

Equality South West

Response to 'Advancing Equality for Men and Women: Government proposals to introduce a public sector duty to promote gender equality'

January 2006

Equality South West welcomes the gender duty as a significant step in the advancement of equality between women and men in England, Wales and Scotland. We believe that when considering how to implement the duty, the government should review how the race duty has worked over the previous four years. We hope that the gender duty is not weaker than the disability and race duties.

Equality South West (ESW) is the UK's first regional equality and diversity network. ESW is undertaking its work to increase co-ordination and effectiveness of equalities work at a regional level, support the development of regional and sub-regional networks, working with equality networks to identify priorities for policy support and development, and establish a voice for the equality strands individually and collectively at regional, national and European level. We are working together with women, Disabled people, Black and Minority Ethnic and lesbian, gay and bisexual communities across the region together with faith groups and our emerging age network in order to ensure a coordinated approach.

In preparing our response to the consultation on the proposals for the Gender Duty we convened a regional consultation event held on the 10th January 2006, Exeter- details of this are set out below. The response document draws heavily on the day of workshops and debate, together with the views of Equality South West as an organisation.

The consultation event, supported by Fair Play South West and the South West Regional Development Agency, was attended by 64 delegates, the majority of whom were women. A significant proportion of those attending were represented from equalities communities, including Black and Minority Ethnic, Disabled and transgender people.

30% of delegates attended from Local authorities, 5% from Health, 8% Education (HE/FE), 10% from Unions, 23% statutory organisations, 13% from the Voluntary and Community Sector and 11% attended as individuals.

Media/Awareness raising

The media has an important role in educating and promoting the general public on the Gender Duty. The media should be utilised to maximum effect with mass media campaigns to raise awareness of the changes and the impact these will have on the lives of women in the long term. The business case for gender equality as well as the case for equality as justice should be made using information on gender discrimination.

Participation and consultation

The recognition of the need for gender equality considerations to be mainstreamed into public authorities' strategic planning is welcomed. In order to

properly carry this out, there needs to be robust mechanisms of consultation in place. Public authorities should review current consultation processes to ensure that the views of a diverse group of women service users and staff are heard and that this in turn influences decision making in a transparent manner. It is particularly important that BME women, Disabled women, older and younger women and those with caring responsibilities are involved in consultation.

Consultation is crucial to understanding the experience of women and thus improving services and employment practices. Ensuring consultation with a diversity of women will lead to a better understanding of the varied experiences women have. Structured ways of consulting Disabled women, BME women, and both older and younger women should be required. Only then can better ways be found to tackle different configurations of inequalities as they occur in the different contexts.

It must be recognised that there are practical barriers to inclusion of marginalised groups in consultation. After reviewing the consultation mechanisms, work may need to be done to enable participation by Women's Voluntary and Community Sectors. Women who are sex workers for example, may find participation harder and public authorities should find ways to overcome this.

Public authorities should be encouraged to be creative when considering their consultation mechanisms. Offering incentives is a good way of engaging people for the first time. However, people will be unlikely to give up their time unless they can see it might make a difference so it is crucial that public authorities give timely feedback about what has happened as a result of the consultation. In addition, self-organised consultation groups with employees and unions coming together, with a common voice, may also be effective in influencing decision making and policy. Indeed the expertise of trade unions on gender equality and equal pay in particular should be recognised.

Consultation and the specific duties

We welcome the obligation to consult on the specific duties for gender goals and schemes and gender impact assessments. We believe that the specific duty relating to Equal Pay should contain an obligation to consult. The gender pay gap (as discussed below) exists partly as a result of discrimination and thus it is important that women are consulted about equal pay also.

Consultation needs to be built into all processes and policy making.

Guidance

Guidance on effective consultation processes and how this will influence decision-making should be given to public authorities.

Equality Scheme

The specific duty to carry out gender equality goals and schemes forms the backbone of the duty. We believe that there needs to be in place some central principles namely effective consultation, an obligation to collect data, training, and a linking of national and local goals.

Training and the Equality scheme

It is very important that the gender scheme should be known and understood by all staff members in the public authorities. Knowledge and transparency of the scheme will be crucial if staff members are to effectively comply with all the specific duties. The content of each gender scheme will effectively form the direction which that particular public authority will take in its compliance with the Duty.

Linking national and local targets

We welcome the suggestion for flexibility in setting targets at a local level. In the South West there are particular barriers faced by women in rural areas resulting from a lack of technological and transport infrastructure, for example. There is a concern though that this flexibility, if unstructured, would result in a variety of unconnected initiatives across the South West region and elsewhere. For gender equality to be systematically addressed there needs to be a coordinated approach by all public bodies throughout the nation to address key gender equality goals. We believe that the specific duties should require local bodies when setting local priorities to have due regard to key gender equality goals as defined nationally. These national goals need to be outlined in the Duty.

