



Comisiwn
Cydraddoldeb a
Hawliau Dynol

Equality and
Human Rights
Commission

WELSH ASSEMBLY GOVERNMENT LISTENING EXERCISE

SPECIFIC DUTIES FOR WALES

**Response from the Equality and Human Rights
Commission**

November 2009

Equality and Human Rights Commission

The Equality and Human Rights Commission is the independent advocate for equality, human rights and good relations in Britain. We are an independent statutory body established under the Equality Act 2006. We are a modern regulator charged with upholding fair treatment and tackling inequality. We are here to ensure everyone is treated with dignity and respect. We believe that the damaging effects of discrimination and prejudice have no place in a modern, open society. Parliament has set us the tasks of promoting equality, enforcing the law, protecting the human rights of and bringing people together to build stronger communities. These are ambitious aims that can only be achieved in partnership with others and with the support of the public.

To fulfil these aims we have unique powers. We can take legal cases on behalf of individuals to test and extend the right to equality and human rights; set up inquiries to investigate the behaviour of institutions; promote and enforce the public sector duties; and use our influence to lead new debates based on the evidence we collect and publish.

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Response from the Equality and Human Rights Commission to the Welsh Assembly Government Listening Exercise

1. Introduction

The Equality and Human Rights Commission welcomes the opportunity to respond to the Welsh Assembly Government Listening Exercise.

In preparing this response we have taken into account:

- Evidence we have gathered about the positive outcomes of the current public sector duties. A copy of 'Rising to the challenge of the equality duties' is attached.

The evidence shows clearly that specific duties have made a difference in Wales. With a focus on outcomes they can deliver real benefits to service providers, service users and the public sector workforce.

- The reports of nine voluntary sector focus groups across seven equality strands - age, disability, race, gender, sexual orientation, religion or belief and transgender. A copy of the report is attached.

The voluntary sector told us that there is a gap at the moment between what the specific duties could deliver and what they actually are delivering. Plugging the implementation gap requires a shift to focus on outcomes rather than solely on process.

Both of the above reports are unpublished (and therefore confidential) but we have incorporated the findings into this response. We will be publishing these on our website in the new year.

The Commission's response is submitted to inform the future framework for equalities in Wales. We look forward to working with the Welsh Assembly Government in shaping this.

2. Specific duties for Wales

The Equality Bill provides for the Welsh Assembly Government to create specific duties that will apply to the devolved public sector to support the new public sector equality duty.

It is essential that the specific duties for Wales are tailored to reflect the political, economic and social context of devolved Wales. It is critical that they take account of the particular circumstances in Wales.

Specific duties that are tailored in this way will be powerful in addressing inequality. They will improve outcomes for all communities and groups.

Recent research¹ shows that tackling inequality effectively can improve the life chances of everyone in society, not just the most disadvantaged. So the duties have the potential to impact positively on the life experience of every citizen.

3. Principles underpinning the new specific duties

In order to achieve this positive difference to the daily lives of citizens the new specific duties should:

- Enable public authorities to focus on improving key outcomes
- Be action orientated - so that public authorities feel confident and can demonstrate to others that they are meeting the general duty
- Address the areas of greatest inequality
- Be appropriate and proportionate for different types and sizes of public authorities
- Avoid unnecessary processes and be flexible enough so that each authority can apply them appropriately to their own business
- Set objectives that are transparent, measurable and sustainable
- Encourage continuous improvement, with learning from one period to the next
- Be based on evidence-gathering and involvement of service users, staff and other stakeholders
- Be a mechanism that can be used by citizens, the workforce and public bodies to ensure accountability
- Be enforceable and subject to audit and inspection
- Build on the experience of the current public sector equality duties

¹ Richard Wilkinson, *The Spirit Level : Why More Equal Societies Almost Always Do Better*, 2009

4. Role of the Commission in relation to Welsh specific duties

The Equality and Human Rights Commission will have the primary role in issuing guidance, promoting, monitoring and enforcing the public sector equality duty and the Welsh specific duties.

We will involve and consult with our stakeholders to help us determine the types and formats of guidance which will be needed to support the implementation of the duties.

5. How can we use the opportunity offered by the specific duties to advance equality and make a real difference for our citizens?

