

# Governing bodies, equality and diversity

A handbook for governors of  
higher education institutions



Equality Challenge Unit

**Leadership  
Foundation**

for Higher Education

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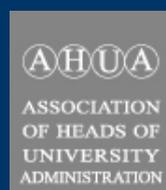
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Although all efforts have been made to ensure the accuracy of the text, any errors that remain are the sole responsibility of Equality Challenge Unit and not the steering group.

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# Governing bodies, equality and diversity

## A handbook for governors of higher education institutions

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# Foreword

This handbook describes the responsibilities of governing bodies in relation to equality and diversity, and provides guidance, case studies and resources to assist them. It aims to be a useful and practical resource, rather than an analysis of the many complex issues identified.

Equality and diversity inhabit difficult and sometimes sensitive territory, reflecting the difficulties and sensitivities inherent in society. In that sense they are an inevitable – and welcome – part of the higher education landscape. Surely a twenty-first-century university or college, with values of collaboration, free speech and the expression of all views, is exactly the place to embrace these issues?

Equality legislation is now extensive and imposes specific responsibilities on governing bodies. More legislation is expected in 2009. However, it is increasingly clear that governing bodies must now consider moving beyond compliance. Many already are. More than ever before there is a need for clarity of vision, policy and priorities. Governors need to analyse the strategic importance to their institution of equality and diversity, together with the risks involved.

Issues of equality and diversity also require consideration of the diversity of governors. Different viewpoints provide a much better analysis of risk by governing bodies, and therefore make for better decisions.

Surprisingly little has been written to guide governing bodies, despite the fact that the consequences for institutions and governors of getting it wrong are potentially serious, and the benefits in their getting it right are potentially substantial. This handbook seeks to fill that gap in relation to both the role of governors and issues of governor diversity.

We have not sought to examine specific single issues that arise, for example from current conflict in the Middle East, or from conflicting religious beliefs. These are beyond the scope of the research. Instead, this handbook sets out examples of how institutions are approaching the wide range of problems and opportunities connected to equality and diversity, together with a road map suggesting the points at which governing bodies should be involved with them. We hope this will prove useful, and that as a starting point the handbook might inform a deeper debate among governors about equality and diversity in their own institution.

*Russell Seal, Chair of Council, University of Exeter  
April 2009*

# Executive summary

## Part A: The role of governors

### **Section 1: Strategic planning**

Equality and diversity are generally understood to refer to issues of gender, race, disability, religion, sexual orientation and age. These are the areas protected by the law. They apply to all aspects of an institution's activities, for both staff and students.

Making sense of this complex and sometimes contested territory falls to the governing body, not in the sense of determining operational decisions, but in the sense of deciding policy and strategy. Just as it is ultimately for the governing body to develop and agree the institutional mission, so it is for them to establish a coherent narrative for equality, and to move the agenda beyond narrow issues of compliance to a programme that ensures the richness and diversity of society are appropriately reflected and celebrated within the institution.

To assist governors in this task, the first section of this handbook sets out the case for equality within institutions, from alignment with institutional mission to the business case, compliance with the law, and the broader social and moral arguments. Clearly the case will vary from institution to institution.

### **Section 2: Institutional culture**

The area of equality and diversity is as much a matter of institutional culture as more tangible operational issues such as supporting students with disabilities or ensuring equal opportunities in promotions processes. Governors have a significant role to play in promoting an inclusive institutional culture. This involves ensuring considerations of equality and diversity are factored into policies and decisions, where relevant. It also involves ensuring governors do not inadvertently reinforce stereotypes and preconceived ideas through the way they themselves speak and act.

### **Section 3: Compliance with the law**

Governing bodies are, as a matter of law, responsible for ensuring compliance by their institution with equality law. This affects individual rights for staff and

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students, as well as the proactive ‘public sector duties’ that apply specifically to higher education institutions.

Individual rights cover gender and gender reassignment, race, disability, sexual orientation, religion and belief, and age. In Wales, issues concerning the Welsh language are relevant, and in Northern Ireland, political belief.

The public sector duties require governing bodies to ensure proactive steps are taken to eliminate unlawful discrimination and to promote equal opportunities and good relations between different groups. In Great Britain they apply to race, disability and gender, although the imminent Equalities Bill is likely to extend the duties to cover all equality areas. Procedural requirements prescribed in the legislation include the development and publication of equality schemes and equality impact assessments.

### **Section 4: Assurance and accountability**

As with other areas of governance, issues of assurance and accountability apply to equality and diversity. Governors will receive reports from the executive in relation to equality, and there is a wealth of additional evidence relating to equality available within institutions, and within the sector, that they may wish to take into account.

Because of the extensive procedural requirements of the legislation, there is always a danger that issues of equality turn into exercises in bureaucracy. This section describes how governors can assist in ensuring equality initiatives deliver relevant and tangible outcomes. Developing and implementing key performance indicators for equality may be one way forward, and examples are included of equality indicators used by institutions.

### **Section 5: Specific responsibilities of governors**

#### *Human resources*

Governing bodies will be involved in the development and oversight of human resources strategies, which are likely to involve consideration of equality issues affecting staff, particularly in relation to the areas covered by the public sector duties – gender, race and disability. This may include issues of equal pay between men and women, and representation of women and black and minority ethnic

staff in senior positions. To engage with these issues effectively will involve an understanding of the institution's priorities, a knowledge of the relevant equality data, and an understanding of the law in this area.

### *Appointment of Vice-Chancellors and senior managers*

Recent research has confirmed that the recruitment process tends to draw on a narrow pool of people. Appointing to these leadership roles involves consideration of the equality implications in terms of ensuring the appointments process does not inadvertently draw only on a limited group of candidates, as well as ensuring the process is legally compliant.

### *Grievances and appeals*

Governors are often called upon to adjudicate in grievances and appeals. The grievance or appeal may identify equality issues, directly or indirectly. Governors will need to engage with these considerations and adjudicate on them, often in contested and sensitive circumstances.

## Part B: Diversity of governing bodies

There are limited data on the diversity of governing bodies in the higher education sector, but many involved in recruitment to the governing board attest to the practical difficulties in recruiting a diverse governing body, particularly in terms of age, race and gender.

Having governors drawn from a range of diverse backgrounds adds considerable value to the quality of decision-making of the board. Diversity is required to provide a balance of views.

Methods used to recruit diverse board members include drawing the job description broadly, consulting alumni, drawing on search consultancies, remuneration, and building a diverse pool for the future.

## Part C: Taking the issues forward

Equality Challenge Unit (ECU) and the Leadership Foundation for Higher Education will be undertaking further work in this area in the future. In particular they will be:

## Executive summary

- = publishing a research report commissioned from Cranfield University into governance and equality (in June 2009)
- = contributing to the Leadership Foundation's governor development programme ([www.Ifhe.ac.uk/governance](http://www.Ifhe.ac.uk/governance)).

ECU will be publishing updates for governors – particularly in the light of the Equalities Bill, which is likely to extend the public sector duties to cover religion, sexual orientation and age – and will be developing projects to make equality data more accessible to governors and to inform the development of equality key performance indicators.