A more structured and coordinated approach will also act as guidance for public bodies and allow for possible mutual areas of support in implementing the duties.

Partnership Working

Real progress on gender equality can only be achieved if public authorities work together. Authorities may need to look beyond the specific services they provide to working with other authorities and developing appropriate partnerships, to deliver gender equality. For example, two of a community's biggest employers will probably be the local authority and the primary care trust. These two organisations could work together on a programme of job shadowing and mentoring to tackle occupational segregation or the low number of women senior managers. The Gender Equality Scheme should encourage public authorities to work together on equality issues. This also reflects the wider government agenda on partnership working. For example, the new government initiative for collaborative working, Local Area Agreements, require a wide range of public bodies to work together to deliver particular services. Some Local Area Agreements have already begun in the South West and others will be introduced over the next few years. We believe that it is crucial that equality is mainstreamed in all this work and that all Local Area Agreements, new and existing, are subject to the duties.

Collection of data

There is no formal duty to collect data. However such data collection is crucial to appropriately determining gender schemes and goals. It is also important in informing the Gender Impact Assessments and Equal Pay policies. Without up-to-date data, an understanding of those using services for example, will be unrealistic. Stereotypical assumptions and an inability to account for change will be the likely outcomes.

In order to monitor differences of experience, data should be collected on several aspects of a person's identity, such as their race and age as well as their sex/gender. Widening the data collection would not, we believe, result in additional burdens and would allow for a more comprehensive understanding of women and men as service users and employees of Public Authorities.

Guidance

There will need to be guidance on collecting data. The guidance should explain fully the importance of treating with respect sensitive issues such as the collection of data around sexual orientation. Lesbian, gay and bisexual employees may not want to openly identify in the workplace.

Gender Impact Assessments

Gender Impact Assessments (GIAs) need to be conducted on all existing as well as new policies/strategies/developments. The proposed gender duties do not require GIAs to be conducted on existing ones. This is nonsensical as it might be the existing policies of a public authority that have the greatest impact on gender inequality.

Gender Impact Assessments are described in the document as allowing 'any negative effects to be mitigated' (pg 5). Impact assessments, through allowing barriers to be identified, provide opportunities for the proactive promotion of equality to be envisioned. We believe that the full benefits of the impact assessments should be made explicit.

Conducting cross-equalities impact assessments (see below).

It is our view that senior management and those at board level within public authorities will need to be assessed. This would ensure transparency and assessment at all levels.

Guidance

Examples of a working model/ template that can be used at local/ regional and national level should be provided to help guide the assessments. Clear direction should also be given to help public authorities decide which policies need formal impact assessments.

Equal Pay

We believe that it is imperative that the gender duty is the tool that finally changes the persistent pay gap. However, the specific duty as currently worded does not ensure action is taken. It is not enough to produce a pay policy and we would like to see this policy implemented by a legal requirement to take action. This should be reflected in any statutory Code of Practice that relates to the gender duty. This action should focus on the three issues identified by the EOC, namely discrimination, occupational segregation and the unequal impact of caring responsibilities.

There needs to be a greater emphasis in the duty on the importance of the pay gap because until workable measures are addressed to close this gap the aim of the duty itself - gender equality – will not become a reality.

The underlying causes of the pay gap, as identified by EOC research and more recently the findings of the Women and Work Commission, as well as the definition of equal pay, must be fully explained to Public Authorities and understood by employers and employees.

Guidance

Guidance will need to be given on this and on the transparency and method of collecting and analysing statistics and data on pay and grading.

Staff Training Within Public Authorities

In order that the duty is implemented, staff need to be properly trained. Gender and other equalities are not automatically understood and a general level of understanding will need to be reached through training. A study by Howard and Tibballs in 2003,¹ found that wider public perceptions of equality were of 'fairness' and predominantly seen as being about preventing individuals from suffering discrimination. If equality training is not given to staff then the proactive aspects of the gender duty will not be complied with therefore undermining the progressive agenda. It is imperative that the basic meanings of gender and gender equality are understood and that stereotypes are challenged.

The training should incorporate the business case for equality where public authorities will be able to provide higher quality services that are more accessible and tailored to need.

The training must be given at all levels within the public authorities including senior members of staff and elected members. Issues of gender equality need to

¹ Howard, M and Tibballs, S (2003) Talking equality, The Future Foundation and Equal Opportunities Commission

be mainstreamed within public authorities' training programme. External consultants and training providers will need to be equality proofed across all equality strands before they conduct work.

Training and the specific duties

There needs to be a requirement in the specific duties to train all staff on gender equality issues. There will need to be specific training for the staff members who will be carrying out the Gender Impact Assessments, the Equal pay duty and in drawing up an equality scheme.

