

Equality Act 2010: The Public Sector Duty
http://www.equalities.gov.uk/news/specific_duties_consultation.aspx

Response from the Institute of Equality and Diversity Practitioners to the consultation document

The Institute of Equality and Diversity Practitioners (IEDP) welcomes the opportunity to respond to this important consultation.

As practitioners working with organisations and individuals to eliminate discrimination and advance equality of opportunity we believe that an effective legal structure that promotes transparency, supports employers and service providers to act fairly and provides protection to individuals experiencing discrimination and disadvantage is essential in a modern democratic society.

The IEDP was launched in January 2009 as a not-for-profit company limited by guarantee. We have over 100 members working within the private, public and voluntary sectors. Our principle aims are to develop professional standards, promote excellence and influence change.

We see no reason why the following approach should not apply to England and Wales. We endorse the following approach contained in the Scottish Consultation Documents save for the reference to Scottish Ministers.

- *A duty to publish equality outcomes, based on evidence and involvement of equality groups and communities, and informed by the general duty. An authority will have to report on progress made towards these outcomes.*
- *A duty to report on 'mainstreaming' – action to embed equality across corporate systems, policies and practices*
- *A duty to consider the impact on equality of new policies and practices, including changes to, or redesign of, existing policies and practices. This duty includes a requirement to use evidence.*
- *A duty to publish specific employment data*
- *A duty on Scottish Ministers to set national equality priorities and report on progress*
- *A simplification of reporting, including a requirement to use existing public performance reporting systems.*

Question1: Do you have any comments on our proposals for data reporting? Does the drafting of the regulation 2 accurately reflect the aims of the policy described in paragraphs 5.2 to 5.9?

We agree that data should be freely available and meet common principles. It may be desirable to publish this information under a standard open licence but unless such a common standard has already been agreed we anticipate that it may take years to agree a common standard. There should be no delay in publishing data consistent with the Race Relations Act as amended, the Sex Discrimination Act, the Equality Act 2006 and Disability Discrimination Act until such time as a standard open licence is approved.

We would wish to be assured that the proposed standard requirements take account of the full range of protected characteristics.

We support the Public Data Principles outlined in Para 5.3 but would wish to emphasise the importance of disaggregated data to determine disproportionate disadvantage. For example, the disproportionate impact that can become apparent when data on gender and age is cross referenced. Without such detail it is difficult for the public to 'hold organisations to account'. We would hope that the requirement for 'fine granularity' ensures that published data is meaningful.

Para 5.6 lists a range of sources and whilst we recognise that it is not an exhaustive list we would urge that scope is made for the inclusion of unpublished data and case studies produced by community organisations detailing the experiences of many marginalised and 'hard to hear' groups such as Gypsies, Roma and Irish Travellers. Because of lack of monitoring the needs of lesbians are not identified or met by many public bodies. To rely solely upon data gathered by public bodies may be to compound existing discrimination and exclusion.

We agree that it is not reasonable to demand that expensive public meetings are held by way of consultation with 'affected groups'. We are aware of many people who are not able to attend such meetings because of their timings, location or cost. However if the guidance on the duty does not set out the need for transparency on who was engaged we strongly believe that this will mean the continuation of exclusion of many groups of people. Under the current proposal it might be considered sufficient for a letter to be sent the Chairs of a few community organisations for a public body to assert that they had engaged widely or sufficiently.

More worrying is the proposal that no guidance should be set upon how an assessment of impact of policies, procedures or practices should be carried out. We recognise that many public bodies misinterpreted the previous guidance and wasted weeks or months undertaking equality impact that were not 'fit for purpose'. However, we believe that this was a result of a failure to provide training on how to provide evidence that 'due regard' had been exercised rather than the guidance per se.

Paragraph 5.7 implies that one equality impact assessment form was used. This is not the case. We have come across a wide range of approaches extending from simply yes/no answers to extensive public engagement and targeted research. It was not until November 2009 that the Equality and Human Rights Commission produced a model document to be used when conducting an equality impact assessment. It is in our view because there was not a standard format on providing

evidence of the impact of proposed or existing policies that they became open to various erroneous interpretations.

Few public sector employees received any relevant training on how to assess 'due regard' and subsequently the impact of the previous duties was limited. Whilst we would support the view that equality considerations should be part of 'normal decision-making' the proposals contained in this consultation document do not indicate what steps public bodies should take to demonstrate that giving 'due regard' is meaningful.

The proposals state that public bodies should have the flexibility to decide when and how to engage. We understand the need for flexibility but believe that the lack of a requirement to specify who was engaged risks compromising the aim of transparency. Public bodies need to be able to demonstrate that all relevant facts have been taken into account and that proportionality has been exercised. In our experience most people do not know what they don't know and accordingly unless there is a format that offers guidance to both policy writers and the public, members of the public may not know what should have been considered.