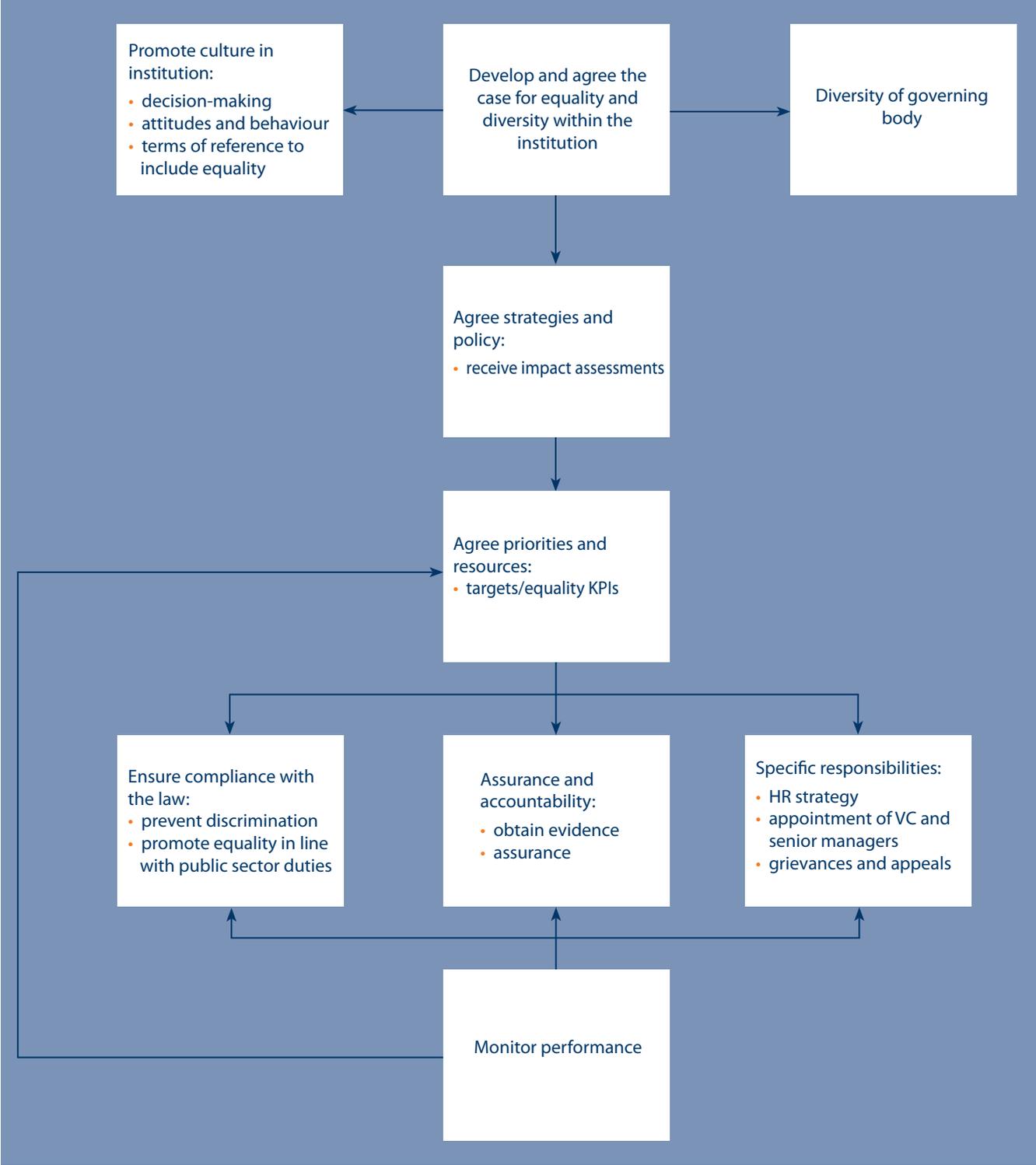
## About this handbook

This handbook was written by ECU. It draws on research, commissioned jointly by ECU and the Leadership Foundation for Higher Education, looking at governance and equality in higher education institutions in the UK. Led by Professor Susan Vinnicombe from the University of Cranfield School of Management, the research will be published in June 2009 by ECU and the Leadership Foundation for Higher Education, and is referred to throughout this handbook as 'Cranfield's research'.

The handbook also builds on the publications *Guide for members of higher education governing bodies in the UK* (CUC, 2009); *Getting to grips with human resource management* (Hall, 2009); and *Equality and diversity: responsibilities and challenges* (HEEON, ECU, HEFCE and University of Wolverhampton, 2007).

The case studies in the handbook are illustrations of initiatives undertaken by some institutions. They do not imply that governors should be responsible for initiating particular actions. Instead, they aim to offer some thoughts that might assist governors in formulating questions as to how their institution is supporting equality and diversity.

# Road map – governing body engagement with equality



# A. The role of governors

## 1. Strategic planning – why do equality and diversity matter?

Higher education institutions (HEIs) operate in an increasingly global context, with institutions seeking to be inclusive of all sections of society, and to be responsive to staff and students from different cultures and with different needs. But what does that mean for individual institutions?

Why does it matter for an individual institution if there is a lack of women in senior positions; if there are low numbers of men participating in certain subjects as undergraduates; if the campus excludes staff and students with disabilities; if the institution acquires a reputation for not being inclusive? Establishing a coherent narrative for equality within an institution will assist in articulating why these issues matter. Without such a coherent narrative, initiatives in relation to equality and diversity may lack focus and end up prioritising bureaucracy over substance. Just as governors are ultimately responsible for the institution's mission, also it is ultimately their responsibility to ensure there is clarity in terms of how issues of equality and diversity affect and support that mission, and therefore what the institution's priorities should be.

The Chair of Council at one British university has put it in this way:

*'What needs to happen is that governing bodies need to make the educational and institutional case for diversity very clearly. We need a better quality of discussion and to move past the compliance debate, starting with the fundamental questions ... What do we want to say about our particular university? Who are we as an institution? What is our mission? What is our strategy?'*

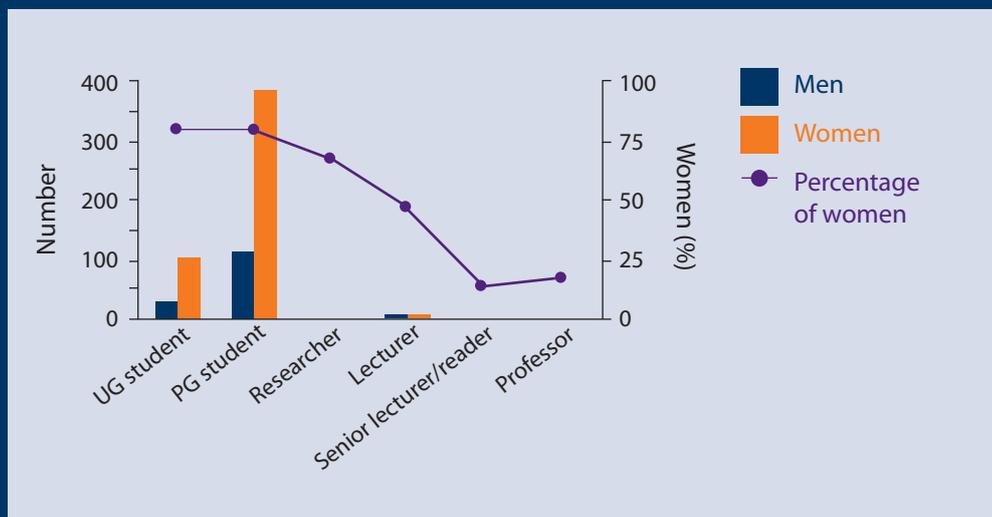
Set out below are some of the arguments for equality and diversity that may assist governing bodies in formulating the case for equality within their institution.

As a matter of law, equality is defined as including race, gender and gender re-assignment, disability, sexual orientation, religion and belief, and age. In Wales the Welsh language is an equality issue, as is political belief in Northern Ireland.

## Competition for staff

In an era of intense competition for the best staff, there is a strong case for drawing on a wider pool of talent, in terms of looking both to international staff and also to a more widely defined home-grown pool. This argument is commonly made in relation to women in science, engineering and technology, where the numbers are low, attrition rates are high, and competition for the best staff is fierce.

The graph shows the extent to which the ratio of female postgraduates drops between postgraduate and research contracts in one university's psychology department – representing both a loss of investment and a loss of talent.



The same arguments will apply in relation to black and minority ethnic (BME) staff, who may be virtually absent in some academic and professional disciplines.

There is also a need to ensure the appointments made are genuinely the best, untrammelled by limiting and cautious preconceived ideas as to who might be a suitable candidate. This may often involve recruiting from a wider pool.

## Competition for students

The arguments in terms of recruiting staff from the widest pool will also apply to students. There are increasing concerns that certain demographic groups are not participating in higher education to their full potential, not least white, male, working class students, potentially to the detriment of the quality of the student cohort – and of social cohesion.

### Supporting a diverse student population

In many institutions there is significant ethnic and religious diversity among the student population, both domestic and international. There is therefore a business case for ensuring all students and potential students are supported in terms of the visible cultural inclusivity of the institution's policies and practices, facilities and teaching, and also the staff profile.

ECU's research report on the experience of gay and lesbian staff and students (ECU, 2009) records that from a sample of over 2700 lesbian, gay, bisexual and trans students, 14.7 per cent said their sexual orientation was a factor in their choice of institution. This finding was subsequently discussed in focus groups, participants confirming that positive images in university brochures, the prospectus and websites influenced their choice of where to study.

### Supporting a diverse staff population

There is considerable diversity among staff in the higher education sector. For instance, 42.3% of academic staff and 62.7% of professional and support staff are female. 29.7% of academic staff and 28.3% of professional and support staff are aged over 50. There is a clear case for ensuring those staff are supported and retained, and their particular needs are accommodated.

### Alignment with institutional mission

Many institutional mission statements either incorporate specific commitments to equality and diversity, or focus on issues such as links with the community or internationalisation, which imply that commitment. It is therefore important in terms of implementation of institutional mission that equality statements are translated into practice.

A university's mission statement states that it is committed to 'the provision of excellent, open and progressive higher education that embraces difference, challenges prejudice and promotes justice'. This commitment is then developed in the university's Equality Policy Statement for Staff and Students, which in turn informs the work of its Equal Opportunities & Diversity Review Group, chaired by its Vice-Chancellor.

## Better decision-making

Professor Chris Brink, Vice-Chancellor of the University of Newcastle and member of ECU's Board of Directors, describes this issue in the following terms.

