
National Equality Partnership Response to Specific Duties Consultation

The National Equality Partnership supports the third sector to challenge inequality and promote equality and human rights. It is a three year project (2008-11) funded by Capacitybuilders under the Improving Support Programme. Our national programme covers the whole of England.

We believe that organisations run by people with direct experience of inequality and discrimination have a unique and vital role in creating lasting solutions to inequality. At NEP we ensure that all work to address equality, diversity and human rights in the third sector is done with close involvement of equality organisations.

We offer training, information and one-to-one support to umbrella organisations to help them challenge disablism, homophobia, racism, sexism and other forms of discrimination and human rights abuse. We enable equalities organisations to increase their voices so that inequality is tackled effectively. All of our work promotes collaboration and partnerships, sharing expertise and encouraging long-term relationships between equalities organisations and the wider third sector.

Our work is closely informed by our reference group encompassing all equalities sectors as well as generalist organisations. The partnership of NEP is made up of:

- Women's Resource Centre (WRC)
- Voice4Change England
- Consortium of Lesbian, Gay, Bisexual and Transgender Voluntary and Community Organisations
- National Association for Voluntary and Community Action (NAVCA)

Women's Resource Centre is the lead partner with core staff based at our London office:

National Equality Partnership

Women's Resource Centre

Ground Floor East, 33-41 Dallington Street, London EC1V 0BB0, 207 324 3030

COVERAGE

Q1: Do you think the criteria set out above are the right ones? Please give your reasons

The National Equality Partnership would expect the specific duties to be imposed on at least the full range of public authorities that are already subject to specific duties for race, disability or gender.

We believe there should be no regression from the application of the current duties in relation to race, disability and gender and that any public authority currently subject to these specific duties should be subject to the new specific duties. The new legislation should build on the strengths of the existing specific equality duties.

This would mean that the specific duties would cover all Government departments and executive agencies (which had once been part of Government departments), non-departmental public bodies, all local authorities except parish councils, local education authorities and education authorities in Scotland, all NHS institutions, all Chief Police Officers and Police Authorities.

Q2: Are there any other criteria we should use? If so, what do you suggest?

The new specific duties should build on the principle that the specific duties promote the better performance of the general equality duty and in particular encourage and facilitate accountability, challenge and transparency.

ENFORCEMENT AND SETTING EQUALITY OBJECTIVES

Q3: Do you agree that public bodies should have a specific duty to publish equality objectives with reference to the relevant evidence and their wider general Equality Duty obligations?

The National Equality Partnership agrees that public bodies should have a specific duty to publish equality objectives; however we are concerned that if each public body has scope to set its own objectives, they will not stretch themselves on equality or really improve their policies or functions.

The specific duties need to ensure that inequalities are addressed in all policies and processes and to identify direct and indirect discrimination across all strands. The document is very unclear on whether there remains a requirement to do this. There needs to be further clarification and specific link between the setting of equality objectives and public bodies showing 'due regard' to all inequalities. If public bodies are not required to set objectives for all protected characteristics, discrimination will continue to be perpetuated outside of the equality objectives set.

The continuation of the requirement to publish an equality scheme (with the extension to all equality strands) and the required equality impact assessment of all relevant policies and processes would ensure fullest possible coverage.

By creating the link between evidence of gaps, setting equality objectives to meet those gaps (through a process of involving the third sector equalities organisations and other stakeholders), and fulfilling the general duty, the specific duties will clarify the *outcome* focus of the specific duties.

Q4: Do you agree that public bodies should set out the steps they intend to take to achieve their equality objectives?

Yes. This would be best done through public bodies continuing to publish Equality Schemes to lay out the actions they will take to meet the equality objectives they have set. 72% of public authorities surveyed within the research found Equality Schemes valuable and with effective outcomes for the cost involved. Therefore, it would seem ill-considered to change this practice when it has obvious benefits.

In addition, the absence of an Equality Scheme (and equality impact assessments) outlining the public body's strategy for promoting equality of opportunity, will not provide the voluntary sector and individuals with the tools that have been previously available to challenge adverse decisions.

Q5: Do you agree that public bodies should be required to implement the steps they have set out for themselves within the business cycle period unless it would be unreasonable or impractical to do so?

The National Equality Partnership agrees that public bodies should be required to implement the steps and activities outlined in the answer to question 4 within the business cycle period.

