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## Briefing on latest developments

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### Sexual Harassment

At the beginning of March, the Business Minister unveiled plans to ban the use of gagging clauses that prevent employees reporting abuse. The plans, to be included in a consultation, could lead to new legislation that would prevent non-disclosure agreements (NDAs) being used to prevent victims reporting serious complaints to the police. [https://www.theguardian.com/law/2019/mar/03/ban-on-gagging-clauses-non-disclosure-agreements-work?CMP=share\\_btn\\_link](https://www.theguardian.com/law/2019/mar/03/ban-on-gagging-clauses-non-disclosure-agreements-work?CMP=share_btn_link)

The next UCU "Tackling sexual harassment in the workplace" will take place on 26 June. To book a place, go to: <https://www.ucu.org.uk/article/9556/Dealing-with-sexual-harassment-in-the-workplace-26-June-2019-London>

The Government is about to consult on tackling sexual harassment and UCU will be responding. UCU will focus on changing the burden of proof so employers have a more proactive preventative duty, reintroduction of third party harassment and employment tribunals to be able to make wider recommendations into the Equality Act, extending the time limits for legal cases (often it takes time for a survivor to be able to make a complaint), non-disclosure agreements not to be used to silence survivors, mandatory training and clear reporting and investigation procedures.

### Non-disclosure agreements – what are they?

Known as "confidentiality clauses" in the legal profession, Non-disclosure agreements (NDA)s can be signed when staff are hired to protect trade secrets like inventions or ideas but they can also be signed when employees and organisations resolve a dispute, and have been used to stop workers discussing allegations of misbehaviour in the workplace. UCU believes in no circumstances should they be used by universities or colleges to 'gag' staff after experiencing poor behaviour in the workplace, including bullying, discrimination or sexual misconduct.

UCU branches have become increasingly concerned about poor practice in using confidentiality agreements in harassment, bullying and discrimination cases which hides the extent of misconduct and a toxic workplace culture. UCU contributed to the

TUC evidence to the BEIS (Directorate of Business, Energy and Industrial Strategy) consultation on the use of confidentiality clauses in April 2019. UCU also contributed to the roundtable to shape the TUC's oral evidence to the Women and Equalities Committee inquiry into the use of NDAs in cases involving alleged discrimination, including harassment. This took place on 6<sup>th</sup> March 2019.

UCU has a number of motions going to UCU Congress asking:

- For UCU to demand institutions on the use of NDA's annually especially in discrimination cases
- Oppose the use of NDA's as practice.

UCU's experience of the use of confidentiality clauses in situations involving workplace harassment or discrimination relates mainly to their use in settlement agreements. However, trade unions also have experience of advising and assisting members who have been asked to enter into such confidentiality agreements before an event, or have confidentiality clauses in their contracts of employment. There are the variety of different confidentiality clauses (such as those relating to non-disclosure, non-derogatory statements and references) used in settlement agreements. The different contexts present different issues and therefore, different solutions are required. UCU members are concerned about confidentiality agreements in settlement agreements.

UCU is committed to workplaces free of all types of discrimination and harassment. We see appropriate and ethical use of confidentiality clauses as an important step towards achieving this goal. We support the current public debate focusing on the use of confidentiality clauses in universities in discrimination and harassment cases and we welcome the prospect of reform in this area of the law. We need oversight in how they are used and must not be used to hide the number of cases.

Our members report, unnecessary and inappropriate use of confidentiality clauses in settlement agreements (including COT3 which are the settlement agreement in an employment claim settled through ACAS) and normally restricts the individual from disclosing any information to any third party, save for professional advisors, about the background and circumstances surrounding the agreement. Use of confidentiality clauses seeking to prevent members from obtaining professional help relating to discrimination and harassment, including from counsellors and therapists.

Along with the TUC, we support:

- A legal requirement for a standard form of wording to be included on the front of all settlement agreements, clarifying the application of confidentiality clauses by expressly stating which disclosures can still be made in accordance with whistleblowing legislation and the common law. Should additional legislation be put in place to protect disclosures to other groups, these should also be referred to in the statement.

