Association of Colleges

Review of the Public Sector Equality Duty

A submission from the Association of Colleges
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The Association of Colleges (AoC) exists to represent and promote the interests of Colleges and provide members with professional support services. AoC was established in 1996 by Colleges themselves to provide a voice at national and regional levels for further education and higher education delivered in Colleges. 96% of Colleges are in our membership, including general and tertiary Further Education Colleges, Sixth Form Colleges and specialist Colleges in England, Wales and Northern Ireland. Colleges employ 245,000 people, 128,000 of whom are teachers and lecturers and staff costs (excluding restructuring) total £5 billion, accounting for 65% of total College spending. In some towns in England, Colleges are one of the major local employers after the NHS and/or local authority.

The AoC employment team provides advice, policy guidance and representation to members in areas of employment law, industrial relations and HR practice. The team provide specific guidance and support to Colleges on the Equality Act 2010 and subsequent Specific Duties Regulations.

AoC are responding to this consultation on behalf of AoC members.

General comments

In addition to the consultation response detailed below, the call for evidence indicated that the Chair of the review was interested in seeing documentation relating to the public sector equality duty. In May 2012 AoC, alongside six of the recognised trade unions of the National Joint Committee, published the Joint Agreement on Guidance on Equality in Employment which provides recommendations to Colleges.

The joint agreement on guidance covers equality in employment and is based on the principle that people with protected characteristics should not be discriminated against in employment, when seeking employment, or when engaged in activities related to work. The document has been developed jointly to equip Colleges to meet their obligations under the Equality Act 2010, and other relevant legislation, in relation to employment and to demonstrate their commitment to equality and diversity. The joint agreement on guidance reflects guidance from the Equality and Human Rights Commission (EHRC) on equality in employment and on the public sector equality duty.

The Joint Agreement can be found as an appendix to this consultation.

Consultation response

The response to this consultation has been split into the main themes detailed in the call for evidence.

How well understood is the PSED and guidance

The Further Education sector is familiar with the expectations of the public sector equality duty. The introduction of the PSED, through the Equality Act 2010, was widely welcomed by equality and diversity professionals as it provided a revised focus on equality outcomes rather than processes. The guidance, although remaining lengthy, continues to be a useful tool as a point of reference for the sector. It would be valuable however when reviewing the guidance to base amendments on feedback the EHRC have had on what issues organisations have had when implementing the PSED and specific duties. Good practice on collecting equality data would be particularly valuable.

Costs and benefits of the PSED

Costs of the PSED vary depending on the size and turnover of each College. These costs consist of dedicated resources allocated to advancing equality and diversity in College strategic plans and supporting the training and development of new and existing staff and students.

In addition to the comments aforementioned, Colleges have fedback the following benefits of the PSED:

- The PSED has provided a clearer understanding of what the law is regarding equality.
- The PSED is simpler to understand and has wider scope - one duty covering all protected characteristics as opposed to three separate duties (race, gender and disability) as prior to the Equality Act.
- Staff understand their own rights as employees, and their own responsibilities to their learners. Without the legal duty there would have been much less emphasis on ensuring this, yet it is of huge benefit in ensuring staff are treated fairly and also in protecting staff from litigation by ensuring they know where their responsibilities start and end.
- Increased clarity on what the different protected characteristics are and the importance of recognising them individually.

How are Colleges managing legal risk and ensuring compliance with the PSED?

Colleges manage legal risk and ensure compliance with the PSED on a daily basis through having dedicated resources to support the meeting of objectives. At a more strategic level working towards medium and long term goals Human Resources, SMT and Quality teams are all involved in monitoring progress and compliance either directly or by supporting working groups or equality committees. As equality and diversity is widely embedded in the Colleges' employment and education practices, all staff are aware of their responsibilities under the PSED and work together to demonstrate due regard.

What changes, if any, would ensure better equality outcomes (legislative, administrative and/or enforcement changes, for example)?

The specific duties requirements present an administrative burden for Colleges which is resource intensive and financially costly. The specific duties do not provide specific outcomes for staff and students in relation to equality and diversity but instead present a bureaucratic tick box exercise. It remains a concern that Colleges who do not have changes in their workforce or student demographics are required to publish the same equality data repeatedly.

In line with other legislative changes affecting the sector, Government should move towards encouraging more confidence in the decision making of Colleges. Enhancing and supporting professional judgment rather than a focus on compliance, should be the focus of any changes to this area of legislation.

Colleges also provided the following feedback which was considered valuable to this consultation:

- Standard reporting formats for data from all FE colleges would allow better comparison between Colleges.

- A period of stability would be the most positive change, as staff across the sector understand their responsibilities and are increasingly skilled in carrying these out. More change would just lead to more confusion, and could potentially send a negative message that equality is no longer important.
- Less bureaucratic tick box/analysis approach covering every policy/procedure/ practice moving to a more common sense approach that allows organisations to focus on the key areas of risk/action required. There needs to be an end to the attitude that it is wrong if an impact assessment has missed something and to move towards the view that it is an ongoing process that may be triggered by an event or submission.
- The Government should run specific programmes to improve/develop the merit based chances of recruiting people with particular protected characteristics rather than expecting employers to provide positive action which can cause resentment from other groups. Appointment should be based on individual merit and quality rather than as an act of tokenism.

Joint Agreement on Guidance on Equality in Employment in Further Education Colleges

May 2012

Between

Association of Colleges (AoC)

Association of Managers in Education (AMiE)

Association of Teachers & Lecturers (ATL)

GMB

University and College Union (UCU)

Section 1: Joint Agreement on Guidance for Equality in Employment 8
1. Introduction 8
2. Scope 8
3. Our Commitment 8
4. Public Sector Equality Duty 9
5. Protected characteristics 11
6. Types of discrimination 12
7. Equality Monitoring and Analysis 14
8. Ensuring equality 15
9. Dignity at work 16
10. Recruitment and Selection 17
11. Training and Career Development 18
12. Termination 19
13. Positive Action 20
14. Responsibilities 20
15. Review and Consultation 21
16. Legal duties 22
17. Implementation 23
18. Definition of a joint agreement on guidance 23
Section 2: Appendices 24
Appendix 1: Specific Considerations for Disability Equality in Employment 25
Appendix 2: Specific Considerations for Trans Equality in Employment 28
Appendix 3: Examples of Potential Discrimination 31
Appendix 4 - Glossary of Terms 33

Section 1: Joint Agreement on Guidance for Equality in Employment

1. Introduction

1.1 This joint agreement on guidance covers equality in employment and is based on the principle that people with protected characteristics should not be discriminated against in employment, when seeking employment, or when engaged in activities related to work. This document has been developed jointly to equip Colleges to meet their obligations under the Equality Act 2010, and other relevant legislation, in relation to employment; and to demonstrate their commitment to equality and diversity. The joint agreement on guidance reflects guidance from the Equality and Human Rights Commission (EHRC) on equality in employment and on the public sector equality duty.