*'Our business is about knowledge ... Staff learn through their research, through their interaction with the community, and through their teaching ... We need around us people who represent the rich spectrum of ... life, and we need the diversity of ideas that are new to us ... We will learn more from those people, those ideas, and those phenomena that we do not know, than from those we know only too well.'*

## Reputation and risk

Allegations, whether justified or not, of the existence of discrimination or inequality have the potential to be hugely damaging to institutions keen to enhance their reputation for openness and inclusivity, both in the domestic market and internationally. Increasing reliance on electronic communication means that reputations can be quickly damaged by negative publicity.

## Legal compliance

Issues of equality and diversity are underpinned by a mandatory legal framework, extending to an institution's relations with both staff and students. The legal requirements are extensive, and responsibility for ensuring the institution is compliant rests with the governing body (see section 3).

## The moral and social case

*'Universities must and should be places where diversity is not simply accommodated but is celebrated. Our campuses should be places where people find themselves, find their identities in ways which are empowering and ways which enrich not only their own lives but the lives of those around them.'*

Professor David Eastwood, Chief Executive, Higher Education Funding Council for England (HEFCE) addressing ECU's conference in November 2008.

The moral and social arguments for equality and diversity represent a significant motivation for many institutions and for many people working in the higher education sector.

### The business case

Research has been carried out to investigate whether there is any link between economic success and effective equality and diversity practice. A large-scale study (EC, 2005) found a demonstrable correlation between successful private sector businesses and a commitment to diversity, even though the exact chain of causation might be difficult to prove.

The University of Sheffield's Women Academics Returners' Programme ([www.shef.ac.uk/hr/diversity/warp.html](http://www.shef.ac.uk/hr/diversity/warp.html)) provides a grant of £10,000 to women academics and researchers who return to work after maternity leave, to cover teaching duties or to support research activities. The university has committed over £1.5 million to the programme. Fifty-four women have participated to date.

Prior to introducing the programme, although nearly 100 per cent of female academics and researchers returned to work following maternity leave, nearly one in four of them would subsequently leave the university. Since introducing the programme, this proportion is now one in seven. The university estimates that the women who participated in the programme have subsequently generated over £6.2 million in research income for the university, benefiting the university as well as their own careers.

### Making the case for equality

The way in which the case for equality is made may vary significantly between institutions. For instance, the demographic case in relation to the ethnicity of students may have more impact in a multi-cultural metropolitan institution than in a rural campus, where both recruit from their local communities. On the other hand, the social and moral case will have a similar impact. When they are in a small minority, BME students may require more support from an institution than when they are in either a larger minority or a majority.

Appendix A presents some facts and figures about the diversity of UK society, and statistics relating to some of the imbalances within UK HEIs. This background information may assist governors in formulating the case for equality within their own institution.

## 2. Institutional culture

Equality and diversity may often have as much to do with the institutional culture – the feeling of the place, or its ‘institutional DNA’ – as with more tangible operational issues such as supporting disabled students, or ensuring a promotions procedure operates fairly.

Governors represent the most senior tier of the institutional structure, and as the body that safeguards the institutional mission, they should in a broad sense be seen as embodying that mission. To the extent that the institution’s mission includes references to inclusivity and diversity, governors also need to embody those qualities personally.

In terms of creating an inclusive culture, it is primarily senior management who are the most obvious and immediate influence, but governors can also have a significant part to play.

One university seeks to capture this contribution in its Equality and Diversity Policy Statement:

‘Our Board of Governors will ensure that its own actions promote equality and diversity. Through their words and behaviours, Governors will aim to provide genuine equality of opportunity regardless of gender, sexuality, race, colour, disability, religion, age, and ethnic or national origin...

When discharging its primary responsibilities as set out below, the Board will take particular account of this policy statement:

- = Considering the educational character and vision ... of the University
- = Exercising general oversight of its many activities
- = Appointing the Vice-Chancellor and the Clerk to the Governors, and other members of the Vice-Chancellor’s Group
- = Setting a framework for pay and conditions of staff.

Governors will devote time to the development of their own knowledge, understanding and practices to promote and achieve equality and respect for diversity and will see such development as one test of their effectiveness.’

## Institutional culture

This approach is reflected in the statutory codes of practice on the implementation of the public sector duties. For instance, the Disability Rights Commission's Guide for Colleges and Universities on the Disability Discrimination Act ([www.equalityhumanrights.com/en/publicationsandresources](http://www.equalityhumanrights.com/en/publicationsandresources)) recommends that '... governing bodies need to take visible ownership of the Disability Equality Duty...'; the emphasis being on visibility. The *Gender Equality Duty Code of Practice England and Wales* (paragraph 2.36) ([www.equalityhumanrights.com/en/publicationsandresources](http://www.equalityhumanrights.com/en/publicationsandresources)) refers to the need to build reference to gender equality into strategic planning, keynote speeches and organisational development work so that a consistent message is given to staff and stakeholders.

It is precisely because governing bodies are regarded as role models that particular care needs to be taken to ensure vocabulary used by governors is generally regarded as acceptable and will not unconsciously offend. Appendix C gives a brief guide to common usage in terms of vocabulary.

## Decision-making

Translating broad principles and commitments into practice is not straightforward, not least because equality issues may arise in a wide variety of contexts – from financial planning (for instance in relation to disability support for disabled staff and students) to estates management design (accommodation for students with disabilities, different religious faiths, mature students, etc.).

One Chair of Governors reported that in their experience it is useful if the terms of reference of all key decision-making bodies and committees of governing bodies automatically include clear equality objectives. This ensures that, where relevant, issues of equality will be taken into account during the course of normal business.

## Attitude

Everyone is the product of their background, and our background affects our attitude and behaviour. This can lead to (unwitting) preconceived ideas and stereotypes. Many people find that it is an external event – a member of the family becoming disabled, a child coming out as gay or lesbian, a personal experience of discrimination – that provokes the self-reflection that challenges these

preconceived ideas and stereotypes. For others, high-quality equality awareness training can have the same impact.

Ideally, all governors should have undergone equality training at some point in their career. Governors may also want to assure themselves that staff within the institution have undergone appropriate training, and indeed to undertake it themselves to obtain first-hand experience of it.

This is not so much an issue of compliance as of behaviour and attitudes that, often in quite subtle ways, affect the culture of an institution.

*'I did diversity training at work. We didn't spend any time on compliance or ticking boxes. What we did was to talk about attitudes, behaviour and culture. What dawned on me was that I had some baggage and unconscious prejudice, and that my first reaction to diversity was to fall back on stereotypes and not look for the individual. The training helped me a lot in listening for different views.'*

Chair of Council

### 3. Compliance with the law

Governing bodies are expressly responsible for ensuring their institution is compliant with the law. For instance, the Race Relations Amendment Act 2000 states that the 'bodies and other persons subject to the general statutory duty' are the 'governing bodies of institutions within the higher education sector'.

There are broadly two categories of equality legislation affecting HEIs throughout the UK: (i) responsibilities in relation to individual staff and students in respect of gender and gender reassignment, race, disability, sexual orientation, religion or belief, and age; and (ii) the public sector duties in relation to gender, race and disability. No distinction is made as a matter of law between domestic and international staff and students. A short summary of the law follows.

#### **Individual staff and student rights**

##### *Direct discrimination*

Under the equality legislation, it is unlawful for an institution to treat a member of staff or a student less favourably by reason of their race, gender, gender reassignment, disability, religion or belief (including political opinion in Northern Ireland), sexual orientation or age (the 'equality areas'). A common example is a failure to appoint or promote a person (consciously or unconsciously) because of their gender or race. This is known as direct discrimination.

##### *Indirect discrimination*

It is unlawful for there to be practices or procedures that are ostensibly neutral, but in their impact disadvantage staff or students from one of the equality areas, unless the practices or procedures can be justified. This is known as indirect discrimination. An example might be an induction course that disadvantages students of a particular faith (for example, if they cannot attend on the specified days because they coincide with religious holidays). Indirect discrimination may be justified objectively, but the institution has to be able to provide clear evidence in support of that justification. The more the practice or procedure disadvantages a certain group, the higher the burden of justification.

Disability law is slightly different: while there is no provision making indirect discrimination against disabled people unlawful, there is a duty on institutions

to make reasonable adjustments where practices or the physical features of the workplace or campus put a disabled person at a substantial disadvantage in comparison with a non-disabled person. Claims in this respect effectively cover the same ground as indirect discrimination claims in the other equality areas.

There are also individual rights in relation to unlawful harassment on grounds of one of the equality areas, and in relation to victimisation, which applies where a person is treated less favourably where they have committed a 'protected act', for example because they have given evidence or made allegations in good faith of discrimination (whether such claims are founded or not).

