

**Joint Agreement on Guidance for Sexual
Orientation Equality in Employment in
Further Education Colleges**

Between

The Association of Colleges (AoC)

and

Association for College Management (ACM)

Association of Teachers & Lecturers (ATL)

GMB

UNISON

Unite – The Union

University and College Union (UCU)

April 2008

1 Introduction

- 1.1 This Joint Agreement on Guidance has been developed to equip Colleges to meet their legal obligations under the Employment Equality (Sexual Orientation) Regulations 2003. The regulations implement the sexual orientation aspects of the EC Equal Treatment Framework Directive (No. 2000/78), which sets out a framework for eliminating discrimination in employment, or occupational inequalities, based on sexual orientation. This Guidance is intended to support colleges towards achieving that end.

2 Commitment

- 2.1 The College encourages, celebrates and values diversity within the workforce. It believes that the College will benefit from engaging employees at all levels of responsibility, and across all areas of work regardless of their sexual orientation, thus helping to provide positive role models for students of differing sexual orientations. The College is committed to equality of treatment for all employees. This will apply to the operation and implementation of all its employment policies. All employees are entitled to be treated with dignity and respect, and the College will seek to provide a positive working environment free from discrimination, harassment or victimisation in relation to an individual's sexual orientation. The College aims to create an environment in which employees feel safe to be "out at work".
- 2.2 The College, in addition to fulfilling the legal requirement to eliminate discrimination on the grounds of sexual orientation, will seek to create a positive working environment based on professional working relations between all employees. The aim is to create a positive inclusive ethos with a shared commitment to challenging and preventing stereotyping, prejudice and discrimination, to respecting diversity and difference and to encouraging good working relations between all students and staff within the College regardless of sexual orientation.
- 2.3 The College will work towards the elimination of prejudice and discrimination, whether overt or covert, and will seek to ensure that all employees have equal access to the full range of college facilities and benefits.

Where personal information is divulged in confidence this will be respected unless there is a conflict with statutory obligations.

- 2.4 Although this guidance refers to 'employees' throughout, the College recognises its wider responsibilities to provide a dignified and positive working environment free from discrimination on grounds of sexual orientation for all who work on the College premises.

3 Legal duties

- 3.1 The College will fulfil all the legal duties established by the Employment Equality (Sexual Orientation) Regulations 2003 (“the Regulations”) and to set out a framework for eliminating employment or occupational inequalities based on sexual orientation i.e. to ensure there will be no discrimination against employees, either directly or indirectly on the grounds of sexual orientation in access to employment, training, promotion or dismissal, in the provision of work-place benefits, or the provision of references.

The regulations deal with discrimination or harassment on the grounds of sexual orientation, which is defined in Reg. 2(1) as meaning “sexual orientation towards persons of the same sex; persons of the opposite sex; or persons of the same sex and of the opposite sex”. The law therefore protects people from discrimination whatever their sexual orientation, actual or perceived.

- 3.2 The wide range of other legislative provision which might relate to sexual orientation discrimination, includes:

- Employment Rights Act 1996
- Human Rights Act 1988
- Pensions Act 1995
- Protection from Harassment Act 1997
- Maternity and Parental Leave [Amendment] Regulations 2002
- Paternity and Adoption Leave Regulations 2002
- Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002
- Civil Partnership Act 2004
- Work and Families Act 2006
- Equality Act (Sexual Orientation Regulations) 2007

4 Meeting our legal duties

The College may wish to refer to the ACAS Guide “Sexual Orientation in the Workplace”.

4.1 Recruitment and Selection

The College will not discriminate on grounds of sexual orientation in the way it recruits and selects employees, and will include reference to this in recruitment materials.

4.2 Terms and Conditions of Employment

The College should ensure that any benefits [facilities and services] which it offers to heterosexual staff will be equally available to lesbian, gay, and bisexual staff. This includes offering any benefits available to spouses to civil partners, and any benefits available to unmarried opposite-sex partners to unregistered same-sex partners. This includes offering any provisions for special leave relat-

ing to partners, including paternity and adoption leave and pay arrangements, ante-natal leave etc¹.

4.3 Training and Promotion

The College will ensure that all employees regardless of their sexual orientation shall have equal access to training, promotion and other aspects of career development, and will include reference to this in the appropriate materials.