1.2 This joint agreement on guidance is based on the knowledge that discrimination exists within today's society and that discrimination prevents people from realising their full potential in the workplace. No one should suffer discrimination at work. This joint agreement aims to progress the equality agenda within Colleges with a view to delivering outstanding services. It is recognised that this requires a proactive approach to mainstream equality into all policies, procedures, decisions and activities.

1.3 This joint agreement on guidance is intended as guidance to Colleges on equality in employment. It is not a model policy. It is intended that the College develop their own equality policies, relevant to their local circumstances, whilst referring to this joint agreement, which aims to support the College in achieving this end.

2. Scope

2.1 This joint agreement on guidance applies in relation to all employees in the College, whether they are employed on full-time or part-time contracts or on a permanent or fixed-term basis. Commitments to equality of opportunity also extend to potential future employees who apply to work in the College.

2.2 Although this guidance refers to employees throughout, the College should be aware of their wider responsibilities to provide a dignified and positive working environment, free from discrimination, for all who work on the College premises and in all activities undertaken in the course of their employment.

2.3 It should be noted that individuals are personally accountable for their behaviour and may be held liable for acts of discrimination. All individuals who work on College premises, including agency, contract workers and volunteers, are therefore expected to support the College's commitment to equality.

2.4 Although this joint agreement applies to staff, students should also be reminded of their responsibilities in relation to equality.

3. Our Commitment

3.1 The College encourages, celebrates and values the diversity of the workforce and is committed to the equality of treatment for all employees. Engaging employees from a variety of backgrounds at all levels of responsibility and across all areas of work will provide positive role models for students and staff who identify with a protected characteristic.

3.2 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.

3.3 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.

3.4 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.

3.5 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.

4. Public Sector Equality Duty

4.1 The Equality Act 2010 introduced a new public sector equality duty ("the duty"), which consists of the general equality duty with its three main aims, and specific duties designed to help Colleges meet the general duty by improving the focus and transparency of their activities.

4.2 The new equality duty at section 149 of the Equality Act replaces the previous duties, which related specifically to race, disability and gender equality. The new equality duty requires all public bodies, including Colleges, to consider all of the protected characteristics in shaping policy, in delivering services and in relation to employment. The original duties were enacted as a response to the Stephen Lawrence Inquiry[1] which concluded that institutional racism affected the Metropolitan Police and their failure to appropriately investigate a racist murder. It is incumbent on every institution to examine their policies and practices to guard against disadvantaging any section of the community and avoiding institutional discrimination.

[1] An inquiry commissioned by the Home Secretary in 1997, to inquire into the matters arising from the murder of Stephen Lawrence which examined the investigation and prosecution of racially motivated crimes. The report, published in February 1999, called for 'radical thinking and sustained action...to tackle racism not just in the Police Services...but in all organisations'.

4.3 Complying with the specific duties is a necessary part of complying with the general equality duty, but it is not sufficient in itself. Complying with the general equality duty requires having due regard to the need to achieve the aims of the duty across all of the College's functions.

The general duty

4.4 In accordance with the general equality duty the College will, in carrying out its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

4.5 Eliminating discrimination and advancing equality of opportunity involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these are different from the needs of other people;
- encouraging people from protected groups to participate in activities where their participation is disproportionately low;
- taking steps to eliminate harassment related to each protected characteristic; and
- promoting positive attitudes towards each protected characteristic, for example attitudes towards women, disabled people, people of certain age groups or religious beliefs, transsexual people, lesbian, gay or bisexual people, or ethnic minority groups.

4.6 'Due regard' involves thinking consciously about how existing and proposed policies and practices impact on equality. This includes how employees are treated, the design and delivery of services and how financial decisions are made.

4.7 Fostering good relations involves tackling prejudice and promoting understanding between people from different groups.

4.8 Complying with the duty may involve treating some people more favourably than others, although it is important to ensure that in doing so there is no breach of the non-discrimination provisions of the act.

The specific duties

4.9 In accordance with the specific equality duties, the College will, in summary, publish equality information and prepare and work towards equality objectives. Full details are explained in Sections 4.10 - 4.12 below.

4.10 The College will publish information to demonstrate how it is meeting the general equality duty. The first publication was required by 31 January 2012, and continues at least annually after that, from the first date of publication.

4.11 The information published will include, in particular, information relating to employees who share a relevant protected characteristic; and will seek to demonstrate the extent to which the College is furthering the aims of the general equality duty for its employees and for others with an interest in the way it performs its functions.

4.12 The College will prepare and publish specific and measurable objectives that it reasonably thinks it should achieve to meet one or more aims of the general equality duty (outlined in Section 4.4 above). These objectives must be published by 6 April 2012 and at least every four years after that, in a manner that is reasonably accessible to the public.

5. Protected characteristics

5.1 This joint agreement on guidance covers all the protected characteristics contained in the Equality Act, namely:

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

Each protected characteristic is defined below.

5.2 **Age**: A reference in the act to a person who has the protected characteristic of age is a reference to a person of a particular age group or a person who shares a particular age group. An 'age group' is a group of persons defined by reference to age, whether to a particular age or a range of ages. The College must not discriminate against any employee because of his/her age or to the age group they belong to.

5.3 **Disability**: A person is defined as disabled under the act if he/she has a physical or mental impairment which has a long-term and substantial adverse effect on his/her ability to carry out normal day-to-day activities. Physical or mental impairment includes sensory impairments. Non-disabled employees who are (wrongly) perceived to be disabled will also be protected from direct disability discrimination and harassment (see Section 6).

5.4 **Gender reassignment**: References to transsexual people under the act covers employees who are proposing to undergo, are undergoing, or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex, i.e. gender reassignment. There is no requirement that the process of gender reassignment includes medical supervision. It is recognised that there may be differences between physical sex and gender identity. This joint agreement on

guidance relates not only to the protected characteristic of gender reassignment, but also to the wider trans community, which includes people who identify with any of the identities described in the Glossary of Terms at Appendix 4. Refer to Appendix 2 for specific considerations for trans equality in employment.

5.5 **Marriage and civil partnership**: The College must not discriminate against any employees because they are married or are in a civil partnership. Marriage will cover any formal union of a man and woman which is legally recognised in the UK as a marriage. A civil partnership refers to a registered civil partnership of a same sex couple under the Civil Partnership Act 2004, including those registered outside the UK. Only people who are married or in a civil partnership are protected against discrimination on this ground.

5.6 **Pregnancy and maternity**: The College must not treat a woman unfavourably because of her pregnancy or related illness, or because she is on maternity leave or seeking to take maternity leave. The College must also not discriminate against an employee because of his/her association with a woman who is pregnant or who has recently given birth (see Section 6).

5.7 **Race**: The College must not discriminate against any employee because of his/her colour, nationality or ethnic or national origins.

5.8 **Religion or belief**: The College must not discriminate against any employee because of his/her religion or philosophical belief, or because of his/her lack of religion or belief. Ultimately it will be up to the Courts and Tribunals to decide which beliefs are covered by the legislation; however, the EHRC provides guidance on the definition of a "philosophical belief" as being:

- genuinely held;
- a belief and not an opinion or viewpoint based on the present state of information available;
- it must be a belief as to a weighty and substantial aspect of human life and behaviour;
- it must attain a certain level of cogency, seriousness, cohesion and importance;
- it must be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others.