The Commission has looked at how the current public sector duties are working. The purpose of this is to inform our thinking about the new specific duties. We asked local authorities and police forces in Wales to share with us examples of how they using the duties.

Public authorities highlighted examples that have delivered benefits in the following areas:

- Promoting active citizenship by introducing innovative ways of engaging with people. Public bodies are strengthening and deepening the dialogue with the aim of delivering services that can better respond to different needs.
- Building stronger communities by tackling hate crime and by working with people whose voices often go unheard.
- Increasing access to services by encouraging new approaches and different ways to achieve positive outcomes.
- Improving employment practices to make workplaces in Wales more inclusive and to help staff to become better prepared for the challenge of delivering effective services.

There are some clear lessons in the experience of public authorities so far. These include the importance of engagement in understanding the issues and the wide impact of initiatives that appear to be small in scale.

Initiatives often begin in promoting one aspect of equality and develop to incorporate many others. The positive benefits of these initiatives are felt by both service users and the public sector workforce. The successes identified by this enquiry provide a strong basis for future specific duties.

The specific duties are the building blocks that will enable public authorities to demonstrate the progress that they are making towards fulfilling the general duty. They should provide tools that enable public sector authorities to fulfil their duties under the Act and demonstrate achievements and outcomes.

The strongest measure of success should be the degree to which public authorities are increasing access to services and making clear progress in reducing inequalities of outcome.

In conclusion, the specific duties offer a unique opportunity for public authorities in Wales to demonstrate their achievements and be judged as to whether they are making a difference to citizens in Wales.

6. How best can public authorities publish equality objectives, based on relevant evidence and set out the steps they intend to achieve?

We would strongly support a specific duty that enables public authorities to set out clearly their equality objectives. Evidence from public bodies about their experience of carrying out the current gender, race and disability duties suggests that setting objectives is a valuable tool in establishing priorities. Publishing evidence-based equality objectives improves internal monitoring as well as increasing transparency.

The specific duty should require public authorities to collect, analyse and act on relevant evidence. This should include both quantitative and qualitative data sources, including material gathered from relevant involvement activities.

Our clear preference is for Welsh public authorities to fully integrate equalities into their mainstream business and thus avoid unnecessary and inefficient duplication of efforts. The most appropriate and effective approach is for public authorities to integrate objective setting and the actions they will undertake as part of the mainstream business planning processes.

In conclusion, the Commission supports the publication of equality objectives which are the result of data gathering, analysis and use within the context of other mainstream plans.

7. How could public authorities involve people in the setting of equality objectives in the design of policies and delivery of services?

We strongly support the principle of involvement as one of the pillars of the public sector equality duty. We favour the inclusion of a specific duty which would require public authorities in Wales to ensure that appropriate groups and communities are involved and consulted in the development of priorities and reporting on progress.

It is important that we learn from the effectiveness of the Disability Equality Duty involvement requirements. In particular, the degree to which involvement has empowered disabled people by increasing their involvement in service delivery and decision making.

In conclusion, the Commission favours thorough, meaningful and strategic involvement in setting equality objectives.

8. What should the reporting requirements include? (For example, Gender Pay Gap figures, Black and Minority Ethnic (BME) employment rates, Disabled People's employment rate?)

How do we build on this, potentially including other equality strands?

If introduced, should this reporting requirement be placed on authorities of a certain size – perhaps 150 employees?

The Commission recognises the importance of:

- Reporting employment rates
- Conducting impact assessments

We recommend widening reporting employment rate requirements currently beyond the areas of race, gender and disability. The Welsh Assembly Government should take action to ensure public bodies collect data on employment rates to include more mandate areas. This reporting requirement should cover all public authorities regardless of size.

There must, however, be recognition of the current challenges in collecting data, particularly around disability, sexual orientation, religion and belief.

The issue of equality impact assessment is highlighted in this section by the Welsh Assembly Government. The Commission is of the view that equality impact assessment is a powerful tool in improving outcomes and that a duty to impact assess should be included. However, equality impact assessment should be

proportionate and appropriate to the size and nature of the public sector organisation and the duty should not be prescriptive in relation to the process.