All these rights in relation to direct and indirect discrimination, harassment and victimisation apply equally to everyone – black and white, male and female, gay and straight, old and young, religious and non-religious. In relation to disability discrimination, while it is generally only those with disabilities who are protected, recent case law also provides that 'associative discrimination' (discrimination against a non-disabled person on grounds of their association with a disabled person) is also unlawful. This therefore means that carers of disabled people are protected by discrimination law.

Claims of unlawful discrimination may be pursued by individual members of staff and students through Employment Tribunals (Industrial Tribunals or Fair Employment Tribunals in Northern Ireland) or County Courts (Sheriff Courts in Scotland). Compensation is uncapped, although guidelines do exist for the tribunals/courts to follow.

### **Positive action and positive discrimination**

Positive action is quite different from positive discrimination. Positive action is the deliberate introduction of measures to eliminate or reduce the effect of a particular disadvantage suffered by a particular group. Its aim is to level the playing field to ensure equal access to the same opportunities. It is not concerned with special treatment. Subject to complex legal provisions, it is generally lawful provided specified circumstances apply. It is not to be confused with positive discrimination.

Positive discrimination is commonly used to refer to the more favourable treatment of someone because they are from a particular group. It is generally unlawful.

## Compliance with the law

By way of illustration, it is lawful positive action to encourage black members of staff to undergo training to equip them to apply for promoted posts, because black people are under-represented in those posts. This would be regarded as levelling the playing field. However, it would be unlawful positive discrimination to appoint them to a promoted post simply because they are black and there are few black people in post. In effect, this would be unlawful discrimination against white candidates.

The scope of permitted positive action is likely to be widened when the proposed Equalities Bill is introduced (anticipated to be published in late April 2009 and implemented in 2010).

### The public sector equality duties

Partly in response to the narrow compliance-driven focus of individual rights, the public sector duties were introduced from 2000 as a way of encouraging a more proactive approach to equality in England, Wales and Scotland. There are three separate equality duties: the Race Equality Duty, the Disability Equality Duty and the Gender Equality Duty. As a matter of law they apply to all public sector organisations, and apply expressly to universities through their governing bodies.

The general duties require institutions to:

- = eliminate unlawful discrimination on grounds of race, disability and gender
- = promote equality of opportunity and good relations between different races, and between men and women
- = promote positive attitudes towards disabled staff and students.

Each of the three general duties is supported by three sets of specific duties. The extent of the specific duties varies between England, Wales and Scotland. Generally, all public authorities are required to prepare and report on equality schemes annually, and to assess policies and practices for their impact in relation to race, disability and gender. In Wales, the specific duties to promote gender equality have not yet been finalised. A full explanation of the impact assessment process is set out in *Conducting equality impact assessments in higher education* (ECU and HEFCE, 2007).

The legislation places the responsibility for ensuring compliance with these duties on the governing bodies. Failure to comply with the duties may be investigated

by the Equality and Human Rights Commission (EHRC), and/or challenged by individuals affected in the High Court (or Court of Session in Scotland). Compensation is unlimited.

The public sector duties are enforced primarily by the EHRC. To date, the EHRC has not focused particularly on enforcement in the higher education sector, although education generally remains a priority. Undoubtedly, effective and visible governor accountability for equality and diversity is one way of ensuring the EHRC does not consider it necessary to take enforcement proceedings against an institution.

Governors may therefore wish to ensure they have sight of the equality schemes and the institution's annual reports, and have the opportunity to debate any issues arising from them.

The Northern Ireland Act 1998 requires public authorities there to have due regard to the need to promote equality of opportunity between persons of different religious beliefs and political opinions, race, gender, sexual orientation, age, disability, and those with/without dependents. This good relations duty is therefore wider than the duties that currently apply in England, Wales and Scotland.

The Welsh Language Act 1993 requires that the Welsh language has a status equal to English within Welsh institutions, and Welsh Language Statements need to be published and verified by the Welsh Language Board.

A recent High Court case, where failure to comply with the public sector duties was successfully challenged, was *Kaur and Shah v. London Borough of Ealing* (CO/3880/2008).

Ealing Council provided financial support to organisations dealing with domestic violence, but had decided that in the interests of community cohesion it should fund only organisations that provided services to the whole borough, not just to specific racial groups.

The Council's decision was challenged on the grounds that it had failed to carry out a race impact assessment to assess the impact of the proposals on women from African-Caribbean and Asian communities before they were implemented.

The challenge was upheld by the High Court, which held that the impact assessment had to be carried out before the policy was adopted: *'What is important is that a racial equality impact assessment should be an integral part of the formation of a proposed policy, not justification for its adoption.'*

## Compliance with the law

The case of *Kaur and Shah v. London Borough of Ealing* reinforces the need for compliance with the public sector duties. The courts are increasingly prepared to intervene if the duties are ignored. This includes compliance with the requirements to carry out impact assessments prior to policy or practice being introduced, and also compliance with the terms of the relevant codes of practice.

The fact that HEIs obtain significant funding from the private sector does not affect the fact that, as a matter of law, they are subject to the requirements of the race, disability and gender duties.

### **Responsibilities of appointed, nominated and elected governors**

Technically, there is no difference as a matter of equality law between the responsibilities of independent lay governors and those nominated or elected by staff, students or other stakeholders, or nominated by virtue of an institution's constitution. The same duties in terms of ensuring compliance with the legislation rests with all categories of governor. However, in practice staff and student governors may not be involved in all the decision-making processes (for instance in some human resources issues in post-1992 institutions). In these circumstances, it would be hard to maintain that responsibility should be shared equally.

### **Liability of individual governors**

Claims can be made by individuals against the institution, or against the governing body on behalf of the institution, although in practice claims against the governing body are dealt with as if directed solely at the institution. Individual governors acting in their capacity as members of the governing body will not generally be individually liable for claims. The only exception is if they are acting outside the scope of their remit as governor, or acting in some other capacity, for instance as an employee of the institution.

#### *The regulatory framework*

It is not just HEIs that are subject to equality law. The funding councils, for example, are subject to equality legislation, including the public sector duties, in the way they allocate their funds and carry out their duties. The sector agencies, such as the Quality Assurance Agency, may also be subject to the public sector duties to the extent that they carry out a public function. These bodies may need to ensure they impose certain requirements – for instance requiring impact assessment or action

in relation to equal opportunities – as a term of a financial grant, which means they will require compliance with equality provisions from institutions wishing to secure that financial support.

One of the UK higher education funding councils recently investigated compliance with the race equality duty by HEIs. They found inconsistent evidence of compliance, with particular weakness in relation to the duty to promote good race relations between different groups. They have required those institutions that were not compliant to address the issues raised. They are currently about to review compliance with the disability equality duty.

### *Future changes to the law*

Equality law is likely to change with the arrival of the Equalities Bill (anticipated to be published in late April 2009 and implemented in 2010). This is likely to consolidate the law, but will also make various changes, including extending the public sector duties to all the equality areas.

This will mean that the responsibilities of governing bodies to eliminate discrimination and promote equality and good relations between different equality groups will extend to religion, sexual orientation and age.

The government is also currently consulting on the extension of the duties to cover socio-economic status, although at the time of publication of this handbook the scope of such an extension is not clear. Whether or not the Equalities Bill does extend the remit of the duties to socio-economic status, the EHRC has embraced issues of poverty and class within its work, which may have implications for the work of HEIs in this area.

## 4. Assurance and accountability

*‘Effective engagement by a governing body in equality and diversity issues takes the form of informed “target setting” and the associated monitoring exercises. To do this, the governing body needs a thorough awareness of good practice and the legal requirements in equality and diversity matters, and a thorough understanding of the institution’s business and business environment, in order to assess the targets that are both desirable and potentially achievable.’*

Registrar

It is for the executive to implement equality policy, to establish and manage the relevant staff and structures, and to ensure day-to-day compliance with the law. It is for the governing bodies to shape and agree the policy, to satisfy themselves that the policy is being implemented effectively, that the appropriate structures are in place, and that the institution is compliant with the law. This responsibility is all the more significant in the higher education sector, where there are perhaps fewer processes and systematised practices relating to equality and diversity in comparison with other public sectors.

The process of assurance and accountability requires governors to understand what the institutional policies are, and the context in which they are being implemented.

### Obtaining the evidence

As a minimum, governors should receive an annual equality report detailing work done by the institution during the year. It may be difficult to ascertain from a report alone whether what has taken place implements policy and complies with the legislation – and, in particular, whether what is being done is strategic and effective. It may also be difficult for governors to assess whether the issues presented in a report are satisfactory, or need to be probed and challenged.

In response to a question in Cranfield’s research about what registrars thought would help their governing body in its role of promoting equality within the institution, 46 per cent of responses indicated that the governors wanted ‘more information’.

In practice, governors will be critically reliant on the provision of data by the registrar, clerk or secretary, or the equality and diversity specialist, but they

will need to be satisfied that they have enough information to inform their decisions. This may involve regular discussions with the registrar, clerk or secretary concerning what information is required.