Throughout this guidance, references to religion or belief or lack of a religion or belief will be covered by the term "belief systems".

5.9 **Sex**: The College must not discriminate against any employee because of his/her sex.

5.10 **Sexual orientation**: Employees must not be discriminated against because of their sexual orientation, whether that be towards:

- people of the same sex (i.e. the employee is a gay man or a lesbian);
- people of the opposite sex (i.e. the employee is heterosexual);
- people of both sexes (i.e. the employee is bisexual).

6. Types of discrimination

6.1 Discrimination occurs when a person (or group) is treated less favourably than others. It can take different forms and this section describes the different types of discrimination, or 'prohibited conduct', under the act.

6.2 **Direct discrimination**: is less favourable treatment because of a protected characteristic. Direct discrimination occurs if a person has the characteristic, is perceived to have the characteristic (see 6.6) or because they associate with someone who has a protected characteristic (see 6.5). Direct discrimination in relation to age can be objectively justified.

6.3 **Indirect discrimination**: may occur when an apparently neutral provision, criterion or practice is applied to everyone, but which puts employees who share a protected characteristic at a particular disadvantage; and this cannot be justified as a proportionate means of achieving a legitimate aim.

6.4 **Discrimination arising from disability**: is where a disabled employee is treated unfavourably not because of his/her disability itself but because of something arising from, or in consequence of it, and that treatment cannot be justified as a proportionate means of achieving a legitimate aim.

6.5 **Discrimination by association**: is direct discrimination because of an employee's association with a person who has a protected characteristic (not including marital or civil partnership status[2]). This applies regardless of whether the employee has the protected characteristic personally.

6.6 **Discrimination by perception**: is direct discrimination against an employee because he/she is mistakenly believed to have a protected characteristic (not including marital or civil partnership status.

6.7 **Harassment**: is unwanted conduct relating to a protected characteristic, which has the effect of violating an employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that employee.

6.8 **Victimisation**: occurs when an employee is treated less favourably because he/she has, in good faith, done a protected act (e.g. made or supported a complaint, or raised a grievance) regarding a protected characteristic.

6.9 **Reasonable adjustments**: are those adjustments made to remove barriers preventing people from integrating into the workplace. The duty to provide reasonable adjustments is a positive duty to remove any barriers or provide extra support to disabled employees in the workplace and for applicants during the recruitment process. Failure to make that adjustment may amount to discrimination. (See Appendix 1 for further guidance).

6.10 **Objective Justification**: is the process by which an employer may be able to objectively justify discrimination as being a proportionate means of achieving a legitimate aim. If challenged it is for the employer to justify the provision, criterion

[2] Discrimination by association for pregnancy and maternity is not included specifically in the Act. However an employee could complain of sex discrimination by association if treated less favourably because their partner is pregnant or on maternity leave.

or practice so evidence should be produced to support any assertion that the discrimination is justified[3]. Considerations should be made for justification on the merits of each individual case.

The question of whether the provision, criterion or practice is a proportionate means of achieving a legitimate aim should be approached in two stages:

- Is the aim of the provision, criterion or practice legal and non-discriminatory, and one that represents a real, objective consideration?
- If the aim is legitimate, is the means of achieving it proportionate – that is appropriate and necessary in all circumstances?

7. Equality Monitoring and Analysis

7.1 In accordance with the equality duty 'specific duties 'the College will gather, analyse and publish information on an annual basis about how its policies, procedures and practices are affecting employees with different protected characteristics.

7.2 This process is used to inform the setting of objectives for the equality duty (as described in Section 4) and the measurement of progress towards achieving the duty. Analysing the impact of the College's policies and practices, and the extent to which they promote equality of opportunity between employees with different protected characteristics, will help identify the key equality considerations and priorities for the College. To this end, the College will gather and analyse appropriate information and use it to assess the impact of relevant College activities on employees who share different protected characteristics. The purpose of this assessment is both to ensure that no employee is disadvantaged because of a protected characteristic, and to identify where equality of opportunity can be promoted actively. The process will also help identify any risk of discrimination occurring in the exercise of the College's functions, and enable steps to be taken to remedy this.

7.3 The College should develop an equality profile of their employees at different grades/levels throughout the organisation, to aid understanding of the workforce and the key equality issues. The College should also consider what additional information would be helpful to meet the duty, such as:

- Job application and selection success rates by protected characteristic
- Type of contract (permanent, fixed-term, part-time)
- Training and development
- Promotion
- Pay levels and any equal pay audits
- Grievances, including complaints of harassment or discrimination
- Disciplinary and capability proceedings
- Leavers and redundancies
- Information from exit interviews
- Results of employee satisfaction surveys
- Rates of return from maternity leave
- Rates of requests for flexible working

3 It should be noted that this is a new higher threshold test. The Equality and Human Rights Commission provide further information on 'legitimate' and 'proportionate' in the Employment Statutory Code of Practice.

- Language and images used in internal and external communications
- Data on adjustment solutions, such as for a disability

7.4 If staff monitoring shows that there is an under-representation of employees with a protected characteristic at any level within the College, they should take action by reviewing their recruitment, promotion and training practices to ensure they are free of bias and contain no barriers.

7.5 The College must engage with people considered to have an interest in furthering the aims of the equality duty when undertaking this analysis. This should include engagement with employees with different protected characteristics, recognised trade union representatives and relevant stakeholders (for example College staff groups such as a gender equality steering group, LGB or LGB&T group or inter-faith Chaplaincy).

7.6 Equality information collated about employees will be anonymised and treated in confidence. However, the College recognises that some employees who share a relevant protected characteristic may still be unwilling to identify themselves as such, due to concerns of privacy. For some protected groups, equality monitoring is not common place, or it raises particular issues that need to be considered. The College should consider carefully the information they intend to monitor, taking into account the guidance provided by the EHRC and other relevant organisations.

7.7 The College will not place any obligation on employees to answer monitoring questions; however, employees will be informed about the reasons for gathering the information, the importance of it for the purposes of tackling discrimination and promoting equality of opportunity, and how the results will be used and who will see it. No information will be published that will enable an individual employee to be identified.

8. Ensuring equality

8.1 A whole-College approach is required to promote equality of opportunity. Where a service or function is contracted out to a third party, the College retains responsibility for meeting the public sector equality duty in relation to that service or function. The College should therefore ensure that adherence to the ethos of this joint agreement on guidance features as part of the procurement process in order that contractors comply with standards for the College as prescribed in this document. Further guidance on procurement and the public sector equality duty is available from the EHRC.

8.2 The College environment, in terms of its pictures, images, publicity materials, literature, use of language etc., should aim to present images that promote diversity, including positive images of people with protected characteristics.

8.3 Promoting equality of opportunity may create tensions between people who identify with different protected characteristics, for example tensions between religious belief and sexual orientation. However, the holding of certain beliefs, such as religious beliefs which regard homosexuality as a sin, will not be a justification for non-observance of Colleges' equality duties.

8.4 Whilst the College must respect the rights of individuals to hold belief systems, the right does not extend to enforcing their beliefs on others.