- A legal requirement that an adviser under S.203 of the Employment Rights Act certifies that advice has been given both on the clarifying statement and any confidentiality clauses.
- Legislation (in addition to current whistleblowing law) to expressly exclude certain groups from the ambit of non-disclosure clauses relating to discrimination and harassment, and to provide protection from detriment where disclosures to these groups are made. We agree this legislation should include the police, but also trade unions, therapists, counsellors and all regulators, as well as all disclosures for the purposes of disciplinary and grievance proceedings. This additional legislation would have the advantage of providing protection for disclosures which may not necessarily fall under the Public Interest Disclosure Act 1998, but which merit protection nonetheless.
- Additions to the prescribed list of bodies in the Public Interest Disclosure Act 1998, including trade unions and all professional regulators.

Effective regulation of the use of confidentiality clauses by way of a statutory code of practice and guidance (produced by EHRC and/or ACAS), to include:

- a recommendation that confidentiality clauses are only used in exceptional circumstances, to bring to an end automatic use of precedent clauses which may not be at all relevant to the individual circumstances.
- recommended confidentiality clauses for different situations such as a standard non-disclosure clause, a non-derogatory statement clause and a reference clause.
- a requirement that where a non-disclosure clause restricts disclosures to family, friends, and colleagues, this will not restrict disclosures to immediate family members and close friends and that all such obligations will be reciprocal.
- a suggestion that as a matter of good practice employers themselves provide specific in-house guidance for managers on the use of confidentiality clauses.
- Enforcement measures to include uplifts to tribunal awards where an employer has failed to follow the statutory code of practice and/or has failed to include a clarifying statement on the front of the agreement, with additional penalties where there are repeat infringements.

UCU also demands the pressing need to resolve the fundamental problem of discrimination and harassment in the workplace and strongly advocates a preventative duty on employers to stop discrimination and harassment, a statutory right to time off for trade union equalities representatives and reinstatement of S. 40 of the Equality Act 2010.

**UCU will be surveying branches on their experience of the use of non-disclosure agreements after Congress.**

## Trans inclusion

UCU support trans workers' rights and as champions of equality we welcome the increased visibility and empowerment of transgendered and non-binary people in our society. It is our responsibility to promote equality is written into our rules. Our rules commit us to end all forms of discrimination, bigotry and stereotyping.

UCU has a long history of enabling members to self-identify whether that is being black, disabled, lgbt+ or women. At Congress and further and higher education conferences, policy has been made on more options than binary genders on forms, using the acronym LGBT+ to ensure an inclusive approach to gender identities which are different to that assigned at birth and/or sexual identity being other than heterosexual, gender neutral and gender specific toilets and facilities, support campaigns to remove the requirement and practice of gender reassignment at birth, promotion of non-heteronormative and non-binary identities.

UCU supports the right of all women (including trans women) to safe spaces and the continuation of monitoring that can help identify discrimination against women and men. UCU also supports a social rather than a medical model of gender recognition that will help challenge repressive gender stereotypes in the workplace and in society.

The fight for women's rights is far from won. For too many women sexual harassment and domestic violence is a daily reality, alongside unequal pay and other forms of discrimination at work including maternity pay and leave. UCU will continue to campaign hard to protect the rights of working women.

UCU is aware that the debate around gender identity has in some quarters become bitterly divisive. Our strength is to bring members together and to build bridges rooted in our values of equality. UCU opposes any violence or intimidation, bullying or disrespect, towards any group that faces discrimination, and from whatever quarter. Trans people including students face physical and verbal abuse, prejudice and discrimination, marginalisation and misrepresentation. UCU is fully committed to providing practical support and policy guidance for reps and trans members in challenging discrimination and harassment.

