first hand experience?

Q Is E&D made explicit within procurement services and external contracts?

Governing bodies are corporate bodies and individual governors are generally protected from personal liability as a result of decisions or action undertaken by the Board.

Governor recruitment and development

A diverse governing body:

- provides a richer perspective, with a breadth of experience, skills and competencies
- enables better decision-making
- ensures an understanding of staff, student and community needs.

It can also bring legitimacy to the Board.

People are often recruited to be governors in FE through personal contact or word of mouth. However, these recruiting methods bring a risk of perpetuating the current equality profile of governors, a particular criticism of the Nolan Committee on Standards in Public Life (1995).

Strategies to increase the diversity of governors include

- open and formalised advertising, stating clearly that applications are particularly welcome from under-represented groups
- exploring creative ways to reach out to local communities and business organisations

Fact Disabled staff and those from black and minority backgrounds are under-represented in the FE workforce, particularly in senior positions.

Fact 20% of people of working age are disabled people. This will include people with physical or sensory impairments, specific learning difficulties such as dyslexia, mental health difficulties and long-term medical conditions such as epilepsy. On average, disabled people make two and a half times as many job applications as non-disabled people, yet are twice as likely to be unemployed.

Fact Unless we step up progress it will take almost 100 years for people from black and minority ethnic backgrounds to get the same job prospects as white people.

- joint campaigns with other local providers
- widely advertised 'taster sessions' to encourage people to complete 'expressions of interest'.

Q Have governors completed a confidential (and perhaps anonymous) survey to determine the profile of the current governing body in relation to gender, age, race, disability, sexual orientation and religion?

Q Does the organisation keep information on a confidential database about the profile of governor applications and expressions of interest and appointment in relation to E&D?

Q Does the governing body reflect a diverse membership that matches the staff and learner profile?

Q What strategies have governors used to improve Board diversity? What further strategies might be considered?

Q Have targets been agreed to address under-representation?



It demonstrates to the people who are governed...that people like them are up there, in charge

Attitudes to diversity among governors in FE colleges. CEL 2006

Organisational culture can be affected by behaviour and attitudes, often in subtle ways. Governors have the opportunity, through their conduct, to contribute to the inclusiveness of an organisation.

Q Do governors keep themselves updated about appropriate terminology to ensure they do not unconsciously offend? (See the governor fact sheet on E&D terminology for further information).

Q Through words and behaviour, do governors aim to provide effective role models to champion E&D within the organisation?

A college held an away day for governors at a conference centre, where they invited an external speaker to explore progress and

practice in E&D, and the role of the governing body in driving forward equality improvements.

Q Have all governors received E&D training? Is this refreshed annually? Do new governors have an induction that includes a module on E&D?

Q Do governors see the development of their knowledge and understanding as a test of their effectiveness?

Q Does the governing body set E&D indicators to help continuously monitor improvement of governors' performance?

Q Is appropriate time given during Board meetings to discuss E&D issues, or is there a risk of neglecting E&D because other matters dominate?



Inspection of equal opportunities

Ofsted will scrutinise equality progress and practice.

The grade for equal opportunities will contribute to, and may limit inspection grades for 'leadership and management', and 'overall effectiveness'. For example, if a judgment of 'inadequate' is made for equal opportunities, then the provider will not get better than 'satisfactory' for 'overall effectiveness', and it is likely that the grade for this will be 'inadequate'. If a college is judged to be 'satisfactory' for equal opportunities, then it is unlikely that 'overall effectiveness' will be better than 'good'.

A key driver for improvement:

'Well-informed governors who challenge managers vigorously on provider performance'.
How colleges improve Ofsted 2008

Q Are governors confident that the grade awarded for equal opportunities in the provider's SAR accurately reflects current strengths and areas for development?

Annual progress reporting¹

The Equality Act 2010 requires colleges to publish, no later than 31st July 2011, and then annually, sufficient information across its functions, to include:

- information on the effect of policies and practices on employees, students and others who share a protected characteristic
- outcomes from equality analysis, including details of information considered when carrying out equality analysis
- details of engagement activities carried out (and from 31st July 2012, progress on achieving equality objectives).

The purpose of this duty is to bring greater transparency on progress in equality and diversity, and the outcomes a provider is working towards, so others can hold the organisation to account.