8.5 The College should not make assumptions about employees or their personal lives, for example assumptions should not be made that partners of employees will be of the opposite sex; or that female employees of childbearing age will not be suitable for promotion opportunities.

8.6 The College should welcome and facilitate staff equality groups.

8.7 Requests for specific needs relating to a protected characteristic should be considered carefully. Examples may include requests for disability leave or time off to participate in religious observance.

9. Dignity at work

9.1 The College endeavours to create a work environment in which everyone is treated with dignity and respect, where all employees, whatever their protected characteristic, feel valued and welcomed, and where discriminatory behaviour is not tolerated. The aim is to work towards eliminating prejudice and discrimination and encourage change in individual behaviour to foster good relations between all.

9.2 Abuse, harassment or bullying (e.g. name-calling, derogatory jokes, unacceptable or unwanted behaviour and intrusive questions) because of someone's protected characteristic are unacceptable. Harassment is viewed as a serious disciplinary offence, that will result in disciplinary action, which may lead to dismissal; or in the event an employee is harassed by a student, the expulsion of that student.

9.3 Propaganda or derogatory messages against any of the protected characteristics, in the forms of written materials, graffiti, music, emails, text messages, social networking websites or speeches, must not be tolerated. The College undertakes to immediately remove any such propaganda whenever it appears on the premises and disciplinary action may be taken against the perpetrators.

9.4 It is important to recognise that a protected characteristic may not be obvious or visible and as such assumptions should not be made about individuals. The College should provide a supportive environment for employees who wish it to be known that they identify with a protected characteristic. However, it is the right of the individuals to choose whether they wish to be open about this in College. For example, to 'out' someone in relation to a protected characteristic (e.g. telling others that someone is lesbian, gay or bisexual, or that someone has a mental illness) whether staff or student, without their permission is a form of harassment, and should be treated as such.

9.5 The College should also refer to the joint agreement on guidance on harassment and bullying, which provides good practice guidance on handling employees' complaints of harassment.

9.6 If an employee reports an allegation of harassment by a third party, the College must investigate the allegation and take action where the allegation is upheld.

9.7 The College should make third parties aware that they will not tolerate harassment of their staff. This includes acts of harassment by contractors, visitors, students and employers.

9.8 The College should accept that there may be conflicts that may need to be managed between people with different protected characteristics (e.g. sexual orientation and religion) and should take steps to foster good relations between people who share different protected characteristics and people who do not share them, to enable employees to work in a neutral and safe environment. Establishing employee's responsibilities and expected behaviours with regards to equality and dignity at work from an early stage can support a healthier working relationship.

10. Recruitment and Selection

10.1 The College undertakes to ensure that there is no discrimination because of a protected characteristic in the way it recruits and selects staff. These principles apply to promotion as well as initial appointments.

10.2 In order to encourage a diverse range of candidates to seek information about vacancies, all recruitment and publicity materials should present jobs without bias towards particular groups (such as people of a particular gender or age range). Careful consideration should therefore be given to appropriate use of language to avoid deterring applicants because of a protected characteristic.

10.3 Job descriptions and person specifications should be drafted to ensure they accurately describe the job and do not exclude people because of a protected characteristic. Job titles will be unbiased towards protected characteristics. All selection criteria should be relevant, job-related and not unnecessarily prescriptive about essential requirements.

10.4 Advertisements and recruitment materials (such as applications forms, information packs etc) should state explicitly the College's commitment to equality. Materials must be provided in accessible formats to meet the needs of any disabled applicants. Employees who are absent from work (such as employees on maternity leave) should be informed of vacancies.

10.5 All members of short-listing and interview panels, and all those involved in other selection processes, should be trained in equality principles.

10.6 Interviews need to be fully inclusive and reasonable adjustments must be made to allow disabled candidates to attend and participate in the interview without being placed at a disadvantage.

10.7 Job applicants must not be asked any questions about their health or disability at any stage prior to any job offer being made, except in the following specific circumstances:

- for the purposes of making reasonable adjustments to recruitment arrangements;
- for the purposes of monitoring the diversity of applicants;
- in order to implement positive action measures (see Section 13);
- to demonstrate an occupational requirement where having an impairment is a genuine occupational requirement for the job; or
- where such questions are otherwise permitted by a relevant exception in the Equality Act 2010.

If a disabled candidate is considered suitable for appointment the College must make reasonable adjustments to allow that candidate to do their job. (Refer to Appendix 1 for further information on the duty to make reasonable adjustments).

10.8 As part of its commitment to the equality duty the College will take steps to minimise disadvantage, meet specific needs and encourage people who share a relevant protected characteristic to participate in the recruitment process. For example the College should ensure that:

- Certain personal information (such as date of birth, gender, ethnic origin, disability etc) is only to be used for monitoring purposes and not on the main application form.

- All applicants for a vacant post who indicate on a separate form with the application form that they are disabled, and who meet the essential criteria in the person specification, are guaranteed an interview. This commitment should be stated in the advertisement.

- Every effort is made to redress any under-representation of persons who share a relevant protected characteristic by positive action. For example, if people who share a relevant protected characteristic are significantly under-represented in the College, consideration is given to placing recruitment advertisements in appropriate publications.

- They analyse the effect its recruitment policies and practices have, or could have, on people who share a relevant protected characteristic.

11. Training and Career Development

11.1 All employees must be afforded equal access to training, promotion and other aspects of career development. Training and promotion opportunities should not be denied on the basis of a protected characteristic; and assumptions should not be made on the basis of an employee's protected characteristic about their ability or willingness to participate in training or be considered for promotion.

11.2 To ensure that training and development opportunities are accessible to all, consideration should be given to how training may be offered flexibly by making

reasonable adjustments to training arrangements, including venues, training materials or providing additional equipment.

11.3 A barrier to promoting equality and fostering good relations may be a lack of understanding among employees about the barriers and needs of those with protected characteristics. The College should therefore provide equality training to all staff, which includes examination of appropriate use of language. Such training should also have due regard to the need to prevent harassment and bullying and break down stereotypes associated with protected characteristics.

11.4 As part of its commitment to the equality duty, the College will take steps to minimise disadvantage, meet specific needs and encourage people who share a relevant protected characteristic to participate in training and career development opportunities. For example the College should:

- Monitor and analyse the effect that training and career development policies, practices and activities have, or could have on people who share a relevant protected characteristic.

- Analyse information to assess whether there may be any discrimination or adverse impact on people who share a relevant protected characteristic in terms of recruitment into senior positions and in promotion opportunities.

- Recognise that stereotypes can be harmful to employees who may feel constrained to behave in ways, and work in areas traditionally considered appropriate for their particular gender, age or racial group, for example. These constraints can lead to occupational segregation between roles, which limit career development opportunities being available to all. Encouragement and support should be given to employees who try to step outside the constraints of stereotypes in any area of the College's work.

- Consider how positive action can be taken to promote equality of opportunity, remove the constraints of stereotypes, and address any under-representation of persons who share a relevant protected characteristic in the College's training and development activities and in the organisation structure. For example, if people of ethnic minority are significantly under-represented in management posts, this may be addressed through coaching and mentoring initiatives.