The findings of the Commission's enquiries into use of the current public sector duties show powerfully that by carrying out equality impact assessments public authorities can identify whether policies, projects and practices are in any way discriminatory and at the same time look for opportunities to promote equality that may have been missed or could be better exploited.

An assessment can help identify whether all aspects of a public authority's services are addressing the needs of all those intended and promoting equality wherever possible. By carrying out assessments good intentions turn into good outcomes in service delivery, working and employment practices.

In conclusion, the Commission's position is that there should be a reporting requirement on employment in relation to all mandate areas. A duty to equality impact assess policies and procedures should also be included, but this should not be prescriptive in process and format.

9. We welcome your views as to what you believe to be the most important factors that should be considered in addressing the gender pay gap.

How could these factors be used to construct a specific duty?

Data released by the Office of National Statistics in November 2008 showed that both the full-time and part-time pay gap in Wales had increased.

Research undertaken on behalf of the Commission by Swansea University to look at why the pay gap increased in 2008 considered a range of possible factors including industry, occupation, region and age.

It is difficult to draw conclusions from a single year's data and, indeed, the pay gap has narrowed slightly in 2009. Nevertheless, it is clear that discrimination in pay systems, occupational segregation and work patterns all play a role in contributing towards the gender pay gap.

Women in Wales are more likely than men to be:

- working in the public sector
- working part-time and not receiving overtime payments
- working in the lowest paid occupations

The purpose of a specific duty to address the gender pay gap is to enable public sector employers to identify:

- whether they have a gender pay gap
- what is causing it
- how they can address it an effective and timely way

We note from the pre-amble to the question on the gender pay gap that two options for a duty to close the pay gap are outlined. We don't agree that there are only two options or that the options outlined are mutually exclusive. Rather we believe a much more effective and robust approach to framing the duty is to ensure it is built on some key underpinning principles. These principles should be:

- **Evidence-based** - collecting evidence about the workforce in terms of jobs, pay, grades, work patterns and contracts.
- **Involvement** - involving stakeholders, particularly trade unions, in analysing the data.
- **Transparency** - publishing the findings and the action plan. This will enable trade unions and others to engage with the action plan and assist with monitoring.
- **Action** - taking action to address the causes of the pay gap.
- **Outcomes** - focussing on tackling the factors that will have greatest impact in narrowing the gap.
- **Measuring progress** - reviewing the progress that has been achieved and clarity on what remains to be done.
- **Accountability** - ensuring all stakeholders understand priorities and progress.

In conclusion, building these principles into a duty will enable public bodies to achieve a clear understanding of the relative weight of the different factors that should be taken into account in achieving desired outcomes.

The Commission will assist public bodies and stakeholders by providing guidance on the duty and its implementation.

10. Should public authorities be subject to a specific equality duty that seeks to reinforce the progressive approach being promoted by Value Wales?

The Commission supports the use of procurement as a lever to making equality a reality. We understand that there are around 90 public sector bodies in Wales, with public sector spending representing around £5 billion per annum².

A specific duty on procurement could have far-reaching impact as it affects the private and voluntary sector as well as the public. International research has found that procurement is the most effective instrument for promoting positive action in employment and changing employers' practices with 'minimum pain and resistance'³.

However, the Commission has found that public authorities are unsure about whether it is legally permissible to use procurement to advance equality⁴. The fact is that they already have a statutory obligation to do so under the current duties. The Equality Bill has the potential to provide some much-needed clarity by establishing a more explicit connection between procurement and the new Equality Duty.

The Commission agrees that Value Wales has been crucial in achieving change in this area, and that this work is ongoing. For instance we recognise the benefit of initiatives such as the Opening Doors Charter for SME friendly procurement.

In terms of the content of the specific duty, the Commission considers the following should be included:

- Equality should be considered in all stages of the procurement process.
- That equality related contract conditions be included in contracts.
- That any specific duty requires public authorities to monitor, manage and enforce any equality requirements in contract specifications and conditions.
- That supplier diversity is considered in the procurement process so that potentially underrepresented groups are engaged, for instance ethnic minority, female and disability led businesses are included.
- That equality related award criteria should be used and given weighting in awarding contracts.