UCU also has strong policy on academic freedom. See link below:

<https://www.ucu.org.uk/academicfreedom>

Higher and further education staff have the right to freedom of thought conscience, religion, opinion, expression, association and assembly. Staff must not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through free expression of opinion on matters of public interest. Academic freedom comes with responsibility to respect the democratic rights and freedoms of others and to respect UCU rules. Rule 6.1 demands members refrain from all forms of harassment, prejudice and unfair discrimination on the grounds of sex, race, ethnic or national origin, religion, colour, class, caring responsibilities, marital

status, sexuality, disability, age or other status or personal characteristic.

## **Gender Recognition Act consultation**

UCU undertook a limited response to the Government consultation on the Gender Recognition Act based on existing policy. The consultation focuses on the legal recognition process and whether this should be streamlined. UCU has policy on supporting non-binary as a gender so responded to this question as well as reaffirming that the requirements under the Equality Act to single sex services remain. The consultation focuses on the Gender Recognition Act and contains no proposals to amend the Equality Act 2010. The Government is not proposing to amend the existing equality exceptions relating to single and separate services in the Equality Act.

The Equality and Human Rights Commission makes clear that to be protected from gender reassignment discrimination, you do not need to have undergone any specific treatment or surgery to change from your birth sex to your preferred gender. This is because changing your physiological or other gender attributes is a personal process rather than a medical one. Trans respondents to the Government LGBT survey (2018) were clear that they wanted legal recognition but not applied for it because it was bureaucratic, too expensive and too intrusive.

## **Pregnancy and precarious work**

UCU is part of a project being run by Maternity Action exploring the relationship between casualization and maternity rights for women on different types of contracts. The objectives are to raise awareness, achieve policy change, equip reps and negotiators to achieve change and to disseminate best practice. UCU will be running focus groups and running a UCU wide survey. If you have personal experience of the tension between casual work and pregnancy, maternity and childcare, please get in touch so we have your details to help inform the project.

Email: [eqadmin@ucu.org.uk](mailto:eqadmin@ucu.org.uk)

## **Redundancy protection for pregnancy and maternity**

There is a currently a parliamentary bill to extend redundancy protections for women which will outlaw redundancy from the point a woman notifies of her pregnancy until six months after the end of her maternity leave. Research by the Equality and Human Rights Commission has found that one in 20 women are made redundant while pregnant or on maternity leave and one in 10 feel they are treated worse by their employer after returning to work.

## Intersection of religion and LGBT+

The intersection of religion and LGBT+ has been to the fore in some of number of recent actions that threaten or undermine LGBT+ rights in the UK. People of various faiths have protested against LGBT+ lessons in the curriculum. Recently some Muslim parents were to the fore of protests about LGBT+ lessons and curriculum in Birmingham. A more organised campaign was witnessed in both Birmingham and Manchester not all were parents. The dispute has pitted minority groups against each other creating tension and feeling of vulnerability.

This has happened around the time that the Government approved new LGBT+ inclusive regulations for teaching Sex and Relationship Education (SRE). Pending approval by the Lords, from September 2020 all secondary schools will be required to teach pupils about sexual orientation and gender identity, and all primary schools will be required to teach about different families, which can include LGBT families. The parental challenge at the Birmingham schools and beyond has been the parental right to take their child from SRE lessons. At the moment parents have the right to remove their children from sex education classes, but not from relationship education. The Government has said that whilst parents should be consulted about what is taught they do not have the right to veto what is taught.

This is far from isolated in relation to seeking exemptions from LGBT+ equality on the grounds of religion. Whether it be about making a cake or about content of lessons. In the Equality Act 2010 there are specific exemptions for religious organisations (schedule 23) 4 in relation to sexual orientation. The Anglican Community is claiming these exemptions in actively banning same-sex partners from attending the 2020 Lambeth Conference. The conference will be hosted at the University of Kent. A statement from the University of Kent LGBT+ staff network shared by the local UCU branch, was as follows:

'The University of Kent's LGBT+ Staff Network is deeply concerned about the University's hosting of the 2020 Lambeth Bishop's Conference. The Archbishop of Canterbury has explicitly chosen to single out bishops' same sex spouses for exclusion. In a recent statement, the University has defended its decision to host the event despite this clear instance of institutional homophobia. University's stance, as quoted in the article, is unacceptable and needs to be challenged. As Staff Network we believe that the University should prioritise its commitment to students and staff alike on issues of equality, diversity, and inclusivity. Specifically targeting same-sex spouses and excluding them from the Lambeth Conference is homophobic from the side of the church, and hosting the event on University premises facilitates this act of homophobia.'