12. Termination

12.1 The College undertakes to ensure that there is no discrimination because of a protected characteristic in relation to the dismissal of staff.

12.2 In particular, should a redundancy situation occur, protected characteristics must not be a factor in the selection of those to be made redundant. For example, absence for a reason related to a protected characteristic, such as pregnancy-related sickness absence or disability-related sickness absence must not be used as selection criteria for redundancy.

12.3 References provided to employees who are leaving, or who have left, should not be influenced in any way by a protected characteristic that the departing employee may have.

12.4 As part of its commitment to the equality duty, the College must analyse the effect, or potential effect, of any business plan or proposal that may result in dismissal (such as redundancies) on equality and diversity. This will include consideration of how the proposal has or could have an effect on people who share a relevant protected characteristic, including employees, students and service users.

13. Positive Action

13.1 Positive action aims to enable existing or potential new employees to overcome or minimise disadvantages arising from a protected characteristic, reduce their under-representation in the workforce, and meet their particular needs.

13.2 Positive action measures are permitted where there is evidence of disadvantage, different needs or disproportionately low participation in relation to a protected characteristic, such as may be reported as a result of the equality analysis described in Section 7 above.

13.3 Positive action, allows the College to:

- target training at particular groups that are under-represented in a particular area of work;
- encourage applications from groups that are under-represented through targeted advertising; or
- provide support and mentoring to meet particular needs, such as to support an employee who has undergone gender reassignment.

13.4 Positive action strategies are intended to be temporary measures only. They must be kept under regular review, and they cannot be used once the disadvantage is removed, the particular needs have been met, or if underrepresentation no longer exists.

14. Responsibilities

14.1 Corporation Members

Corporations should aim to ensure that they have a balanced membership that represents the different protected characteristics. Members of the Corporation are responsible for ensuring that:

- They are aware of the College's statutory responsibilities in relation to equality, both as an employer and as a provider of education and services.
- The College is meeting the public sector equality duty.
- The College's strategic plan includes a commitment to equality.
- Equality training features as part of the College's strategic plan.
- They receive and respond to equality monitoring information.
- The College is meeting its objectives in relation to equality.

14.2 Management

The Principal/Chief Executive, Senior Management Team and all managers are responsible for ensuring that:

- They take the lead in creating and positive, inclusive ethos that challenges discriminatory behaviour in all forms on the part of managers, staff or learners.
- The College is meeting its statutory duties in relation to equality, including the public sector equality duty.
- Consideration of equality and good relations is integrated into all aspects of College policy and activity.
- Equality information is collected and analysed.
- Targets are set, based upon the analysis of equality information, and actions are taken towards those targets.
- The College's publicity materials present appropriate positive and non-stereotypical messages about people who share a protected characteristic
- The staff induction programme reflects the College's commitment to promote equality of opportunity.
- Appropriate training and development is provided to all staff to support the appreciation and understanding of diversity.
- Appropriate policies and procedures are in place to deal with complaints of alleged discrimination, harassment or victimisation; and that such complaints are taken seriously and investigated promptly and sensitively in accordance with those procedures.

14.3 Staff

All staff are responsible for ensuring that:

- They are aware of the College's policies and procedures for equality and participate in related training activities.
- Their schemes of work, lesson content and teaching resources demonstrate awareness of issues of diversity.
- They challenge (or where appropriate should report) prejudice and discriminatory behaviour, whether intentional or unintentional, by students, work placement providers, contractors or other members of staff.
- They respond positively to the particular needs of individuals with a protected characteristic who they come in contact with during the course of their work.

15. Review and Consultation

15.1 This joint agreement on guidance will be subject to regular monitoring and review and any amendment will be by agreement within the national joint negotiating forum (NJF).

15.2 The College should review their equality policies on a regular basis in accordance with legislative developments and the need for good practice, by utilising College equality forums, staff equality networks or appropriate equivalent body.

15.3 As part of a review, the College should seek to engage with stakeholders, including recognised trade unions and appropriate equality bodies.

15.4 The College must publish annually sufficient information to demonstrate their compliance with the general equality duty across its functions. In relation to employment, this information must include information on the effect that College policies and practices have had on people who share a relevant protected characteristic, to demonstrate the extent to which the College has furthered the aims of the general equality duty for its employees.

15.5 The College must review progress against their chosen equality objectives, as required by the Specific Duties. The College must publish information on equality objectives at least every four years.

16. Legal duties

16.1 The College undertakes to fulfill the legal duties placed upon it by the Equality Act 2010 ("the Act") and the Employment Statutory Code of Practice in connection with the act.

16.2 In relation to the public sector equality duty, the general duty is contained within Part 11, Chapter 1 of the Equality Act 2010, and the specific duties are outlined in the Equality Act 2010 (Statutory Duties) Regulations 2011. The College should also take account of the Code of Practice on the Public Sector Equality Duty from the Equality and Human Rights Commission (EHRC), as well as specific guidance from the EHRC on the various aspects of the duty.

16.3 The College should 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.

16.4 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

17. Implementation

17.1 The College, working in partnership with recognised trade unions and employee representatives, will seek to ensure that all employment policies and procedures (e.g. Recruitment and Selection Procedure) are non-discriminatory and that monitoring and positive action processes are reviewed regularly and monitored.

18. Definition of a joint agreement on guidance

18.1 This joint agreement on guidance is a recommendation to Colleges relating to equality in employment issues.

Section 2: Appendices

Appendix 1: Specific Considerations for Disability Equality in Employment 25
Appendix 2: Specific Considerations for Trans Equality in Employment 28
Appendix 3: Examples of Potential Discrimination 31
Appendix 4 - Glossary of Terms 33

Appendix 1: Specific Considerations for Disability Equality in Employment

Summary

This guidance should be read in conjunction with Section 1: Joint Agreement on Guidance for Equality in Employment, which applies to all of the protected characteristics including disability. The following additional information relates specifically to disability in the workplace and recognises that the Equality Duty requires a proactive approach to mainstreaming disability equality into all College activities. This joint guidance aims to support Colleges and trade union representatives on managing issues that relate specifically to disability equality in employment.

Reasonable Adjustments

Colleges may need to make reasonable adjustments for employees (or job applicants) to enable them to do their job. This may require:

- Changing the way things are done (such as changing a practice);
- Making changes to the work environment (such as providing access to a building); or
- Providing auxiliary aids and services (such as computer software).

The College must pay due regard to the need to make reasonable adjustments by considering, for example:

- Adjusting the premises
- Allocating some of the job duties to another person
- Altering working hours
- Allowing time off for treatment, rehabilitation or therapy
- Making College materials available in the preferred format
- Acquiring or modifying equipment
- Providing additional training (such as training in the use of particular equipment unique to the disabled person and ensuring this training is held at accessible venues)
- Altering communication in the workplace (providing a sign language interpreter, reading to a visually impaired person at particular times during the day, working with the previous postholder for a transitional period, providing noise level meters, overhead projectors, laptop facilities etc).