The following sources of data are available and are often used to inform analysis in the annual report, although this will vary from institution to institution:

- = The Higher Education Statistics Agency (HESA) collects and holds data covering all staff employed, students (in undergraduate and postgraduate study) and graduate destinations for the following equality categories: gender, age, ethnicity, nationality and disability. It does not collect data on religion or sexual orientation. A wealth of information is covered: for staff the data cover salary; grade (professor, senior lecturer, researcher, support staff occupation);<sup>1</sup> mode of employment (part-time or full-time); terms of contract (permanent or fixed-term, etc.); academic employment function; cost centre (broadly equating to academic subject area), and many others. For students, the data cover prior attainment, access, academic subject of study, retention, degree attainment, graduate outcomes, etc.
- = HESA makes these data available to all institutions. In addition, it has established a data-management tool, Heidi, to which 80 per cent of all HEIs subscribe, that allows the data to be captured in accessible reports, and supports benchmarking and comparisons with other institutions.
- = ECU distributes a CD-ROM annually to each institution, setting out the staff data set disaggregated according to gender, race, disability and age.
- = The National Student Survey collects data on student assessment of teaching and learning, and can disaggregate responses (among other categories) according to race, gender, disability and age.
- = Many institutions carry out staff and student surveys into the lived experience at work, many of which have the capacity to disaggregate responses according to race, gender, age and disability.

An ECU report, *Mapping equality data in the higher education sector* (Connor, 2008), contains a full analysis of what equality data exist in the higher education sector.

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1. The new grading structures will make it difficult to record staff grades, and these data categories are likely to be discontinued and replaced with points on a pay spine.

Governing bodies of HEIs have used different ways of ensuring they secure a good understanding of, and engagement with, issues of equality within their institution. Examples drawn from the sector include:

- = convening special meetings of governors specifically to debate the case for equality within their institution
- = inviting the equalities officer or an external speaker to address their governing body
- = commissioning a special report for discussion at a board meeting
- = tasking the registrar or clerk to ensure issues of equality and diversity appear as appropriate on the board's agenda at various times
- = delegating issues to a board committee to allow for more detailed thought and analysis
- = undertaking visits to meet with different groups of students – for example to talk to disabled students about the provision made for them, or to religious groups about support for religious observance.

### Assuring outcomes

Governing bodies need to be satisfied that procedures and structures within institutions are effective, and that they are delivering real and tangible outcomes, not just ticking boxes.

Cranfield's research identified this as an issue, quoting one governor who describes the role as partly involving the strategic overview, but also the following: 'the other part of governance [is] to check to see that actually the core values are being embedded down throughout the organisation in the decisions that have been made ... As my role of Chair of HR, it is to focus more on that second aspect, to see actually our systems beginning to be put in place ...'

There is no single way to ensure equality and diversity are effectively implemented, and what works best for one institution may be quite different from what works in another. By scrutinising equality reports and ensuring they record real, tangible outputs that are evidence-based and reflect agreed priorities, governors can assure themselves that equality policy is being implemented effectively.

Although it is impossible to generalise about what types of structure tend to work most effectively, the only model that is generally regarded as ineffective is when the entire responsibility for implementing equality is passed to an equality officer, whose influence may be limited.

In *The role of the equality specialist in higher education institutions* (University of Wolverhampton *et al.*, 2006), the following were identified by equality officers as likely to enable equality and diversity to be effectively embedded within their institution:

- = visible leadership from the head of institution and senior management
- = provision of adequate financial and staffing resources
- = inclusion of equality and diversity considerations in institutional, strategic and business plans
- = mandatory training for all staff
- = sound and robust communications strategy
- = mainstream equality and diversity through the institution
- = monitoring and measurement
- = cohesive, integrated policies and procedures.

In the same piece of research, approximately 20 per cent of equality officers reported unequivocally that these things were not happening within their institution.

### **Governance and equality impact assessment**

Impact assessment refers to the process of ensuring current and future policies and practices are assessed proactively to prevent any negative impact on equality groups, and to promote good relations. Impact assessment is a legal requirement and forms part of the requirements of the public sector duties in relation to race, disability and gender.

In practice, the work of impact assessment is an operational matter for the executive. Nonetheless, governors need to satisfy themselves that the process is taking place in a meaningful and effective way. They also need to ensure their own formulation of policy is impact-assessed where relevant. For instance, in

## Assurance and accountability

developing a strategy in relation to tuition fees, the impact (if any) on students of different race or gender and on disabled students should be anticipated, and any disproportionate impact avoided or mitigated where possible. For more details see *Conducting equality impact assessments in higher education* (ECU and HEFCE, 2007).

One university decided to tie its impact assessment process into the university's overall strategic aims. A number of impact assessments were conducted, and the outcomes of those assessments are now being analysed to inform the institution's proposed strategic priorities. Those priorities will then be approved by the governing body as part of its determination of future policy.

### Developing equality key performance indicators

Because of the rich sources of available equality data, many governing bodies have identified equality key performance indicators (KPIs) to focus attention on the areas most closely aligned to their institutional mission.<sup>2</sup> Where institutions have adopted a limited number of high-level KPIs, equality and diversity tend to figure in supporting indicators.

Equality indicators can be both quantitative and qualitative, with an increasing emphasis being placed on the qualitative end of the spectrum (for instance through equality analysis of staff and student surveys).

The range of data available is large. To assist with benchmarking and the identification of equality measures, ECU produces an annual summary of headline equality data at sector level in the key equality areas, drawing primarily on the HESA data sets (see ECU, 2008).

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2. Cranfield research indicates that 23 per cent of the HEIs surveyed whose board uses KPIs have one equality KPI; 19 per cent had two; and others had four or more. Others incorporated equality considerations as supporting or operational indicators.

The Committee of University Chairs' *Report on the monitoring of institutional performance and the use of key performance indicators* (CUC, 2006) identifies the following potential equality issues through self-assessment questions in relation to model KPIs.

- = The student experience and teaching and learning – does the teaching and learning strategy address equality and diversity challenges in a manner appropriate to the institution?
- = Staff and human resource development – are our policies for promoting equality and diversity in our staff effective?
- = Governance, leadership and management – are legislative compliance and related issues, including equality and diversity, reported to governors in an appropriate manner?

### *Equality indicators currently being used by HEIs*

The following examples are selected from equality KPIs currently in use by HEIs in the UK.

#### **Students:**

- = Proportion of full-time undergraduate entrants, by reference to age, gender, ethnicity and socio-economic status.
- = Percentage of first-degree students in receipt of disabled students' allowance, compared with benchmark.
- = Student satisfaction survey analysed by ethnicity, disability and gender.
- = Percentage difference in completion rates between UK undergraduate students from ethnic minority backgrounds and other UK undergraduate students whose ethnicity is known.
- = Difference in degree attainment rates for UK undergraduate BME students and other UK undergraduate students whose ethnicity is known.
- = Increasing proportion of international students.
- = Annual increases in number of students from traditionally under-represented groups benefiting from programmes supporting progression to research-intensive universities.

## Assurance and accountability

### Staff:

- = Age distribution of academic and support staff.
- = Difference in percentage of ethnic minority internal and all staff, and economically active ethnic minority population in the area.
- = Pay equality.
- = Benchmarked data on equality and diversity of the staff body.
- = Results of staff satisfaction survey.
- = Number of appropriately qualified applicants from under-represented groups.
- = Percentage of new professor and senior administrator appointments who are BME.

### Equality measures

Equality measures, short of KPIs, can be used as a checklist by governing bodies to assure themselves that the appropriate equality issues are being addressed. Examples of equality measures are set out in Appendix B.

### Risk

Risk is defined in the Committee of University Chairs' *Guide for members of higher education governing bodies in the UK* (CUC, 2009) as 'the threat or possibility that an action or event will adversely or beneficially affect an organisation's ability to achieve its objectives'.

Although not of the same order as financial insolvency, unlawful discrimination and inequalities can have a significant impact on staff and campus relations, undermine the recruitment of the best staff and students, cost money in terms of litigation, lead to lurid and negative media reporting, and – perhaps most significantly – have subtle and pervasive impact on an institution's reputation.

All these are areas of risk of which governors need to be aware.

How risk is dealt with is a matter for each institution. One option is to include an assessment of risk in the annual equality report to Council. Alternatively, this issue can inform the institution's overall risk register.

One institution's risk register includes the following description of risk.