Para 5.8 makes reference to a full picture of equality in the workplace or in public service provision' but does not provide a vision of what full equality would look like against which a citizen might measure achievement. If a group or section of society were currently not receiving appropriate and relevant services how would they be able to drive a faster pace of change if they are not currently appearing in the information captured by the public authority?

Question 2: Do you have any comment on our proposals for workplace transparency? Does the drafting of regulation 2 accurately reflect the aims of the policy described in paragraphs 5.10 to 5.11?

It is misleading to imply that the requirement on public bodies with 150 or more employees to publish data on their workforce is a new provision. This was a requirement of the statutory Code on Practice on race equality in 2002. However the proposal now implies different standards for different groups of employees. For example, whilst the distribution of disabled employees across an organisation is to be monitored only the proportion of ethnic minority staff in the workplace as a whole is required. This is a reduction on the protection from discrimination provided by the RR(A)A for which no justification is provided.

Without monitoring of staff at all grades by reference to protected characteristics how would it be possible to know whether ethnic minority staff are disproportionately subject to redundancy in the event of certain tiers of an organisation being laid-off. Under the previous provisions monitoring of employees subject to disciplinarys or dismissal or those benefitting from training and career development opportunities and those taking out grievances was monitored by race. The new proposals increase the likelihood of less favourable treatment because of race and this is particularly worrying at a time of significant staff reductions occurring amongst many employers. Last in first out would disproportionately affect many ethnic minority workers.

Para 5.11 states that public sector bodies will not be required to 'routinely collect data on sensitive personal issues such as the religion or sexual orientation of their employees'. Without such data it is difficult to see how public bodies will demonstrate progress on advancing equality and eliminating discrimination across all of the protected characteristics. Some public employers have successfully introduced monitoring on sexual orientation and religion in order to be aware of patterns of discrimination that might be occurring and to formulate appropriate action. The issue is not whether data should be recorded but how employers communicate the purpose of monitoring, provide assurances on confidentiality and demonstrate how the data used.

How could an employer demonstrate due regard to the elimination of unlawful discrimination, harassment or victimisation without monitoring? How could it evidence that equality of opportunity is advanced between different groups or how good relations can be fostered between different groups when some characteristics will be monitored but not others. This proposal implies a hierarchy of equality.

Question 3: Do you have any comment on our proposals for transparency in public service provision? Does the drafting of regulation 2 accurately reflect the aims of the policy described in paragraphs 5.12 to 5.14?

Without guidance on what should be in the published data there is a significant risk that it may be unintelligible to most of the public. Against what criteria might the public judge whether discrimination is being eliminated or even reduced? Mere numbers is not an effective measure. For example an organisation which has many complaints of discrimination might be one that actively encourages it's employees to let them know of problems that must be dealt with; in contrast to one that discourages complaints and so inequality goes unchallenged. The collection of data is important but equally so is the analysis of that data. For example, how might members of the public know whether a procurement process has or has not discriminated against women or ethnic minority providers? How might the public know whether members of the LGBT community are receiving appropriate and sensitive services without adequate monitoring data and sensitive presentation?

Under statutory guidance in place until 1st October 2010 public bodies were required to publish a range of relevant data but in reality, most of them failed to do so. These current proposals offer no indication of why those same Public Bodies will now comply.

Question 4: Do you have any comment on our proposals for setting objectives to achieve transparency about the impact of equality? Does the drafting of regulation 3 accurately reflect the aims of the policy described in paragraphs 5.15 to 5.16?

Regulation 3 states that a public authority must prepare and publish one or more equality objective every four years. It is difficult to see how the complexity of advancing equality of opportunity in employment and service provision could be effectively demonstrated by the adoption of the required minimum of one objective. It is also not clear how the requirement to develop equality objectives at least every

four years can effectively take account of the changing economic and social context which employers and service providers operate within.

Para 5.16 states that the public will be able to 'judge' whether public bodies are 'focusing on the right areas'. This approach runs the risk of public bodies responding to the most vocal citizens rather than those in the greatest need. What happens when the views of one section of the public on what is the 'right area' conflicts with the view of another, for example between the protected characteristics of sexual orientation and religion?

Whilst we support the view that objectives should be specific, relevant and measurable the provision of appropriate and sensitive services is not always reflected in raw data. For example services to some people who have reassigned their gender. Setting objectives which are measurable as described could have the effect of omitting information which might demonstrate relevant service delivery. What might data on stop and search or stop an account look like if published in manner which could compare like with like across the 43 Police Services of England and Wales? Give the level of outright hostility and ignorance there is towards many Gypsy and Traveller communities might the publication of data on its own lead to greater equality or less?

We agree that equality data should be part of good management practice within public bodies but the issues go somewhat deeper than quoting numbers. The proposals give little indication of how a change of philosophical approach to equality and transparency will occur if public bodies are to advance not just promote equality.