The College should discuss with the employee (or job applicant), and relevant experts, what reasonable adjustments are needed. If there is not sufficient expertise available in the College to deal with a particular reasonable adjustment, the College should seek the advice of appropriate specialist advisers (for example the Disability Employment Adviser under the 'Access to Work' scheme).

Where adaptations are to be introduced that affect other employees, the College should consider the most appropriate way to notify those employees and their trade union representatives to enable the most suitable arrangement for all parties to be reached.

The need for reasonable adjustments must not be used to justify a failure to promote or train an employee.

Colleges should ensure that all training and staff development activities are accessible to all, including venues, materials and provision of support staff if required.

Where an employee acquires an impairment and declares this to the College, a meeting should be held by the employee's line manager to discuss the employee's needs. The employee should be offered the opportunity to be accompanied at such a meeting by a work colleague or trade union representative, and a member of the human resources department should accompany and advise the manager during the process. Medical and other appropriate advice might also be sought about the employee's needs, which might include a period of paid disability leave (see below).

The College undertakes to make every effort to ensure that an employee who acquires an impairment, which makes it impossible for them to continue in their existing job, and who wishes to remain in employment, is enabled to do so. Should the employee wish to be redeployed to a vacant job they are capable of doing, the College undertakes to make every effort to redeploy the employee, including providing training and other reasonable adjustments where necessary. Redeployment to a higher graded post can be regarded as a reasonable adjustment.

Disability Leave

Disability leave is included as an example of a reasonable adjustment under the Employment Statutory Code of Practice – the guide to the detail of the Equality Act 2010. All employees who are disabled (using the definition in the Equality Act 2010) should have access to disability leave. It is worth noting however that many such employees will not need to take disability leave.

Disability leave is time off work for a reason related to someone's impairment and examples are provided below. It is good practice to consider giving a reasonable period of paid disability leave to individuals where the appointment, activity or training cannot be taken outside of work time. The period of disability leave should be agreed between the employee and line manager, with assistance from a work colleague or trade union representative as appropriate, taking account of the need to balance the individual's circumstances with the needs of the College. This period of leave should be regularly reviewed to ensure that the agreed arrangements remain fit for purpose. Examples of when this leave may be appropriate include:

- A period where an employee is well but requires training to work with a guide dog or using new equipment
- A prolonged period of treatment or rehabilitation
- A period of time to recuperate from treatment
- A period of time to complete an assessment relating to adjustments
- A period where the employee is waiting for the College to complete the making of reasonable adjustments.

Disability leave will not be included for the purposes of assessing performance, promotion, attendance, selection for redundancy, and similar issues unless there are exceptional circumstances.

Disability leave may be for a long or short period of time, and may or may not be pre-planned. The effect of an impairment depends on the individual and their circumstances. To accommodate this requires some flexibility, so employees may need to take planned disability leave or unplanned disability leave.

If time off work due to ill health is for a reason that is not related to an impairment, then it will be recorded as sickness absence.

Planned disability leave is agreed in advance. It may be a number of individual days each year that a disabled person needs to be absent from work. Typically this would be for treatment, rehabilitation or assessment related to their impairment. It may also be a longer block of time needed for a specific reason. An employee who needs to take planned disability leave should meet with their line manager on a confidential, individual basis and discuss what is needed. An example of short-term planned disability leave is time off to facilitate training with a guide or hearing dog. Employees may choose to be accompanied at such a meeting by a work colleague or trade union representative to provide support. If agreement cannot be reached at this meeting, then the employee may refer to the College grievance procedure.

A longer block of disability leave might also be appropriate. This could be, for example, where an employee who has recently acquired an impairment needs to make changes inside and outside of work; or to allow physical or environmental adjustments to be made to an employee's work environment; or if an employee has to undergo a more prolonged period of treatment, rehabilitation or recuperation.

It may be appropriate to agree that an unplanned period of leave be classed as "disability leave" rather than disability-related absence under the sick leave scheme. Usually this will be related to a sudden change in the nature or intensity of an impairment which requires action to be taken.

Time spent on disability leave is counted as continuous service for all contractual benefits.

Medical information about employees should be kept strictly confidential unless they agree to disclosure. Its use will conform to Part 4 of the Information Commissioner's Data Protection Act Employment Practices Code (Information about Workers' Health).

Disability-related Absence

If a person is absent due to illness or injury for an impairment related reason, payment for the leave comes from the entitlement to sick pay, but it should be recorded as disability-related absence. Whilst this should not exceed the maximum sick pay allowance, it is acknowledged that there may be circumstances where it is reasonable to extend the period of leave beyond the employee's sick pay entitlement.

It may be a reasonable adjustment to consider disability-related absence differently under the College's normal sickness absence procedure. For example it may be reasonable to consider using different trigger points for the scheduling of sickness absence review meetings where the absence is disability related.

Paid time off for disability-related medical appointments should be granted at all times. Employees who can control the timing of their appointments/treatment should consider the needs of the College when scheduling these.

Discrimination arising from a disability

Discrimination arising from a disability occurs where a disabled person is treated unfavourably not because of his/her disability itself, but because of something arising from, or in consequence of it, and that treatment cannot be justified as a proportionate means of achieving a legitimate aim. An example is provided in Appendix 3.

Appendix 2: Specific Considerations for Trans Equality in Employment

Summary

This guidance should be read in conjunction with Section 1: Joint Agreement on Guidance for Equality in Employment. The following additional guidance relates specifically to the employment of people who identify as 'trans': people whose gender identity does not conform to the gender they were labelled at birth.

The Equality Act 2010 defines the protected characteristic of gender reassignment for the purposes of the Act as where a person has proposed, started or completed a process to change his or her sex; so a transsexual person has the protected characteristic of gender reassignment. However this joint agreement on guidance relates to the wider trans community - which includes people who identify with any of the trans identities described in the Glossary of Terms at Appendix 4 - and aims to support Colleges and trade union representatives on managing issues that relate specifically to trans equality in employment.

Transition

The College recognises that for those trans people who wish to undergo full gender transition, this is a long and difficult process. This will normally involve the person living their lives under medical supervision, although it should be noted that an individual is no longer required to be undergoing such supervision to be protected from discrimination. The College recognises that this process can be exceptionally difficult, and will consider carefully any reasonable requests to make the process easier and more pleasant for the individual concerned.

The College will recognise all medical documents produced by any medical practitioner relating to the transition. In general, the College will accept the word of the employee transitioning. No attempt will be made to expect medical proof of conditions such as gender dysphoria. Nor will the employee transitioning be subject to intrusive questioning.

The College will provide support for a trans employee returning after a break caused by medical or surgical treatment. For example, for cases of significant medical and surgical treatment, the College should treat sympathetically a request for a variation to the employee's working pattern, such as a job-share arrangement, or to move from a full-time to a part-time contract for a specified period.

The College, when producing timetables for teaching staff or work patterns for support staff, will adopt a flexible approach which endeavours whenever possible to meet the individual needs of trans employees recuperating from medical or surgical treatment. The College recognises that there may be a continued need for trans people to access medical treatment, which may include periods away from work. The College will ensure that provision is made to facilitate an employee through all the stages of gender reassignment.