*'Description:*

- = Failure to embed equality and diversity at the heart of all the university's activities could lead to a loss of credibility and a reduced ability to attract and retain staff and students.*
- = Failure to meet legal requirements could lead to adverse media exposure.*

*Severity:*

- = Cultural change. Failure to embed equality and diversity at the heart of the University's activities could lead to a loss of credibility and a reduced ability to attract and retain staff and students. For example, a high number of serious incidents of discrimination not being dealt with satisfactorily.*
- = Failure to meet all the requirements from current anti-discrimination legislation placed upon us could attract adverse publicity and damage the university's reputation. There is no ceiling on the compensation paid out in cases of discrimination.*
- = If the university does not have robust systems and procedures in place it is very probable that incidents will occur which will not be dealt with appropriately and which may result in employment tribunals/substantial compensation claims/loss of reputation. We would be very much out of step with the current government agenda for the HE sector and the internationalisation of the university.'*

## 5. Specific responsibilities of governors

### Human resources

Individual governors may be involved in human resources committees, and boards will often have oversight of the development and implementation of human resources strategies.

It is in the context of human resources that some of the most stark imbalances and inequalities are found. At national level currently only 18.7 per cent of heads of department and professors are women (HESA statistics 2008/09). In comparison – although it is acknowledged that this cannot be a like-for-like comparison – 32.1 per cent of the senior civil service is female (Cabinet Office statistics, October 2007). This imbalance has a significant impact on the pool for recruitment for senior management teams and Vice-Chancellors.

The lack of women in senior positions informs salaries. According to *Times Higher Education* (19 March 2009), HESA statistics reveal that the average academic salary was £45,809 per annum for men, compared with £39,547 for women.

Human resources strategies can and should engage with these issues. The public sector duties (section 3) make it the responsibility of governors to ensure their institutions are addressing imbalances in terms of gender (including pay), race and disability.

### Appointment of Vice-Chancellors and senior managers

Governors may also be involved in the selection of Vice-Chancellors and senior managers, and in setting their terms and conditions of employment, normally through a remuneration or nominations committee.

The process of appointing a Vice-Chancellor is one of the most significant that governors are likely to undertake, and significant equality issues may arise, not least because Vice-Chancellors tend to be selected from a narrow pool. Currently 19 per cent of Vice-Chancellors are female.

The processes to be adopted, including the job description and selection criteria, may have significant equality implications.

The report *The characteristics, roles and selection of Vice-Chancellors* (Breakwell and Tytherleigh, 2008) quotes comments about the recruitment process as being too limited: 'It is a recruitment process which I am not absolutely sure draws in to that process the full range of people who might be qualified. Because, I think if one looks objectively, this is not a very deep pool at the moment ...'

The report also emphasises the need for a long-term and sustainable approach to widening the recruitment pools, including the identification of candidates who might make valuable Vice-Chancellors in the future, 'feeding them into good preparatory processes, whether they are roles within the institution or appropriate training.'

In this context, equality and diversity training for members of interview panels – including governors – and clear internal processes will be invaluable in facilitating open and transparent decision-making.

The role of governing bodies in appointing Vice-Chancellors and senior managers is currently the subject of research commissioned by Universities UK, to be published in Autumn 2009.

### **Grievances and appeals**

Governors are often called upon to adjudicate in grievances and appeals for both staff and students. Issues of equality and diversity may often be relevant, even where the grievance or appeal is not ostensibly categorised as an equality matter.

Of the 600 eligible complaints received by the Office of the Independent Adjudicator in 2007, 35 per cent were from non-British nationals, and 5.7 per cent related to discrimination and human rights issues.

For example, if a complaint is made by a student with a known mental health impairment, which amounts to a disability, consideration will need to be given to how the complaint is handled to take account of the disability. The extent to which the institution carried out reasonable adjustments to support the student may also need to be taken into account in the appeal (if relevant), even though the appeal itself may relate to something quite different.

## Specific responsibilities of governors

In one university, a grievance lodged by a staff member went to the governing body. The grievance did not relate primarily to issues of race, although they were clearly relevant. The governors hearing the grievance did not expressly engage with the race element. An employment tribunal was subsequently pursued, and the governing body was criticised for not recognising and addressing the racial element of the grievance. The claim against the institution was upheld.

## B. Diversity of governing bodies

Limited data are collected in relation to the diversity of members of governing bodies in higher education. This contrasts with some other sectors, for instance the NHS and police authorities, where the diversity of governors is monitored.

Of the 82 HEIs that responded to the survey forming part of Cranfield's research, 73 per cent reported that they monitor their board for gender, 46 per cent for race, 40 per cent for age, 33 per cent for disability and 8 per cent for religion. Because of the relatively low numbers, reliable figures on the diversity of governing bodies can be formulated only in relation to gender. These show that, overall, just over 30 per cent of governors of the institutions that responded to the survey are female, and 17 per cent of Chairs are female. The proportion of female governors is generally higher than in the private sector but not as high as in the NHS, where approximately 48 per cent of non-executive directors are female (Cairncross and Pearl, 2003). That same research indicated that 12 per cent of NHS non-executive directors were BME, and 53 per cent were aged under 55.

### **Securing a diverse governing body**

During the Cranfield research, many registrars commented on the practical difficulties of recruiting a diverse governing body, particularly in relation to race, gender and age, and particularly in a climate that is tending towards reducing the size of governing bodies. Given the demands on governors in terms of increased accountability and time commitment, combined with a need for specific skills and experience, candidates for governor roles are often retired, leading to recruitment from a limited pool in terms of age.

Nonetheless, the research confirmed a general acknowledgement of the need for governing bodies to reflect the community they serve in the broadest sense. The value of this diversity is often expressed in terms of a governing body being more robust, and more informed and in touch with social and commercial concerns, if it is able to draw on a diverse range of views. It is more likely to be able to do this if the governors are drawn from a diverse demographic group of people of different backgrounds and ages. As representatives of the group determining institutional mission and policy, governors face important issues of perception and reputation in terms of being seen to be broadly representative of the staff and student population, and possibly also the wider community.

## Diversity of governing bodies

This is not a question of diversity being set in opposition to the skills required of a governing body. Diversity is part of the skills and experience required. It is needed to provide the balance of views which add value.

Personal contacts or word of mouth is currently the most popular form of recruitment of governors in higher education (Cranfield's research). Undoubtedly this is a relatively quick and cheap method. But it brings a real risk of reproducing the existing demographic. It was explicitly criticised as a method in the Nolan Committee's First Report on Standards in Public Life (1995) ([www.fegovernance.org/nolan\\_committee.html](http://www.fegovernance.org/nolan_committee.html)), which expressed concerns that governing bodies self-perpetuate themselves by recruiting new members through contacts and informal networks. Instead, Nolan recommended the use of advertisements to reach a wider section of the population, search consultancies, and committees to oversee nominations.

### Methods used to recruit diverse board members

Set out below are examples of methods that have been used to encourage the recruitment of diverse board members from both inside and outside the higher education sector.

These methods may take time, effort and resources. But, as with staff appointments, the advantages of using more transparent recruitment methods are not only the opportunity to attract a greater diversity of candidates, but also the appointment of high-quality board members.

#### *Defining the job description inclusively*

Job descriptions and person specifications should not reflect the skills and experience of existing governors. Instead, consideration should be given to the actual skills required, in an imaginative way that will open the door to a wider pool of potential candidates. For instance, many women and BME people work in the commercial or voluntary sectors, and people who have many skills and much to bring to the table may not have a traditional academic background.

One university undertook a recruitment exercise and realised that it had failed to attract a diversity of governors in terms of age, gender and race. It scrutinised the job description and realised that it had unwittingly designed it to replicate existing board members. It redrafted the job description and spent time encouraging a broader range of governors to apply. The exercise was successful.

### *Advertising vacancies locally and nationally*

Local and national advertisement account for 23 per cent of recent governor appointments of those institutions surveyed by Cranfield. Some institutions did not consider the expense involved was justified by the increased quality of responses, while others were concerned about the potentially negative message involved in rejecting applicants. Other institutions were far more positive, some seeing it as an opportunity not only to recruit, but also to send out a positive and welcoming message of inclusivity to the wider community.

In 2006, a university nominations committee decided it needed to increase the diversity of its board. Contact was made with local BME and women's organisations and groups, leading to the appointment of one of its alumni, who was black. That person's appointment has brought a rich new perspective to the board. The process of contacting local groups also had the benefit of attracting attention and raising awareness about the university.

### *Using alumni*

With increasing proportions of women and BME undergraduates participating in higher education, alumni can provide a potentially diverse pool for recruitment. Alumni may also offer good opportunities for recruiting younger board members.

### *The Public Appointments Register*

Some institutions use the Public Appointments Register (PAU) as a source of potential board members. The PAU maintains a register of people willing to be considered for public appointment to any public body. Their experience, interests, time commitments and other relevant information are recorded, and searches are then made on request.

### *Using search consultancies*

Current use of search consultancies to recruit governors to HEIs is limited (only 1.5 per cent of those surveyed by Cranfield), but is increasing. Consultancies can bring transparency and the potential for a broader recruitment pool, although many argue that head-hunters do little to increase diversity through their recruitment methods.