It is our belief that equality diversity and human rights have to be learned; people cannot know or intuit what Parliament intends when it passes a law. Citizens must be made aware of specific provisions of laws that affect them. As a result of not knowing what the law says on racial equality BBC Newscasters have repeatedly made reference to 'reverse discrimination' which indicates an ignorance of the laws on race in the UK. At other times reference was made to 'positive discrimination' which is unlawful prior to and since October 2010.

Knowledge of Health and Safety laws have reduced deaths and injuries in the workplace, employees are required to be aware and some have specific training to enable them to advise on compliance and safety. In a similar way we believe that there is a body of expertise about how equality can be implemented by public bodies which is reflected by practical knowledge not merely personal moral commitment. The consultation does not indicate how people who do not know what they do not know will be able to undertake 'meaningful scrutiny'.

Question 5

The proposal in para 5.19 to remove the need for Secretaries of State to set national equality priorities assumes that there is no systematic, sector specific inequalities, for example, health, crime, housing. Whilst it is right that public bodies should ensure that equality objectives are integrated into their own businesses how does this approach sit with a need to give the public a 'full picture of equality'? It runs the risk of a 'postcode lottery approach' to equality. We are not aware of priorities being set

by the previous Secretary of State which had the effect of discouraging each relevant public body from complying with its duties under the 3 previous sets of duties. Reference is made to the trust that should be put in public bodies but it must be noted that many of them have failed to carry out any kind of meaningful equality impact assessment which they had a duty to do from the 31st May 2002..

We believe that there should be a duty for the Secretary of State to produce an annual report covering all protected characteristics; this would demonstrate both leadership and commitment to equality.

We are disappointed by the statement in para 5.21 that the Government will not introduce a specific duty relating to procurement and believe an opportunity has been lost to promote greater diversity within the supply chain and encourage the growth of SME's (many of whom are minority led businesses). We have seen little evidence of public bodies effectively using commissioning and procurement to promote equality. What action has been taken tends to focus on short questionnaires for potential providers of goods and services about whether they have an equality policy and an assurance that they do not discriminate. Many Organisations such as the Office for Government Commerce have no track record to show how they have integrated equality into the commissioning process. Cheapness is not to be confused with value for money if the goods and or services do not reflect the different needs of diverse service users.

With the increased focus on transparency and accountability it is imperative that those organisations receiving public funds show evidence to the public of the inclusion of equality. How can the Government itself demonstrate 'due regard' to advancing equality if it does not scrutinise the £220 billion per year? Many Companies which operate in the USA have been subject to stringent equality requirements when doing business with Government and have grown their own markets as a result of the contract compliance.

Para 5.22 states that there is to be no requirement for public bodies to set out how they intend to achieve their equality objectives. Action planning was always about outcomes not process, any reduction in being transparent and accountable will have the effect of reducing equality. We have noted elsewhere that little or no consistent training was provided on how to implement and have an audit trail of equality outcomes. By not requiring action planning and not insisting on training for relevant staff, equality of outcomes will be further hampered by the proposals.

Question 6: Do you have any comments on our proposals for transition from the existing duties relating to race, disability and gender to the new public sector Equality Duty, as described in paragraphs 6.1 and 6.2?

No explanation is given in para 6.2 as to why public bodies should be able to comply with the general duty immediately upon repeal of the disability, gender and race duties but need a further year to publish equality objectives and measures of success. We believe that this runs the risk of losing momentum on advancing equality and that citizens will have a hiatus in being able to hold public bodies to account.

We see no reason why a public body should not continue to produce information about the protected characteristics of race, disability and sex but not to be able to comply with the gathering of data on the additional protected characteristics. This would appear to undermine the aim of the Equality Act to provide protection for all of the protected characteristics. The alternative will otherwise reduce transparency in meeting the public sector duties. This is especially so during a period of upheaval and budget reductions. It will cost more in the long run if the impetus is lost in the short term to show evidence of compliance with the duty.

We are surprised that reference is made to central government helping other public sector bodies understand what they must do to implement the Equality Duty. Had your references been to Local Government this would make sense since it was they who were required under S71 of the Race Relations Act 1976 to demonstrate 'due regard'. Many of these same Councils have been in the forefront of extending those duties not only to Disability and Gender but also to age, religion or belief and sexual orientation. Central Government has a poor record in understanding and demonstrating equality outcomes except on employment related issues. The Duty covers goods, services, and facilities..

Question 7 and 8

We believe that here are some important omissions in the proposed list of public bodies subject to the specific duties. For example, Ofsted, the General Medical Council and the Electoral Commission. We welcome the commitment to include GP commissioning consortia once created and believe that there must be flexibility to add new bodies as they are created as a result of Government decisions.

The above response is agreed by the Board of the Institute of Equality and Diversity Practitioners, supported by other practitioners:

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