Q6: Do you agree that public bodies should be required to review their objectives every three years? If not, what time-period do you suggest instead?

Yes, the National Equality Partnership agrees with a three-year review. However, we would like clarity on how public bodies will be assessed as having met their objectives and how public bodies will be monitored to see if they are on track to achieve their objectives within the three year period.

Q7: Do you agree that public bodies should set equality objectives taking into account priority areas set by the relevant Secretary of State?

The National Equality Partnership has concerns about this proposal as we consider that public bodies should be setting their objectives after having assessed the inequalities of their area and after carrying out equality impact assessments on the decisions they take when setting their equality objectives.

Q8: Do you agree that public bodies should not be required to set equality objectives in respect of each protected characteristic?

No. If not required to have objectives for all protected characteristics then inequality could actually be increased.

The public body should have to consider whether to set equality objectives in relation to each equality protected characteristic. If the public body decides not to set any equality objectives in relation to any of the protected characteristics, the public bodies should be required to carry out an equality impact assessment on this decision. Further, the public body should publish within the document outlining its objectives, its rationale (and where to find the equality impact assessment) for not including a particular characteristic.

If the rationale (and link to equality impact assessment) is clearly stated this would promote accountability and enable challenge if this was appropriate.

REPORTING ON PROGRESS

Q9: Do you agree that public bodies should be required to report annually on progress against their equality objectives, but that the means by which they do so should not be prescribed in legislation?

Yes. The reporting process should include reporting on the actions they have taken so far and also analysis on whether they are on track to achieve their objectives within the remaining time and if not, what *additional* steps they will put in place to meet their goals.

REPORTING IMPORTANT EQUALITY DATA

Q10: Do you agree that public bodies with 150 or more employees should be required to publish their gender pay gap, their ethnic minority employment rate and their disability employment rate? We would welcome views on the benefits of these proposals in encouraging public authorities to be more transparent.

Yes, however, the level of reporting suggested is over simplified and should also be widened to include the other protected characteristics.

Without analysis of what job roles, grades and departments Black people, disabled people and people of an ethnic minority are employed in, the data is only a numbers exercise and does not contribute to understanding race or disability discrimination.

Q11: Do you agree with the proposal to use the overall median gender pay gap figure? Please give your reasons. If not, what other method would you suggest and why?

A median figure, without any analysis of the positions both women and men hold within organisations, will not progress the reduction of this gap. To identify where and how gender discrimination is happening it is essential to make comparisons within job roles and departments and therefore fairly compare individuals of equal or comparable seniority. Therefore the median pay gap fails to achieve this by combining a wide range of different employees and failing to provide the detail.

When considering the reporting of employers in relation to the gender pay gap, it would be necessary to take into consideration the jobs the public body contracts out, for example, cleaning services.

In particular, when reporting begins, it should start with a snapshot of the organisation prior to mandatory reporting because what is to stop a public body, who desires to show a reduced median gender pay gap, from contracting out all of the low-paid and predominantly female occupied jobs that were perhaps once within the organisation?

The specific duties should therefore specify the need for comparability in pay gap data within job roles and departments.

The National Equality Partnership would like to see public bodies publishing what steps they will take to address the gender pay gap. Any action should

include consideration of how recruitment, retention and development can be linked into forward planning.

Q12: Do you have any evidence of how much it would cost to produce and publish this information, and of what the benefits of producing and publishing this information might be?

Q13: Do you agree with the proposal not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty? If not, what other data do you think should be reported on?

No.

DEMONSTRATING IMPACT

Q14: Do you agree with the move away from an emphasis on describing process, to requiring public bodies to demonstrate how they have taken evidence of the impact on equality into account in the design of their key policy and service delivery initiatives and the difference this has made?

The National Equality Partnership would not like to see a complete move away from requiring public bodies to impact assess the decisions they make. There needs to be elements of both process and outcomes to address inequality - if you remove the process you are removing the tool and outcomes are important but meaningless if not achieved in the correct way.

Equality impact assessments have served as useful tools for service users and public bodies. 70% of public bodies find equality impact assessments useful and all successful legal challenges have been on points of process. The National Equality Partnership views equality impact assessments as essential in setting evidence based objectives, especially given that groups affected by discrimination and abuse are often excluded from decision-making processes.