On the 26th March 2019 the University of Kent reported on discussions about this situation and said they would make accommodation available on campus for same-sex partners at the time of the Lambeth Conference. Whilst the University of Kent has committed to bring concerns to the Archbishop of Canterbury this situation underlines

ongoing discrimination being carried out on the grounds of a UK university. The law is clear that one protected characteristic does not trump another. Workers have the right to be free from discrimination because of their religion, belief or lack of belief. They are also entitled to express their religious beliefs. The law seeks to eliminate discrimination and promote equality whilst fostering good relations between those who have and do not have legally recognised protected characteristics. Citing any particular characteristic does not simply allow discrimination against another.

At a time when hatred against all equality groups is on the rise, and both LGBT+ people and those of Muslim faith (and many will be LGBT+ and have a faith) are bearing the brunt of it, we need to work together to end prejudice and discrimination. Education is critical part of this action.

## **Disability parliamentary campaign**

During Disability History Month 2018 (22 November - 22 December), UCU held its first day of action for disability equality in education, on 21 November 2018, which kicked off our action for Disability History Month 2018.

Initiated by UCU's Disabled Members' Standing Committee, the day of action is all about organising against discrimination and focuses on the challenges and barriers faced by disabled people in education. Working with our sister unions (UNISON, UNITE, NEU, NUS, TUC, NASWUT) and with disability campaign organisations, Disable People against the Cuts (DPSC) and Alliance for Inclusive Education (ALLFIE), the day saw UCU branches all over the UK take action to highlight issues facing disabled workers in further and higher education.

The day culminated with a cross-party parliamentary meeting on improving equality for disabled staff in education. Hosted by Shadow Disability MP, Marsha de Cordova and chaired by Elane Heffernan, UCU NEC and Chair of Disabled Members' Standing Committee, who presented and demanded our four campaign 'asks':

- Time limits for the implementation of reasonable adjustments
- A review of building regulations to ensure they meet the accessibility needs of disabled people
- A statutory right to disability leave
- The right for disabled people to access mainstream education and a reversal of cuts to SEND provision

UCU will be taking forward our parliamentary strategy with an early day motion to be tabled – further details to be circulated.

This year's day of action will be held on Wednesday 4 December 2019. Visit <https://www.ucu.org.uk/disabilityequality> to see how branches marked the day last year!

## Reasonable Adjustment Passport and Policy

Produced with the support of the Disabled Members' Standing Committee, the reasonable adjustment passport is a live record of the agreed adjustments between you and your manager to support you at work due to a health condition, impairment or disability, visible or hidden such as mental health issue or condition.

The aim of the passport is to:

- ensure that everyone is clear and had a record of what adjustments have been agreed
- reduce barriers (the need to re-negotiate) every time a member changes jobs, are relocated or assigned a new manager in the same organisation
- provide a space to record any subsequent changes to adjustments and
- provide members with the basis for future conversations about adjustments

Branches are encouraged to adopt the use of the passport and model policy which can be downloaded here at <https://www.ucu.org.uk/article/1940/Equality-advice-and-guidance#Disability>

## Justice for rape survivors

After the [revelations](#) late last year of the alarming collapse in the charging rate for rape and the problems with gathering digital evidence during rape investigations, the Government has announced a 'rape review' of the whole criminal justice system's response to rape. EAW is urging members and supporters (of which UCU is one) to follow this review closely: <https://www.gov.uk/government/news/government-sets-out-key-measures-to-tackle-violence-against-women-and-girls>

The review is tasked to be 'end to end', and as such should be able to take in the prevalence of rape, who it happens to, and who does not report it to police in the first place – which will reveal multiple, intersecting inequalities. It will also need to take in the critical problems with bail management, and in the probation system.