<u>Managing an individual case of gender reassignment</u>

An employee who has decided to begin the transition process can request a meeting with [the human resources department] to discuss how this is to be handled in the workplace. This is an important factor for an individual in transition from one sex to another and it is helpful to agree in advance a process for managing any employment-related issues. More than one meeting may be helpful and the employee may choose to be accompanied at the meeting(s) by their trade union representative or a work colleague for further support.

Prior to any meeting(s) to discuss an individual case of transition, it will be appropriate to ensure that all those to be in attendance on behalf of the College have an understanding of trans equality and associated issues. This might be supported by disseminating appropriate guidance ahead of the meetings.

Issues which should be considered during the meeting(s) include:

- Any needs for time off to attend appointments and the expected timescale of any medical, hormonal or surgical procedures, if they are planning to go through these processes. Also consideration of any possible side effects from any medication.

- The expected point of change of name, personal details and social gender and what amendments will be required to internal records and systems. This may include a discussion about identification passes, library cards, contact details, email addresses, website references or any other relevant matter.

- Whether the individual wishes to inform colleagues (and students/service users) themselves, or if they would prefer this to be done on their behalf by an appropriate College representative.

- The point at which use of facilities, such as changing rooms or toilets, should change. This may be, for example, at the point when the individual begins living permanently in the sex with which they identify. Note that it is not acceptable to treat a transsexual person as though they have a third sex, i.e. neither male nor female. It is therefore not acceptable to insist on a transsexual employee using separate facilities in the long term, for example an accessible toilet for disabled people.

A transsexual employee should be granted access to 'men only' or 'women only' areas according to the sex in which they permanently present. Under no circumstances should they be expected, after transitioning, to use the facilities of their former gender.

Any individual who is going through the transition process should receive at least the same level of support and protection from management as any other colleague. Any reasonable requests for time off, or work on different sites, or alternative duties will be noted, discussed seriously, and if it is at all possible to act on them, that will be done.

While the employee can expect to have their case treated in utmost confidence, the College should reaffirm its commitment to respond in confidence to any requests in relation to transition in relevant policies and procedures. It is essential that the College seeks permission from the employee before their status is discussed with any third party.

The College will not in any way penalise an employee for not making their trans or transitioning status known, or for any delays in making this information known. Conversely, the person transitioning should appreciate that they cannot expect the College to make reasonable adjustments on their behalf if the College does not know about their status.

Following agreement of the appropriate date during the above meeting(s), all College records will be changed, including the employee's personal HR file, sickness absence records, training and development records, payroll details, including records held on paper or in electronic form. No changes will be made without prior request and agreement between the employee and the College.

Communicating the change to others

The College should discuss and agree with the employee undergoing transition, how best to handle informing colleagues, students and/or service users. It is likely to be appropriate to inform those who have a working relationship with the employee and therefore knew the person prior to the change of status.

The employee may request to organise a meeting with colleagues in their area of work at which their status as a transitioning person is to be explained. At this meeting, if it happens, a representative of the College should express their support for the employee concerned. The employee may choose, if they wish, to answer questions from those in attendance.

If such a meeting takes place, then all those involved should be informed that they are required to keep the information strictly confidential. The information shared by the employee undergoing transition should not be discussed with any third party without the prior consent of the employee.

Adjustment of records and protecting confidentiality

The College will respect any request for anonymity. The College will seek to update its records to include the chosen name and sex identified by the individual at an appropriate time.

Employment records relating to a trans employee will not refer to a previous name. Records made prior to a change of name or gender change will be updated once the College is informed of the change by the employee in writing, along with appropriate supporting documentation. Note that a Gender Recognition Certificate is not required for an individual to begin living in their acquired gender.

The Gender Recognition Act 2004 (GRA)

The Gender Recognition Act 2004 gives legal recognition in their acquired gender to transsexual people who satisfy the Gender Recognition Panel (a judicial body of lawyers and doctors) that they:

- Have or have had gender dysphoria, and
- Have lived in the acquired gender for two years prior to the application, and
- Intend to live permanently in the acquired gender.

The panel or the Secretary of State can also apply for medical evidence, marital status and other information, which must be given for an application to be successful.

Following a successful application, a transsexual person will acquire all the legal rights and responsibilities of their acquired gender from the date of recognition.

Appendix 3: Examples of Potential Discrimination

The purpose of this Appendix is to highlight to Colleges the types of potential acts of discrimination towards each of the different protected characteristics and where they will be unlawful under the Equality Act 2010. The examples provided are not exhaustive and aim only to provide support to Colleges in promoting understanding of the scope of the Act.

	Direct discrimination	Indirect discrimination	Discrimination arising from a disability	Discrimination by association	Discrimination by perception	Harassment	Victimisation
Age	Specifying age ranges e.g. 'applications will only be accepted for those under 25' within job advertisements.	Specifying a requirement for GCSE's without including 'or equivalent'. GCSE's were introduced in 1986 and there is a particular disadvantage against those who studied prior to that date if the requirement is essential.	*Does not apply.*	Not offering a role to an employee because they live with an older relative through concerns that the individual may take additional time off for carer responsibilities.	Not allowing a younger looking employee to apply for a more senior role because of an assumption made about their age.	Referring to a person constantly as 'young man' within a meeting.	Not providing a reference for a person who has previously claimed age discrimination.
Disability	Refusing to let a wheel-chair user attend a residential training course, even if the reason for refusal was because a College had concerns about that person's mobility/welfare whilst away.	A College who only produces training materials in a format which isn't easy to read, making it difficult for a person with learning difficulties or a visual impairment to access.	An employee being disciplined for out of character behaviour caused by medication linked to a disability.	Dismissing an employee due to absence relating to a dependent's disability or withholding an offer of appointment or promotion due to a dependents disability.	Using simple language towards an individual who is perceived to have a mental impairment because of a physical disability.	Talking openly about disability allowances being 'a drain on society'.	A wheelchair user complains their workstation is not suitable, their concerns are dismissed and subsequently they are excluded from information sharing groups.
Gender reassignment	Treating transsexual people less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would be treated if they were absent because they were ill or injured, or if they were absent for some other reason.	On a training course, as an ice-breaker staff are asked to bring in a photograph of themselves when they were a child. One worker is a transsexual woman who dos not want her colleagues to know she was raised as a boy. When she doesn't bring a photo she is criticised in front of the group for not joining in.	*Does not apply*	An employee is overlooked for promotion because their partner has undergone gender reassignment	A female applicant is perceived to be a transsexual because of her appearance and although scores the highest at interview is not offered the role. The woman could complain of direct discrimination because of perceived gender reassignment, even though she is not in fact transsexual.	Name calling or comments of a derogatory nature towards the trans community are made at a College social event. Similarly the continued use of an incorrect pronoun ('he'/'she') may account towards harassment (whether intentional or not).	An employee raises a grievance against a procedure which they feel is unfair to transgender people; they are then later rejected for promotion as they are perceived to be 'trouble'.
Marriage and civil partnership	Benefits available to spouses are not made available to civil partners.	Because more married women than single women have childcare responsibilities, a policy of full-time working could amount to indirect marriage discrimination.	*Does not apply*	*Does not apply*	*Does not apply*	*Harassment would amount to harassment related to sexual orientation*	An employee is not offered any overtime until the outcome of their grievance has been investigated.
Pregnancy and maternity	Refusing training to those who are pregnant.	A manager organises a team building event includes strenuous physical activity not suitable for pregnant women.	*Does not apply*	*Does not apply directly however employees may claim sex discrimination by their association with a pregnant woman.*	Not short-listing a female employee for promotion because senior staff believe her to be pregnant irrespective of whether she is pregnant or not.	*Harassment would amount to harassment related to sex.*	A woman who is pregnant complains of unfair treatment and is subsequently made redundant whilst on maternity leave.