## Diversity of governing bodies

### *Ensuring elected or nominated governors are drawn from diverse pools*

Many institutions may seek diversity in their own appointments, but are faced with a limited demographic in respect of elected governors, or governors nominated by external bodies.

The fact that a governor is elected or nominated externally does not mean that equality principles and equality legislation no longer apply. It may be legitimate, indeed appropriate, for there to be a requirement that the election or nomination be carried out in a way that acknowledges the importance of equality and diversity. This could be done, for example, by ensuring those responsible for the election or nomination process are aware of the desirability of ensuring a diverse pool of potential candidates in terms of gender, race and disability, and the merits of encouraging candidates from under-represented groups to put themselves forward.

At one church foundation, a proportion of the members of the governing body are appointed by the Church of England, led by the Bishop. The Vice-Chancellor sits on the appointment panel and assists in the selection process, but does not contribute to the decision. In the latest recruitment exercise, the Vice-Chancellor worked with the Bishop to ensure a diverse list of candidates.

### *Remunerating board members*

Remuneration of board members is a contentious issue, with many views being expressed as to whether payment may lead to greater diversity. No HEI in the UK yet remunerates its board, although some speak in terms of it being only a matter of time before they do so. Certainly, no clear evidence has yet been produced to suggest that remunerating governors would lead to greater diversity. There are concerns that remuneration would lead to a significant financial commitment by institutions if realistic levels were to be adopted, and questions are raised about the relationship between remuneration and the motivation of governors.

The NHS and the housing association sector both remunerate board members, in part as an acknowledgment of the commitment required from members, but also in order to attract greater diversity. Research into remunerating board members in further education (Collinson *et al.*, 2007) concluded that there was a particular need to consider remuneration of governors so as to be able to attract potential members with work commitments and caring responsibilities who otherwise

would not be able to put themselves forward. The research also stated that this would assist in attracting a greater diversity of ages, including younger members, onto governing bodies, which would ensure greater alignment in terms of age profile with students.

The University of Melbourne decided that in order to achieve greater representation of indigenous people on Council, it needed to provide remuneration to governors to take account of the time that they would need to spend in travelling from their homes to Council meetings.

The strategy of rewarding the employers of governors may be useful if there is a need to secure the services of professionals (such as doctors), which can assist in the process of gaining greater diversity, not least in terms of age. This may be particularly useful for institutions requiring specialist input at board level, such as a medical school requiring medical expertise on its board.

The three Royal Colleges of Physicians operate a system of reimbursing employers of the governors and board members, as a way of ensuring continuation of salary without loss to the employing organisation. This has led to the appointment of four female doctors to the boards of the Colleges, who otherwise would not have been able to take time off.

More work will need to be done, beyond the scope of this handbook, to establish whether or not remunerating governors would contribute to greater diversity of members.

### *Building a diverse pool for the future*

As well as seeking to recruit a diverse board for the present, many organisations are laying the foundations for a broader recruitment base for the future. One way of doing this is by providing training to potential governors who lack experience, or by appointing them to sub-committees so that they gain experience.

Many women or other under-represented groups may benefit from interaction with board members, for example through participation in board events such as pre-board dinners or conferences, or through individual mentoring and coaching arrangements as a way of supporting them in future applications.

## Diversity of governing bodies

One university has decided to address the need to create a pool of future governors by introducing potential candidates to the work of the university, so they can acquire the experience and knowledge they would need to apply for governor roles in the future. The university sees this as a particularly useful way of attracting younger governors in the future – without this exposure and training, it would take years for suitable candidates to acquire the necessary experience.

Vodafone has an established policy of encouraging managers to sit on the boards of other companies as non-executive directors. The first-hand experience of working as part of a board and exposure to different challenges is an important part of their personal development, benefiting both the organisation and the individual (DTI, 2004).

## C. Taking the issues forward

This handbook forms part of a larger project to support governors in discharging their responsibilities in relation to equality. ECU and the Leadership Foundation for Higher Education will be undertaking further work in this area in the future. In particular they will be:

- = publishing a research report commissioned from Cranfield University into governance and equality (June 2009)
- = contributing to the Leadership Foundation's and Committee of University Chairs' governor development activities ([www.lfhe.ac.uk/governance](http://www.lfhe.ac.uk/governance)).

As part of its core programme, ECU is also currently undertaking work that may assist governors by:

- = distributing updates to governors, particularly following the introduction of the Equalities Bill, which is likely to extend governors' legal responsibilities
- = working with HEIs and HESA on a project looking at equality indicators and the development of an equality data management tool for use by institutions
- = promoting future debate on issues including freedom of expression and equality, and religion on campus, which may inform the ongoing work of governors.

More details of these projects can be found on ECU's website at [www.ecu.ac.uk/our-projects](http://www.ecu.ac.uk/our-projects).

# Appendix A: Diversity facts and figures in the UK, and in higher education

## UK statistics

The latest census (2001) revealed the following statistics.

### *Gender*

- = 49 per cent of the population are male and 51 per cent are female.
- = There are estimated to be between 5000 and 10,000 people in the UK who will change the gender they were born with (trans).

### *Race*

- = 6.7 million people in Great Britain (11.8 per cent of the total population) are from ethnic minorities.
- = 87.5 per cent of the population of England and Wales gave their ethnic group as white British. The highest proportions describing themselves as white British are in the North East, Wales and the South West.
- = 87 per cent of the population of England and 96 per cent of the population of Wales gave their ethnic origin as white British.
- = The ethnic minority population in London is 42 per cent, and BME groups make up 32 per cent of the population (London Equalities Commission, 2007).
- = Generally, London has the highest proportion of people from minority ethnic groups apart from people of Pakistani origin, of whom there is a higher proportion in Yorkshire and the Humber (2.9 per cent) and the West Midlands (2.9 per cent).
- = In Northern Ireland, 99.15 per cent of the population gave their ethnic group as white, 0.1 per cent Irish travellers, and 0.75 per cent BME.
- = In Scotland, the ethnic minority population was 2.01 per cent. Pakistani people represented the largest group, followed by the Chinese and Indian communities and those from mixed ethnic backgrounds.

### *Religion*

Figures from the 2001 census are as follows.

<b>Religion in the UK</b>	<b>Number of respondents</b>	<b>Percentage of respondents</b>
Christian	35,251,244	71.7
No religion	7,171,332	14.6
Not stated	3,776,515	7.7
Muslim	1,524,887	3.1
Hindu	546,982	1.1
Sikh	327,343	0.7
Jewish	257,671	0.5
Buddhist	139,046	0.3
Any other religion	143,811	0.3
Total	49,138,831	100

In Northern Ireland, 53.1 per cent of the population described themselves as Protestant, and 43.8 per cent as Catholic.

### *Disability*

Government figures indicate that 11.6 per cent of the working age population disclose a work-limiting disability, and/or are considered disabled under the terms of the Disability Discrimination Act. Of the employed population this figure reduces to a little over 5 per cent (Labour Force Survey, Quarter 1, 2007).

### *Sexual orientation*

The Treasury Actuary's Department currently estimates that 6 per cent of the UK population (3.6 million people) are gay or lesbian.

### *Age*

An increasing number of students are mature (HESA data for 2006/07 confirm that 33.6 per cent of all undergraduate students are aged over 25), and the proportion of older students is set to increase.

## Appendix A: Diversity facts and figures

### Higher education

Unless indicated otherwise, the following statistics are taken from *Equality in higher education: statistical report 2008* (ECU, 2008).

#### Students

- = 41.6 per cent of undergraduates are male, 58.4 per cent are female.
- = In science, engineering and technology subjects, 62 per cent of students are male and 38 per cent female.
- = In education, 20.5 per cent of students are male and 79.5 per cent female; in subjects allied to medicine, 16.4 per cent of students are male and 83.6 per cent are female.
- = 17 per cent of UK-domiciled undergraduates are BME; 14.8 per cent of postgraduates are BME.
- = 8.2 per cent of undergraduates declare a disability, of whom 47 per cent have dyslexia. Just over 7000 students declare mental health difficulties. 4.6 per cent of postgraduates declare a disability.
- = 66.4 per cent of undergraduates are under 25.
- = On degree attainment, women are awarded significantly more good degrees (first and 2:1) than men; white students are awarded more good degrees than BME students.
- = Lesbian, gay and bisexual students report significant levels of negative treatment: from fellow students (49.5 per cent), tutors/lecturers (10.4 per cent), and those who work in other areas of their institution (10.6 per cent) (ECU, 2009).

#### Staff

- = 42.3 per cent of academic staff and 62.7 per cent of professional and support staff are women. Women represent 93.2 per cent of secretaries/typists, receptionists and telephonists.
- = Men represent 82.9 per cent of chefs, gardeners, electrical and construction trades, mechanical fitters and printers.
- = Women are under-represented in senior positions: currently 17.5 per cent of professors and heads of department in the UK are women; the figure is 7.9 per cent in science, engineering and technology subjects.
- = 4.8 per cent of professors and heads of department are BME.

