



**Equality and
Human Rights
Commission**

Fair financial decisions in further and higher education

Guidance for decision-makers

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Introduction

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

Since 2009, Further and Higher Education Institutions (FEIs and HEIs) have been subject to significant financial constraints in order to meet the targets set by the government in relation to efficiency savings. The Equality and Human Rights Commission (the Commission) understands that this has resulted (and continues to result) in many FEIs and HEIs having to take difficult and often unpopular decisions including budget cuts, reorganisations and relocations, redundancies, and service reductions.

The Commission has received an increasing number of reports regarding the way these decisions are being taken. From the evidence we have received, we are concerned about the approach that some institutions are taking to make those decisions..¹

The equality duty

HEIs and FEIs should be aware of their obligations under the equality duty. Public authorities have to have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.

The protected characteristics covered by the equality duty are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.

The equality duty is a legal requirement that must be met, even in times of economic difficulties. The duty is also a valuable tool that can aid decision-making and help ensure that decisions do not create or perpetuate inequality, or damage good relations.

This means that FEIs and HEIs need to be particularly vigilant to ensure that the decisions they take to save money minimise unfairness and do

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

not have a disproportionately negative impact on people with different protected characteristics. For example:

- closing down childcare services is likely to have a disproportionately adverse impact on the number of women able to take on or carry on with their studies
- reducing support services to your students may have a disproportionately adverse impact on disabled students
- reducing language support for international students might have a disproportionately adverse impact on the number of non-native English speakers a college has.

In order to do this, FEIs and HEIs should carry out robust assessments of the impact on equality to understand the actual or potential impacts of their decisions on people with different protected characteristics. It is also beneficial to engage relevant stakeholders as part of their information gathering and decision-making processes. For further information, see our guidance on the equality duty:

www.equalityhumanrights.com

When carrying out assessments, it is essential to consider the potential inter-relationship of policies and, where this is the case, to include those responsible for designing/amending those policies as early as possible. The equality duty means that as an employer and a service provider, you have to have 'due regard' to the aims of the duty. This requirement is in relation to the whole of your workforce and to all of your service users.

In this context it is important, when considering the impact of employment practices (and indeed services, policies etc.), that you ensure you are able to consider the potential impact on equality as a whole, as opposed to simply in relation to one group of people. Unless you build this type of consideration into your assessments, you may take action which could widen existing disparities between people with different protected characteristics based on their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation and therefore be unable to meet the requirements of the equality duty overall.

This is why the Commission would recommend for FEIs and HEIs to carry out assessments of the impact on equality using:

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

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

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

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

Assessments should also:

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

The Commission would like to stress that it is essential for the decision-making bodies of FEIs and HEIs to ensure that assessments of impact on equality are robust and that any potential negative impacts on people with protected characteristics are considered thoroughly while making

decisions affecting its workforce and/or service users. Failure to carry out robust assessments is likely to result in FEIs and HEIs taking important decisions without fully assessing the potential negative impacts of those decisions with regard to all protected characteristics and without considering all of the options open to them. This may mean missing potential opportunities to:

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

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

The Commission would like to stress that FEIs and HEIs failing to carry out robust assessments of impact on equality might also expose themselves to costly and reputation-damaging legal challenges.

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

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