	Direct discrimination	Indirect discrimination	Discrimination arising from a disability	Discrimination by association	Discrimination by perception	Harassment	Victimisation
Race	Specifying a requirement for a particular race (without a genuine occupational requirement) of an employee within a recruitment process to ensure students are taught by someone of the same race even if the intention is to enhance the learner experience.	Specifying a requirement for UK only qualifications on person specifications.	*Does not apply*	Excluding a female employee from staff awareness training on race equality because they are engaged to a black man as it is assumed they have a level of race awareness.	Automatically rejecting an applicant because the person is perceived to be of a particular nationality due to the name on the application form	Insulting comments relating to stereotypes on race.	A manager is denied promotional opportunity as they provided evidence against a colleague who made a racist remark.
Religion or belief	Refusing time off or space to demonstrate religious observance for example not making provisions for prayer would amount to direct religious discrimination. Similarly not acknowledging a persons belief as a genuine belief would also amount to direct discrimination.	A strict policy of no headwear within a college would amount to indirect discrimination if adjustments cannot be made for those who cover their heads as part of their religion.	*Does not apply*	An employee who is subject to harassment by colleagues because they are married to a Jehovah Witness.	A person is not invited to drinks on a Friday after work because they wear a Star of David and are perceived to be Jewish (Friday is the start of the Sabbath for the Jewish faith and starts a few minutes before sunset).	A person's belief or religion is constantly mocked.	A lecturer intends to make a complaint of religions discrimination and are subsequently subject to tougher performance measures because of their complaint.
Sex	Not employing a female into an all male team because they feel it would make the female uncomfortable even if it was well-intentioned.	A single mother is forced to resign from her job as she cannot comply with a new shift pattern. It is accepted as common knowledge that men are far less likely than women to be single parents with childcare responsibilities and that a higher proportion of men than women are able to comply with the new pattern.	*Does not apply*	A male employee is excluded from a consultation on parental leave because his female partner works at the same college.	Automatically rejecting an applicant because it is perceived that the person is a particular sex by the name on the application.	Comments made about a persons body or clothing caused the effect of violating a person's dignity 'makes a person feel uncomfortable at work.	A woman who complains of equal pay is subsequently not offered any training opportunities.
Sexual orientation	A college allows a man whose female partner is pregnant to take annual leave so he can go to ante-natal appointments with her; a similar request is rejected from a woman whose female partner is pregnant.	Inviting 'wives and girlfriends' to a social event for a male dominated team would exclude gay men from bringing their partners.	*Does not apply*	A man is refused annual leave to attend his daughter's civil partnership.	Denying an opportunity to an employee because they perceive that person to be gay because of their appearance or mannerisms.	Forwarding a chain of emails which include jokes about same sex couples.	A bisexual woman raises a grievance relating to her sexuality; her hours are subsequently reduced.

Appendix 4 - Glossary of Terms

Throughout the joint agreement on guidance, use of the word '*must*' refers to a legal requirement; use of the word '*should*' refers to a strong recommendation by the National Joint Forum of good practice in managing equality and diversity.

The following table provides an alphabetical list of terms that are either used within this joint agreement, or are relevant to inform understanding of the protected characteristics and the equality and diversity agenda.

Term	Definition
Acquired Gender	The new gender of a person who has reassigned their gender.
Gender	The overwhelming majority of people have a gender that accords with their anatomical sex. Gender consists of two related aspects: gender identity, which is a person's internal perception and experience of their gender; and gender role, which is the way that the person lives in society and interacts with others, based on their gender identity. Gender is less clearly defined than anatomical sex, and does not necessarily represent a simple 'one or the other' choice. Some people have a gender identity that is neither clearly female nor clearly male. For many purposes of law, however, people can only be male or female.
Gender Dysphoria	A person with gender dysphoria may feel that they have a gender identity that is different from their anatomical sex. As a result, they may experience anxiety, uncertainty, or persistently uncomfortable feelings about their birth gender.
Gender Reassignment	Gender reassignment refers to everything involved when someone changes the gender they were assigned at birth, not merely – or necessarily – to surgical procedures. It is a complex process and involves changing physiological or other characteristics of sex. It also involves changing all state documentation relating to the individual. This may include, for example, national insurance or tax records, passport, driving licence and medical cards. Legislation is in place to enable birth certificates to be changed (see 'Gender Recognition Certificate' below). A person going through gender reassignment is not required to be under medical supervision to be protected from discrimination.
Gender Recognition Certificate	A Gender Recognition Certificate gives transsexual people full recognition of their acquired gender in law for all purposes, including marriage and allowing them to acquire a new birth certificate. However it is important to note that the Gender Recognition Certificate is not required for an individual to be protected from discrimination (see Section 5.4 and Appendix 2). The certificate will be issued to a successful applicant if he or she is not married or in a civil partnership. An interim certificate will be issued to a successful applicant if he or she is married at the time of application. The interim certificate is issued to allow the applicant and his or her spouse to end their marriage easily. It has no legal significance beyond this use. When the marriage or civil partnership is ended, a full Gender Recognition Certificate will be issued to the successful applicant.
Institutional	The collective failure of an organisation to provide an appropriate and

Discrimination	professional service that can be seen or detected in processes, attitudes and behaviour, which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and stereotyping.
Trans or Transgender people	'Trans' and 'Transgender' are inclusive umbrella terms used to describe people who identify their gender differently to that of their birth. This gender variance can range from how someone dresses or behaves to someone having surgical procedures. The terms 'trans' and 'transgender' are used as adjectives and followed by terms such as 'man', 'woman', 'person' or 'community'.
Transsexual people	Some trans people identify as transsexual and have a deep conviction that their gender identity does not match that of their appearance or anatomy. The medical term for this is 'gender dysphoria' (see above). Eventually, this may lead the person to permanently present to the world in the opposite gender to the one they were assigned at birth. This process is referred to as 'gender reassignment' or 'transitioning'. The majority undergo hormone therapy. Many will also undergo surgery to bring their bodies into line with their gender identity.
Transvestite	Transvestite people, or people who cross dress, are those who wear clothing traditionally associated with the opposite sex. Generally, transvestites do not wish to alter their body and do not necessarily experience gender dysphoria.

Joint Agreement on Guidance on Equality in Employment in Further Education Colleges

Signatures of the parties to this agreement:

AoC

AMiE

ATL

GMB

UCU

UNITE – The Union

UNISON

Date of Commencement of this Agreement:

May 2012