Q Do governors discuss and agree an annual equality and diversity report?

Q Does this report summarise progress in meeting the requirements of equality legislation, particularly the areas listed above?

Q How is this report linked to the organisation's self-assessment report and Quality Improvement or Development Plan?

Q Is there evidence that equality objectives and targets have been achieved, or at least good progress has been made? Where equality objectives and targets have been achieved, has this led to specific tangible improvements in equality?

Q How has the organisation made progress transparent for key stakeholders? For example, is the annual E&D report clearly signposted and easily available on the organisation's website? Are effective strategies in place to communicate highlights from this report to staff and learners?

¹The government announced on 17 March 2011 that they are reconsidering these original decisions published in January 2011. At the time of writing this briefing (May 2011), there has been no announcement of their final decisions. Readers are advised to consult statutory and non-statutory guidance that will be issued by the Equality and Human Rights Commission in due course (www.EHRC.com).

Looking to the future

In the current economic climate and with limited funding, governors will want to ensure sufficient time and resources are still available to enable the provider to carry out its equality plans.

The Equality and Human Rights Commission is responsible for monitoring compliance and enforcing the law. It emphasised the importance of meeting legal duties in an economic downturn.

‘While acknowledging the difficult economic environment in which public authorities are now operating, the Commission is emphasising the mandatory nature of the equality duties, and the importance of public authorities meeting their duties when making significant decisions...The equality duties are legal

obligations which should remain a priority, even in times of economic difficulty’.

The public sector equality duties and financial decisions. Equality and Human Rights Commission. 2009

Financial constraints may have resulted in governing bodies making strategic decisions, for example about budget cuts, reorganisation and redundancy. Governors will want to carry out robust equality analysis as part of the decision-making process, to ensure that they have complied with the equality duties and any decision does not unfairly discriminate.

Conclusions

Equality, like quality, is not a state that is ‘arrived at’ but a goal to continually strive towards.

By challenging managers vigorously on provider performance, governors can help ensure that equality and diversity is central, fundamental and integral to every aspect of an organisation’s culture, vision and practice.

Factsheets are currently being developed to accompany this briefing. These include

- ‘Positive action’
- ‘Transgender equality’
- ‘Procurement and equalities’.

To receive any of the fact sheets listed, please send an email to equalities@isis.org.uk with your details and the factsheet(s) of interest.

Links

The new Equality Act 2010 - What does it mean for the FE and Skills sector? <http://www.lsis.org.uk/Services/Publications/Pages/EqualityAct2010-briefing.aspx>

Succession planning and race equality 2008 <http://www.excellencegateway.org.uk/media/ED/FERacialEqualityExecSumm.pdf>

Equality and sexual orientation: the leadership challenge in FE, 2006 CEL <http://philbarnett.co.uk/pdf/EqualityandSexualOrientationPUBLISHED.pdf>

Equality information and the equality duty: a guide for public authorities. Equality and Human Rights Commission Jan 2010 http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/information_guidance.pdf

Risk and appointments in FE: An Exploration, CEL 2008 <http://webarchive.nationalarchives.gov.uk/20091115002334/http://www.centreforexcellence.org.uk/UsersDoc/RiskAndAppointmentsFE.pdf>

Nolan Committee on Standards in Public Life 2005 <http://www.archive.official-documents.co.uk/document/cm28/2850/285002.pdf>

Attitudes to diversity among governors in FE Colleges, CEL 2006 <http://webarchive.nationalarchives.gov.uk/20081201175900/http://www.fegovernance.org/diversity.html>

How colleges improve Ofsted 2008 <http://www.ofsted.gov.uk/Ofsted-home/Publications-and-research/Browse-all-by/Documents-by-type/Thematic-reports/How-colleges-improve>

The public sector equality duties and financial decisions. Equality and Human Rights Commission. 2009 http://www.equalityhumanrights.com/uploaded_files/PSD/31_psdandfinancialdecisions.pdf

Disability equality policy

LSIS is committed to promoting equality for disabled people and we strive to ensure that all our communication and learning materials are available in various formats including large font, audio or braille. Please contact us at enquiries@lsis.org.uk or 024 7662 7953 to request an alternative format.

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