## Appendix A: Diversity facts and figures

- = 19 per cent of Vice-Chancellors are female (ECU research, April 2009).
- = 41.7 per cent of female staff work part-time, compared with 26.9 per cent of men.
- = Of academics earning over £50,000, 21.6 per cent are female and 78.4 per cent male.
- = BME staff (UK nationality) account for 6.1 per cent of the total HE staff population. BME academic staff (UK nationality) represent 6.7 per cent.
- = 2.2 per cent of academic staff and 28.3 per cent of professional and support staff declare a disability.
- = 29.7 per cent of academic staff and 28.3 per cent of professional and support staff are aged over 50.
- = Lesbian, gay and bisexual staff reported significant levels of negative treatment on the grounds of their sexual orientation from colleagues (33.8 per cent), students (18.9 per cent), and those who work in other areas of their institution (25.3 per cent) (ECU, 2009).

## Appendix B: Checklist of equality questions for use by governing bodies<sup>3</sup>

Set out below are examples of equality questions that members of governing bodies may wish to ask themselves in relation to their institution. Some can be answered by reference to the staff and students statistics collected and reported annually to HESA. Others raise more qualitative issues, where the evidence may be found in the results of staff and student surveys.

### Outcomes

Is your institution able to show that:

- = it has a reputation as an inclusive institution that welcomes students and staff from all backgrounds?
- = students and staff from diverse backgrounds have successfully applied to the institution?
- = grievance and complaints procedures are transparent and handled effectively, and equality issues are properly engaged with, where relevant?
- = the outcomes of grievances and complaints do not suggest different outcomes for different equality groups?
- = staff and students are confident about expressing their views and/or concerns relating to equality and diversity?
- = staff and student surveys do not suggest different satisfaction rates for different equality groups?
- = degree results and graduate employment rates are the same for students from all equality groups, particularly for men and women, and students of different races?
- = senior staff are drawn from a wide and diverse pool?
- = employee exit rates are similar for all groups?
- = flexible working and family friendly policies are available and widely used by all groups of staff and students, including men?
- = there is an appropriate balance of age groups among staff and students?
- = procurement practices have led to more opportunities for a diverse supplier base, where appropriate?

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3. Adapted from HEFCE *et al.* (2006).

### Process

Has your institution:

- = developed a clear and coherent case for equality and diversity that aligns with the institution's mission and is communicated and understood by all staff and students?
- = implemented effective practices and systems in relation to equality and diversity that have led to real and tangible outcomes?
- = published a Race Equality Policy, Disability Equality Scheme and Gender Equality Scheme, and undertaken impact assessments in those three areas?
- = established clear accountability for equality policies and schemes and their implementation, with senior managers committed to their success?
- = ensured that all managers are aware of the contribution that they need to make?
- = taken action, including the provision of training, to ensure there is increased awareness of equality and diversity issues at all levels of the organisation?
- = analysed the range and extent of equalities complaints against it?

### Self-challenge

Does the governing body:

- = feel able to assure itself that equality and diversity are being effectively implemented within the institution?
- = have access to the information it needs for this assurance in terms of practice and outcomes?
- = contribute, through its conduct, to the inclusiveness of the institution?
- = offer members training in equality and diversity, either as part of their induction or subsequently?
- = include a diversity of members?

## Appendix C: Use of language

Actions usually matter more than words, and obsession about correct and incorrect language can have a stultifying effect on debates about equality. This appendix does not set out to prescribe the use of appropriate vocabulary.

However, ECU has been approached by a number of governors who have expressed concerns about involuntarily using language that might offend.

This appendix sets out some broad guidelines about vocabulary currently regarded as acceptable or as offensive. There are no absolute rights and wrongs here. What is acceptable and offensive is often subjective and contested, and changes over time, so this short summary can represent no more than ECU's assessment of what is generally regarded as acceptable and what is not, in the UK in 2009. We have also included a glossary of commonly used terms.

### Glossary<sup>4</sup>

**Civil partnership:** the legal equivalent of civil marriage for same-sex partners.

**Equality and diversity:** depending on the context, 'equality' is usually used to refer to equal opportunities, or equal treatment, or equal outcomes. Diversity refers to the range of visible and non-visible differences that exist between people, implicitly acknowledging that these differences are enriching and welcome. Both expressions are commonly used together to reflect the range of meaning associated with both words.

**Equality and Human Rights Commission (EHRC):** established in October 2007 following the merger of the Commission for Racial Equality (CRE, which addressed issues of race), the Equal Opportunities Commission (EOC, which addressed issues of gender and gender reassignment), and the Disability Rights Commission (DRC, which addressed issues of disability). The EHRC is chaired by Trevor Phillips, and operates in England, Wales and Scotland. It engages with issues of race, gender and disability, sexual orientation, religion and age. In Northern Ireland, the Equality Commission has played a similar role since 1998. Its remit also covers political opinion.

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4. Some of these definitions are from *A-Z equality & diversity* (AUA *et al.*, 2008).

**Impact assessment:** a statutory requirement of the public sector equality duties in relation to race, disability and gender. The process by which all policies, procedures, practices, plans and strategies of an organisation are systematically reviewed and evaluated to ensure they are not discriminatory and that they are making a positive contribution to equality. This is done by assessing how their impact differs (if at all) for different equality groups, and normally requires the collection of statistical or other data. In Northern Ireland, institutions are required to conduct impact assessments in relation to religious belief, political opinion, sex, racial group, age, marital status, sexual orientation, gender, disability and caring responsibilities.

**Institutional racism:** this term came to prominence (or notoriety) following the inquiry into the death of black teenager Stephen Lawrence. The inquiry report (the Macpherson report) defined 'institutional racism' as 'The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin which can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people.' The Macpherson report led to the introduction of the race public sector duty, which required institutions to take proactive steps to promote equality of opportunity and good race relations. (The race duty was followed by the disability and gender duties.)

**Intersex:** a person has an intersex condition when their anatomical sex is ambiguous. They may or may not choose to identify as male or female.

**Religion and belief:** the Employment Equality (Religion or Belief) Regulations 2003 define religion or belief as 'any religion, religious belief or philosophical belief'. All religions are intended to be covered, with no distinction between organised religions and those considered to be less so. 'Philosophical belief' covers humanism, agnosticism or atheism, and potentially any belief system that amounts to a worldview or life stance.

**Trans:** the generic term used by those who identify as transgender, transsexual or transvestite.

## Appendix C: Use of language

### Common usage

#### *Race*

Black and minority ethnic (BME) is the commonly used expression to refer to all black, Asian, Chinese, mixed-race and other ethnic groups. BME is also used in the formulation 'black and ethnic minority' (BEM). Some object to the word 'minority', and the generic expression 'black' is sometimes used.

There are several examples of governors inadvertently using language that is viewed by some as offensive. For instance a Chair of governors used the expression 'nigger in the woodpile' during the course of a board meeting, and had to resign as a consequence.

#### *Gender*

Women and men is the most straightforward usage.

#### *Disability*

Disabled people and non-disabled people are the usual expressions.

Wheelchair-user is preferable to wheelchair-bound, which has negative connotations, as has handicapped.

#### *Sexual orientation*

Lesbian, gay and bisexual people (LGB) is standard. 'Sexual preference' implies that sexual orientation is a matter of choice rather than identity and is therefore generally avoided.

LGBT is sometimes used to include trans people as well as gay, even though trans identity is very different from sexual orientation.

#### *Age*

Old/young person is common usage, and the expression mature student is still widely used and regarded as acceptable, particularly in the higher education sector.

It is generally best to use equality characteristics as adjectives not nouns: so for example 'a Jewish student' or 'gay men', rather than 'a Jew' or 'gays'. The same applies to disability, where it is best to say 'a student with schizophrenia' rather than 'a schizophrenic'.

## Appendix D: Resources

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### Updates

ECU publishes a monthly bulletin, *Equalitylink*, which updates the higher education sector about relevant issues relating to equality and diversity. If you would like to subscribe, please go to [www.ecu.ac.uk/news/equalitylink](http://www.ecu.ac.uk/news/equalitylink)

### Websites

Equality Challenge Unit: [www.ecu.ac.uk](http://www.ecu.ac.uk)

Leadership Foundation for Higher Education: [www.lfhe.ac.uk](http://www.lfhe.ac.uk)

Committee of University Chairs: [www.shef.ac.uk/cuc](http://www.shef.ac.uk/cuc)

Equality and Human Rights Commission: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Equality Commission (Northern Ireland): [www.equalityni.org](http://www.equalityni.org)







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**Equality Challenge Unit supports the higher education sector to realise the potential of all staff and students whatever their race, gender, disability, sexual orientation, religion and belief, or age, to the benefit of those individuals, higher education institutions and society.**

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