## Domestic Abuse Bill & VAWG Strategy

Key provisions in the Domestic Abuse Bill were published in draft in January. Measures are included which will finally enable the UK to ratify the Istanbul Convention, and there is a clear extension of the definition and potential responses to economic abuse.

The Government also announced a 'refreshed' and ambitious Violence Against Women and Girls Strategy in early March. New commitments to tackling perpetrators, and online abuse and sexual harassment are strong. However, while EAW and many of its members have welcomed the Domestic Abuse Bill and the refreshed VAWG Strategy, it's of concern that both significantly exclude migrant women from protection and access to justice. Migrant women, who have a range of immigration statuses and are subject to immigration inspection and control, have severely restricted routes to safety and support whether they are abused by a partner, a stranger, an employer or multiple

perpetrators. The “hostile environment” can make women fearful of approaching health workers or other public services workers for help, particularly the police; it means women’s support organisations are not funded to support migrant women; and ultimately it means abusers can “weaponise” women’s immigration status.

## **Parental bereavement (leave and pay) Act 2018**

This legislation will introduce a right for employed parents to two weeks statutory leave and pay if they lose a child under the age of 18 or have a still birth from 24 weeks of pregnancy. This is due to come into force on 6<sup>th</sup> April 2020. Further regulations setting out how the leave is to be taken are awaited. UCU has supported campaigns to support these changes.

## **Ethnicity pay reporting**

The Government consulted in the autumn 2018 on ethnicity pay reporting by employers. It set out options and asked questions on:

- what ethnicity pay information should be reported by employers to allow for meaningful action
- who should be expected to report
- next steps.

UCU has been demanded ethnicity pay reporting for many years along with other protected characteristics to be included. At a minimum it should improve on the gender pay reporting regime and include action plans, recruitment and promotion data, types of contracts and smaller employers. The Government has indicated that it will be implemented.

## **Equality Act enforcement consultation**

UCU supported and contributed to the TUC’s response to the Women and Equalities Committee consultation on the enforcement of the Equality Act 2010. UCU urged the Government to consider reinstating third party harassment and implementing the dual discrimination and socio-economic duty which has never been implemented by the UK Government.



## Dates for your diary: UCU Equality Events 2019/2020

Please support these events by putting up a poster, inviting a guest speaker or if appropriate looking at your workplace policies to support positive change.

Please contact the equality team [eqadmin@ucu.org.uk](mailto:eqadmin@ucu.org.uk) for support and further information on any of these events.



<b>20 November 2019</b>	<b>Transgender Day of Remembrance</b>
<b>22 November – 22 December 2019</b>	<b>Disability History Month</b>
<b>4 December 2019</b>	<b>Day of action for disability in education</b>
<b>1 December 2019</b>	<b>Worlds Aids Day</b>
<b>25 November – 10 December 2019</b>	<b>16 Days of activism against gender based violence</b>
<b>27 January 2020</b>	<b>Holocaust Memorial Day</b>
<b>February 2020</b>	<b>LGBT+ History Month</b>
<b>February 2020</b>	<b>UCU Day of Action Against Racism</b>
<b>8 March 2020</b>	<b>International Women’s Day</b>
<b>21 March 2020</b>	<b>International Day for the Elimination of Racial Discrimination</b>
<b>May 2020</b>	<b>Mental Health Awareness Week</b>

<b>17 May 2020</b>	<b>International Day against homophobia, transphobia and biphobia</b>
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**Prides:**

**Manchester (August bank holiday)  
London Pride 6<sup>th</sup> July 2019 and  
London Black Pride 7<sup>th</sup> July 2019**

**Contact Seth [SAtkin@ucu.org.uk](mailto:SAtkin@ucu.org.uk) for more information**



**Don't forget**

**Equality Conference: 21<sup>st</sup> to 23<sup>rd</sup>  
November Birmingham**

**Contact: [eqadmin@ucu.org.uk](mailto:eqadmin@ucu.org.uk) or  
visit: [www.ucu.org.uk/equality](http://www.ucu.org.uk/equality)**