

Notes of the Equality Officers' Briefing

1 March 2012

Hillscourt Education Centre, Rednal

Introduction and welcome

Michelle Williams, National Executive Member and Equal Opportunities Committee member, welcomed the Equality Officers to the meeting and gave an update on the work of the Equal Opportunities Committee.

Michelle reported that the BME, Young and LGBT Teachers' Consultation Conferences had all taken place since the last Briefing and were all larger than last year. The next conference is the Disabled Teachers' Consultation Conference on 16 June and the Union's biennial equalities conference is on Saturday 10 November at TUC Congress House, London. The conference will focus on international equalities issues.

The Union continues to campaign against violence against women, supporting the International Day for the Elimination of Violence against Women on 25 November and also sponsoring the national Reclaim the Night march in London.

The NASUWT is supporting the campaign to get the Government to sign the Council of Europe convention on preventing and combating violence against women and domestic violence. The Government's refusal to sign the convention sends a signal that violence against women and girls is not a priority in the UK or abroad. There is a link to the petition on the Women Members page of the website.

Michelle informed the delegates that the Union had raised awareness of LGBT History Month in February and continues to be represented in the Education for All coalition co-ordinated by Stonewall.

The Union has submitted a motion on Standing up for Standards to each of the TUC equalities conferences and is standing a candidate for each committee. We have also responded to the TUC and South East Region TUC equality audits.

The Union continues to highlight the disproportionate effect the cuts are having on the various equalities groups and is working with The Runnymede Trust to carry out research on the equalities impacts of the Government's policies on BME workers. The Union is also conducting another Big Question survey, the results of which will include an equalities analysis.

Culturally based violence and the role of teachers

Rani Bilkhu, founder and director of Jeena, ran a session on culturally driven abuse, which explored concepts of honour-based violence, female genital mutilation, forced marriage, disability abuse and intercultural abuse.

Rani explored the definition of honour based abuse as being a reaction to what is perceived as immoral behaviour and brings shame on the family or community, affecting both girls and boys and where usually there is more than one perpetrator. Females are mostly affected but about 15% of the cases are male victims. The most prevalent ages are between 15 and 24 but can be as young as 10 and some come forward years after being forced into marriage.

The majority of cases reported to the Forced Marriage Unit (FMU) come from Pakistan (65%), Bangladesh (25%), and India. However, cases have also been reported from Cyprus, Jordan, Mauritius, Sri Lanka, Somalia, Mali, Norway, Bosnia and Hong Kong. There have also been incidents from the Travelling community and Ireland. It was not that long ago in the indigenous white population of Britain that there were 'shotgun weddings', whereby people were forced into marrying when a pregnancy occurred.

Rani then focused on forced marriage and explored the reasons why it occurs. Delegates then discussed a case study that focused on a potential case of forced marriage. It was emphasised that when teachers suspect that pupils are at risk of culturally based violence, including forced marriage, they should contact the school's Safeguarding Officer or Child Protection Officer.

There was a brief discussion on female genital mutilation, which is also a form of culturally driven abuse.

Equalities legislation update

Andrew Sladen, Senior Official in the Legal and Casework Team, gave a presentation on recent cases with equalities implications. Andrew covered three cases that focused on retirement ages, discrimination due to marital status and a reasonable adjustment case.

Retirement ages

The Employment Equality (Age) Regulations 2006 introduced the Default Retirement Age (DRA) of 65. This was legally challenged but held *not* unlawful by the European Court of Justice. However, the Default Retirement Age was abolished as from 1 October 2011. This position is now that employees can retire when they like or employers impose their own compulsory retirement ages. However any compulsory retirement age will need to be justified by showing that it is necessary as a proportionate means of achieving a legitimate aim. There have been two cases from Germany - Fuchs (2011) and Rosenbladt (2010) - where the European Court of Justice said that the default retirement age was justified and not unlawful. There has been a case in the UK - Seldon v Clark Wright and Jakes - where the employer argued three broad grounds of justification for a compulsory retirement age: fairness between older and younger workers; balancing the labour market; and 'dignity' in retirement. The Court of Appeal held that these were acceptable grounds for justification. This case is now in the Supreme Court. This may have implications for teachers as the conditions of Service for School Teachers in England and Wales (Burgundy Book) contains a compulsory retirement age of 65 unless changed by mutual agreement.

Discrimination of the grounds of marital status

In the case of *Dunn v The Institute of Cemetery and Crematorium Management*, Mrs Dunn claimed that she was treated less favourably because she was married to Mr Dunn. Section 3 of the Sex Discrimination Act, now included in the Equality Act, states that it is discriminatory to treat married people less favourably because of their marital status. In *Dunn v Institute of Cemetery and Crematorium Management*, the Employment Appeal Tribunal (EAT) said that it is also discriminatory to treat someone less favourably because they are married to a particular person.

After working as a volunteer, Mrs Dunn was appointed Technical Services Manager (Northern) in December 2007, with the specific brief of opening a northern office for the Institute. A few months later, she lodged a grievance because of proposed changes to her sick pay entitlement, which was rejected. She went off sick on 3 September 2008 and her solicitors wrote to the Institute on 16 September, alleging sex discrimination and victimisation, among other things.

The Institute wrote to Mrs Dunn on 11 October, telling her that it was shelving the idea of opening a northern office and that she was at risk of redundancy. Mrs Dunn then resigned in February 2009 and claimed constructive dismissal on the basis that she was being paid a lower rate of sick pay than anyone else, which amounted to a fundamental breach of her contract.