4.4 Bullying and Harassment

Bullying and harassment on the grounds of sexual orientation is viewed by the College as a very serious offence, which after full investigation and if upheld, may be treated as gross misconduct which could result in summary dismissal. If an employee is harassed by a student, this will be dealt with under the student disciplinary procedure which may lead to expulsion.

4.5 Dismissal

The College will ensure that there is no discrimination on the grounds of sexual orientation in relation to dismissal of employees. In particular, should a redundancy situation occur, it should ensure that sexual orientation is not a factor in the selection of those to be made redundant.

4.6 References

The College should ensure that any references provided to employees who are leaving are not influenced in any way by the sexual orientation of the departing employee.

5 Ensuring Equality

5.1 The College values all its employees equally, and will endeavour to create an environment in which all employees, whatever their sexual orientation, feel equally valued and welcomed, and where discriminatory behaviour is not tolerated.

5.2 The College is committed to creating an environment in which everyone is treated equally and with respect. The College aims to eliminate sexual orientation discrimination in its structures and employment practices as well as to encourage change in individual behaviour, and ensure equality of opportunity and treatment for all staff, regardless of their sexual orientation. The holding of religious beliefs which regard homosexuality as a sin will not be a justification for non-observance of this agreement.

5.3 The College environment, in terms of its pictures, images, publicity materials, literature, use of language etc., should aim to present images that promote diversity, including diverse sexual orientations.

¹For the purposes of deciding if an employee is eligible for paternity leave, a partner is someone who lives with the mother of the baby in an enduring family relationship but is not an immediate relative.' BERR guidance on paternity leave

- 5.4 Homophobic abuse, harassment or bullying (e.g. name-calling, derogatory jokes, unacceptable or unwanted behaviour and intrusive questions) are serious disciplinary offences, and will be dealt with under the appropriate procedure.
- 5.5 Homophobic propaganda, in the forms of written materials, graffiti, music, emails, text messages, social networking websites or speeches will not be tolerated. The College undertakes to remove immediately any such propaganda whenever it appears on the premises.
- 5.6 The College should provide a supportive environment for employees who wish it to be known that they are lesbian, gay, or bisexual. However, it is the right of the individuals to choose whether they wish to be open about their sexual orientation in the College. To 'out' someone, whether staff or student, without their permission is a form of harassment, and should be treated as such.
- 5.7 Assumptions will not be made that partners of employees are always of the opposite sex.
- 5.8 Lesbian, gay and bisexual issues should be included in all equality training and internal attitudinal surveys, monitoring of complaints etc. The results of monitoring will be published.
- 5.9 The College welcomes and will facilitate lesbian, gay and bisexual employee groups.
- 5.10 The College recognises that lesbian, gay, and bisexual employees come from diverse backgrounds, and will strive to ensure that they do not face discrimination either on the grounds of their sexual orientation or with regard to other aspects of their identity (e.g. race, gender, age, religion, disability).

6 Monitoring

Although not a requirement of the Regulations in England and Wales, colleges may wish to consider monitoring sexual orientation. Colleges in Northern Ireland are subject to s.75 of the Northern Ireland Act 1998, which places a statutory duty on them to monitor equality of opportunity on various grounds, including sexual orientation.

- 6.1 The College recognises that monitoring individual employees for sexual orientation is a sensitive issue, (and there is no legal obligation to do so). It undertakes to keep the question of whether such monitoring should occur under review with the recognised trade unions and other relevant employee groups. If it is agreed to undertake such monitoring it will be explained to employees that there is no legal obligation to answer the question, that the results will be used to combat discrimination, and that the information is entirely confidential.
- 6.2 The College is committed to ensuring that it is making progress in achieving equal treatment for employees regardless of their sexual orientation. To ensure

that progress is made, it may undertake monitoring of the following in relation to sexual orientation.

- job application and selection success rates;
- the take up and outcomes of grievance and harassment procedures;
- the content of equality training;
- a question in anonymous staff attitude surveys
- information from exit interview;
- equal access to family/partner benefits;
- language and images used in internal and external communication.

6.3 Once the results of any monitoring are available, the College will consider relevant action to reduce any disadvantage suffered by employees of any particular sexual orientation.