² Barriers to Procurement Opportunity Research, Welsh Assembly Government Value Wales, March 2009

³ R Singh Dhani, J Squares & TO Modood, *Developing positive action policies : learning from the experiences of Europe and North America*, Research Report No 406 (London: Department for Work and Pensions), 2006, p5

⁴ Equality procurement pilots recently carried out in central government on behalf of the Department for Work and Pensions found that the lack of clarity about the role of public procurement in social policy had an adverse effect on the way that the pilots were implemented. See N Dijan Tackey, H Barnes, H Fearn & R Pillai, *Equality Procurement Pilots* (London: Department for Work and Pensions), forthcoming

- That there be an explicit requirement for public authorities to exclude suppliers with a history of unlawful discrimination unless they can demonstrate that effective steps have been or are being taken to resolve the issue

In conclusion, public authorities in Wales should be subject to a specific duty around procurement.

11. What role can inspectorates play in securing equality outcomes for citizens?

The Commission welcomes the Assembly Government's recently published 'Policy Statement on Inspection, Audit and Regulation in Wales'. This places the citizen-centred approach firmly at the centre of external review, and emphasises the need for collaboration between inspectors, auditors and regulators in Wales.

Equality and human rights should be central to the work of other inspectorates, regulators and auditors as they are pivotal components in ensuring citizen-centred focus and improvement.

External review by inspectorates, regulators and auditors is a key element in improving the delivery of public services in Wales. We are pleased to note the recognition of the role that inspectorates such as Wales Audit Office (WAO), Care and Social Services Inspectorate Wales (CSSIW), and Healthcare Inspectorate Wales (HIW) and Estyn play in driving up standards in the critical spheres in which they operate. These inspectorates cover some of the most important areas in people's lives – social services and social care, health, education and local government. They are also facets of life particularly critical for those facing the most entrenched discrimination, deprivation and exclusion.

Given this, it is the Commission's view that the key inspectorates, CSSIW, WAO, HIW and Estyn are listed separately to the Welsh Assembly Government and should be subject to the specific duty (as they are in respect of most of the existing equality duties).

More widely, whilst it is the Commission's role to regulate on equality legislation, equality and human rights are core to the inspection and regulation of public services as they are essential components of improvement. If a public authority does not meet the differing needs of its diverse community it cannot be high-performing. The extent to which a public body understands and implements its equality obligations throughout its core business should therefore provide inspectorates with valuable evidence about its overall performance. A collaborative approach between the Commission and other inspectorates, regulators and auditors is therefore essential.

In tune with the Policy Statement, the Commission would welcome a specific duty that ensures:

- Equality is built into assessment frameworks as part of the citizen-centred and improvement focus, and inspectorates include reporting on equality within their overall reporting regimes.
- Information is shared between the Commission and other inspectorates, auditors and regulators as part of collaborative partnership, informing Government policy and driving up standards.

In conclusion, the Commission supports the inclusion of key inspectorates in the list of bodies to whom specific duties apply. The Commission supports a duty that will ensure the sharing of information between key regulators, inspectors and auditors, and the embedding of equality within assessment and reporting frameworks and regimes as part of the citizen-centred and improvement agenda.

12. How can we ensure that equality reporting by Ministers is meaningful and provides a genuine opportunity for a discussion on progress on equality in Wales?

The Commission would like to see the existing reporting requirement on equalities extended in the specific duties.

A human rights based approach in relation to work could inform reporting by Welsh Ministers. Such an approach would encompass:

- A recognition of the rights of all involved
- A participatory, transparent process
- A focus on the relationship between rights-holders and duty-bearers
- A system by which the approach could be monitored

The Commission is currently developing an Equalities Measurement Framework, Good Relations Framework and Human Rights Framework to inform a report to Government every three years on equality, good relations and human rights in Britain (the 'triennial review').

The Welsh Assembly Government is closely involved in the development of the frameworks and they will be a valuable tool in informing the Ministers' assessment and reporting on progress on equalities and human rights in Wales.

In conclusion, the Commission recommends that equality reporting by Ministers incorporates a human rights-based approach.

13. Conclusion

The Commission shares the desire of the Welsh Assembly Government to improve equality outcomes. The specific duties have a key role in enabling public authorities to achieve better equality outcomes.

We look forward to working with the Welsh Assembly Government in the drafting of clear specific duties. This will enable the Commission to prepare the best possible guidance for public authorities in Wales.