Members of our reference group have expressed to us concerns that public bodies will not know how to demonstrate that they have taken evidence of the impact on equality into account without the tools being provided. Currently, when public bodies do not demonstrate good practice when carrying out equality impact assessments, they have a reduced chance of success in achieving real change for the people in their area.

Therefore, the National Equality Partnership believes that the impact assessment process *should* be specified for public bodies to assess the likely outcome of their functions and policies on different equalities groups and for the advancement of equality of opportunity between people who share a protected characteristic and persons who do not share it.

INVOLVEMENT AND CONSULTATION

Q15: Do you agree that public bodies should have a specific duty - when setting their equality objectives, deciding on the steps towards their achievement and reviewing their progress in achieving them to take reasonable steps to involve and consult employees, service users and other relevant groups who have an interest in how it carries out its functions - or where appropriate their representatives; and in particular take reasonable steps to consult and involve the protected groups for whom the duty is designed to deliver benefits?

The National Equality Partnership disagrees that public bodies should be required to only take 'reasonable steps' to involve and consult employees, service users, and other relevant groups. This proposal is a regression from the current requirements under the existing duties and will have an adverse impact on equalities groups.

It is essential that public authorities are given a clear direction that robust involvement and consultation of all the legally protected groups is important to setting their equality objectives and to carrying out its functions.

PROCUREMENT

Q16: Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?

Yes. Specific duties should be imposed on contracting authorities in relation to public procurement. The promotion of equality of opportunity should be explicitly identified as being key criteria in the pursuit of value for money and efficiency savings.

Q17: Do you agree that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities?

Yes. Public authorities should outline how they are taking equality into account at every stage of the procurement process.

Q18: Do you agree that contracting authorities should be required to consider using equality-related award criteria where they relate to the subject matter of the contract and are proportionate?

Q19: Do you agree that contracting authorities should be required to consider incorporating equality-related contract conditions where they relate to the performance of the contract?

Yes.

Q20: What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?

Q21: Do you support the proposal to establish a national equality standard which could be used in the procurement process? If so, do you believe this is achievable through a specific duty or is this better tackled through a non-legislative approach? Are there any practical issues that would need to be considered?

REPORTING DUTY

Q22: Which of the above four models do you consider achieves the best balance between joined-up working and senior accountability for equality outcomes, while avoiding unnecessary burdens? Please explain why.

The proposed models would act as a regression from present reporting requirements on the three existing duties and with only three yearly reporting would move equality down the priorities of government departments rather than ensuring it is a fundamental part of all government actions.

We would therefore recommend an annual reporting requirement for secretaries of state that adequately outline the progress made on equality objectives set and overall reduction of inequalities.

Q23: Do you have any other suggestions how this duty could be remodelled to retain the valuable features of senior accountability and joined-up working, whilst avoiding unnecessary burdens?

Q24: Are there any specific requirements, other than those that we have proposed, which you think are essential to ensure that public bodies deliver equality outcomes in an effective and proportionate manner?

The National Equality Partnership would like to comment on the government decision to no longer make equality training mandatory. We would also like to comment that this decision should have been a part of the consultation questions as it marks a step backwards in relation to educating public sector staff on equality awareness, in particular, race equality.

Every voluntary and community sector organisation that we have worked with since the specific duties proposals were published, has been alarmed at the regression on the equality training component.

We would have expected an expansion of current training requirements for public bodies to cover the extension of protected characteristics under the Public Sector Equality Duty.

Staff working within public bodies, especially those involved in making decisions on their public functions, need to have an understanding of equality issues and in particular, an understanding of any particular equality issues to their area e.g. Gypsies and Travellers.

Training is often the only time where some staff will find out anything regarding equality issues. It is also an opportunity for individuals to challenge their own discriminatory beliefs. Training can lead to attitudinal change which lays the foundation for cultural change.

Without a requirement for public bodies to carry out training, public authority staff are unsupported to gain the knowledge they need to make good practice decisions on equality, and to set robust equality objectives.

Q25: What role do you think the guidance from EHRC should play in helping public bodies implement the specific duties in a sensible and proportionate manner? What do you think it would be helpful for such guidance to cover?

Clear, accessible, practical good practice guidance produced by the EHRC, after the involvement of key stakeholders, in particular from all the protected equality groups, will assist in the appropriate implementation of the specific duties.

The EHRC should also work with voluntary organisations that have in-depth knowledge and experience with equality impact assessments to further develop the processes by which public authorities will be held to account on the decisions they make.

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