7 Confidential Support

The College recognises that because of the existence of heterosexism and homophobia, confidentiality is a major issue for some lesbians, gay men and bisexuals.

7.1 The College will nominate an appropriate employee, in consultation with the recognised staff unions and any existing lesbian, gay or bisexual staff group to whom lesbian, gay and bisexual staff can approach for support. This person will be appropriately trained and supported and confidentiality will be maintained.

7.2 The role of the named person is to give support and information on issues including:

- a confidential complaints procedure;
- confidential handling of special leave relating to partners;
- confidential managing of partner benefits etc.

8 Division of responsibilities

8.1 Corporation members / Governors should aspire to ensure that the membership of the Corporation welcomes diversity in sexual orientation.

Corporation members are responsible for ensuring that:

- The College's strategic plan includes a commitment to equality and diversity;
- Equalities training features as part of the College's strategic plan;

- They are aware of the Corporation's statutory responsibilities in relation to sexual orientation legislation as an employer.

8.2 Managers are responsible for ensuring that:

- the College Principal/chief executive and senior management team have responsibility for taking the lead in challenging homophobic behaviour on the part of the managers, employees and learners in creating a positive, inclusive ethos;
- they are aware of the College's statutory duties in relation to sexual orientation legislation;
- all aspects of college policy and activity are sensitive to issues in relation to lesbian, gay and bisexual employees;
- the procedures for the recruitment and promotion of employees enshrine best practice in equal opportunities;
- the College's publicity materials present appropriate positive and non-stereotypical messages about people of diverse sexual orientation;
- appropriate training and development is provided to support the appreciation and understanding of diversity.

8.3 Employees are responsible for ensuring that:

- they are aware of the College's statutory duties in relation to sexual orientation legislation;
- they challenge homophobic behaviour, whether witting or unwitting, by learners, work placement providers, outside contractors or other members of staff whenever practicable.

9 Publicising our policy and progress

9.1 To the public (including learners, work placement providers and employees):

Our commitment to equality, including sexual orientation equality will be highlighted in our prospectus, annual report and annual financial statement.

9.2 To employees:

- All employees will have access to or receive a full copy of the policy.
- The employee induction programme should highlight the College's commitment to sexual orientation equality, action that can be taken by

employees who suffer discrimination and the action to be taken against any perpetrators of such discrimination.

10 Complaints

- 10.1 The College should seek to provide a supportive environment for employees who make claims of discrimination or harassment.
- 10.2 Acts of discrimination, harassment, victimisation or abuse on the grounds of sexual orientation will be treated as a serious disciplinary offence.
- 10.3 Employees who feel they are being discriminated against on grounds of sexual orientation should raise the matter under the Grievance Procedure. Employees who feel they're being harassed or bullied on the grounds of sexual orientation should raise the matter under the College's Harassment and Bullying Procedure so the matter can be investigated promptly and sensitively.
- 10.4 If, in the course of their work, College employees feel they are being harassed or discriminated against on the grounds of sexual orientation by members of the public, the College will take appropriate action and provide appropriate support.
- 10.5 Any unacceptable behaviour directed against employees by students should be dealt with under the student disciplinary procedure.

11 Review and consultation

- 11.1 This Joint Agreement on Guidance will be reviewed on a regular basis in accordance with legislative developments and the need for good practice, by the Association of Colleges and the joint trade unions. The College should also undertake regular reviews of its policy, taking amendments to guidance into account.
- 11.2 As part of the review the College should seek and take into account the views of stakeholders including the consultation/negotiating arrangements within the College, and appropriate equality bodies.

12 Implementation

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

13 General

13.1 This Agreement should not be read in isolation, but cross-referenced with all relevant college employment policies.

14 Definition of joint agreement

14.1 The Agreement on this guidance is intended as a recommendation to colleges relating to Equality in Employment issues.

**JOINT AGREEMENT ON GUIDANCE FOR SEXUAL ORIENTATION
IN FURTHER EDUCATION COLLEGES**

SIGNATURES OF THE PARTIES TO THIS AGREEMENT

- (a) AoC
- (b) ACM
- (c) ATL
- (d) GMB
- (e) Unite - The Union
- (f) UNISON
- (g) UCU

Date of Commencement of this Agreement:

April 2008