Mrs Dunn also claimed victimisation on the grounds that her treatment was due to her complaint of sex discrimination and discrimination on the grounds of her marital status under the Sex Discrimination Act. In respect of this element of her claim, Mrs Dunn argued that the reason for her less favourable treatment was because of who she was married to (as her husband was also involved in a dispute with the Institute).

The Tribunal upheld her claim of constructive dismissal and agreed that she had been victimised for a protected act (making a complaint) under the Sex Discrimination Act.

However, it dismissed her claims of sex discrimination relating to her marital status, because although she had been treated less favourably, this was not because of her marital status in general. It was because she was married to Mr Dunn in particular, and the Tribunal decided that this type of complaint was not covered by the Sex Discrimination Act.

Mrs Dunn then appealed and this was upheld at the Employment Appeals Tribunal (EAT). The EAT concluded that anyone who is married (or in a civil partnership) 'is protected against discrimination on the ground of that relationship and on the ground of their relationship to the other partner. Any less favourable treatment which is marriage-specific is unlawful'.

In this case, the EAT said there was no doubt 'as to the linkage in the Respondent's conduct between the Claimant and her husband.... The Claimant is expressly linked to her husband... It is clear that the Respondent's officers treated the Claimant the way they did, adversely, because of her relationship to Mr Dunn. She is treated as an adjunct to his family'. Consequently, the EAT found that Mrs Dunn had been unlawfully discriminated against on the grounds of her marital status.

Reasonable adjustments

In the case of *Cordell v Foreign & Commonwealth Office (FCO)* Jane Cordell was profoundly deaf and required a full-time lip-speaker as support for the political work she did at the foreign office overseas. She has been employed by the FCO since 2001. Between 2006 and January 2010 she was a First Secretary at the British Embassy in Warsaw. She was provided with a full-time lip-speaker to enable her to fulfil this role. She applied for and was offered the post of Deputy Head of Mission in Kazakhstan. The offer was conditional on an assessment of reasonable adjustments in accordance with the FCO's reasonable adjustments policy, which had been changed while Jane was working in Warsaw. The post was subsequently offered to the second place candidate due to the costs involved. The FCO also argued that continuity of support could not be guaranteed in Kazakhstan.

Ms Cordell brought a claim of discrimination based on disability against the FCO. This claim was dismissed, as was her appeal. Employers can use cost as a reason for not providing reasonable adjustments if they can show that they have come to a balanced decision based on due consideration. It should be noted that the costs of reasonable adjustments in this case were particularly high. The FCO assessed the adjustments at £695,000 for a two-year posting and £990,000 for three years. Equality Officers should therefore still challenge schools when they use it as a reason not to make reasonable adjustments.

The Welfare Reform Bill and what it means for disabled people

Peter Purton, Policy Officer for Disability and LGBT Rights, TUC Equality and Employment Rights Department, gave an update on the impacts of the Welfare Reform Bill. Peter focused on the implications of changes to Incapacity Benefit, the abolition of the Disability Living Allowance, the introduction of the universal credit

system, cuts to local authority funding and the negative media coverage of disabled people that has made it easier for the Government to cut benefits.

There was a discussion about the impacts of the cap on benefit levels, which means that people can only claim a certain amount for benefits, including housing benefit. Delegates felt that this would lead to economic ethnic cleansing of disabled people as they would be forced to move to areas where rents were low.

Delegates were informed that the Equality and Human Rights Commission (EHRC) had announced that it would not be producing statutory codes of practice on neither the Public Sector Equality Duty (PSED), which came into force on 5 April 2011, or codes for the further and higher education sector and schools. The Government claims that this will reduce bureaucracy and feels that further statutory guidance may place too much of a burden on public bodies. Although the Commission has powers to issue codes, it cannot do so without the approval of the Secretary of State as they are reliant upon Government to lay codes before Parliament in order for them to be statutory. The EHRC will therefore produce draft codes as non-statutory codes instead.

The NASUWT believes that rather than creating a regulatory burden, statutory codes have a valuable role to play in making clearer to everyone what is and is not needed in order to comply with the Equality Act. Delegates expressed their grave concern over this matter.

Are you ready? – Preparing for the Public Sector Equality Duty deadlines

Stephen Smith, Principal Official, Equality and Training, reminded delegates that in April, schools and colleges in England, Wales and Scotland will be expected to have complied with the requirements of the Equality Act 2010.

The Public Sector Equality Duty (PSED), consists of a general equality duty (in force now) and specific duties imposed by secondary legislation.

Under the Duty all schools need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;

- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

Even if a school has less than 150 employees, they are still required to prepare and publish equality objectives and show PSED compliance.

By 6 April, all schools must publish:

- evidence of analysis undertaken to establish whether policies and practices have (or would) further the aims of the general equality duty;
- details of the information considered in carrying out this analysis; and
- details of engagement undertaken with people whom they consider to have an interest in furthering the aims of the general equality duty.

Stephen concluded by emphasising that the NASUWT should be involved at all stages and; by any definition, is an interested party and a stakeholder – as are all the trade unions in a school or college.

There was a discussion on the Union's role in getting employers to carry out Equality Impact Assessments (EIAs). Although the Equality Duty does not impose a legal requirement to conduct an EIA, the Union believes that carrying out an EIA is the best way public bodies can demonstrate that they have considered the aims of the Equality Duty when making decisions.

Information exchange

A discussion was held on the new Agency Workers Directive.

Suggestions for topics for future meetings included Stonewall's School Champions programme and Islamophobia. It was also suggested that the Union develops links with Mind, the mental health charity.