Transgender

We believe that issues of gender should be seen in a much broader sense than the traditional and artificial dichotomy of "men" and "women". At different times of the transition process, a transgender individual may define as a man, woman, both or neither.

The proposed wording of the gender duty does not require public authorities to tackle gender equality issues that impact on transgender people. We welcome the legislative advances for transgender equality in recent years – in particular the Sex Discrimination (Gender Reassignment) Regulations 1999 and the Gender Recognition Act 2004. However, transgender people still experience significant discrimination in both employment and service delivery and the new Gender Duties could create opportunities to tackle this. At whatever stage they are in the transition process or how they personally wish to define, transgender individuals currently experience discrimination and disadvantage when they access the services of public authorities or are employed by them.

We know that many transgender people continue to experience discrimination and harassment at work – whether in recruitment, access to training, promotion, access to benefits or selection for redundancy. The Sex Discrimination (Gender Reassignment) Regulations make it unlawful to discriminate against a job applicant or employee on the ground that the person intends to undergo gender reassignment, or is undergoing gender reassignment, or has at some stage in the past undergone gender reassignment and if this happens provides individuals with an avenue of redress. However, we feel that the regulations alone do not provide adequate protection. With the race and disability duties, public authorities are required to go beyond responding to individual complaints and take proactive steps to prevent discrimination occurring at all. We feel that the Gender Duty should be used to require public authorities to treat transgender equality in the same way.

We also know of numerous examples of discrimination experienced by transgender service users of public authorities. These will be far less likely to occur if the gender duty provides them with further protection. For example, local authorities and police forces should show due regard to the vulnerability of transgender communities to hate crime if a thorough impact assessment is

carried out on their community safety strategies. Currently only a minimal number of health authorities provide specific medical and support services for transgender communities. Some Primary Care Trusts in the region continue to send transgender patients to a gender clinic in Charing Cross, London rather than the much closer clinic in Newton Abbot. Often concerns about data protection are used by public authorities to justify differential treatment offered to transgender communities. For example, the Inland Revenue stipulates that all transgender individuals who have fully transitioned, must submit their tax return to the Cardiff office – irrespective of where they live. They are also prevented from submitting on-line returns.

We welcome the government's assurance that it will bring in legislation to prevent discrimination against transgender people in the provision of goods, facilities and services by December 2007. However, we are not convinced that it is necessary to wait until this date. The gender duty legislation could be used to prevent discrimination by public authorities before this time.

We believe that the gender duty should not only cover public authorities but should be extended to cover the voluntary/community sectors. We are aware of many examples where organisations in these sectors have not delivered appropriate services to transgender individuals or not tackled discrimination and harassment.

The fear, ignorance and prejudice felt towards transgender individuals in society could be tackled if the media took responsibility for how they portrayed positive images. For the last 50 years, transgender people have invariably been portrayed as figures of fun, freaks, bizarre and deviant in newspapers, television programmes and advertisements. As both the BBC and Channel 4 are public authorities, if the gender duty specifically covered transgender issues, it would require them to treat the issues more fairly. If the duty covered private sector organisations, all the media would have to do the same.

Education

As currently worded, the Gender Duty would not cover educational institutions. We are pleased that the Minister for Women and Equality has since stated that educational institutions in England, Wales and Scotland will now be covered by the specific duties.

It is now widely recognised that gender stereotypes pervade educational institutions. Girls and boys make choices that drastically affect their later life. Subject choice and work experience placements for example, lead to occupational segregation with women entering lower paid and lower skilled work than men. Change must be made through the education system, from the very earliest years, in nurseries and play schools, to further education.

Employment practices within educational institutions will also change, if the specific duties are applied. Unequal pay between men and women persists in educational institutions and men dominate the higher levels of the profession.

It is essential that educational institutions are covered by both the general and the specific duties and that those obligations under these duties cover transgender issues. Schools and colleges have a key role in raising awareness and tackling ignorance and prejudice about transgender people. Schools and colleges should also be required to demonstrate support for transgender students.

Action focused

The duty as currently worded lacks force in its tone. While mention is made that public authorities will need to 'pro-actively' promote equality, under the general duty section it is stated that public authorities will need to be 'conscious of their obligation under the SDA and EqPA'. This suggests a requirement merely to keep a watchful eye for discrimination should it arise. The Gender Duty, in fact, should be a tool to tackle systematic and ingrained gender inequalities, such as pregnancy discrimination, which continue to exist at all levels and in different organisations. The wording will need to be rephrased to this effect, because currently it suggests that Public Authorities need only react to ad hoc and smaller cases of discrimination when they arise.

Integrating equality duties

We welcome the suggestion in the consultation of an integration by Public Authorities of the existing public duties. We would like it to go further with a recommendation to integrate work on all six equalities areas where possible, namely the single equalities schemes and equality impact assessments, whilst ensuring that differences between these areas are not lost through integration.

It is hinted in the consultation document on page 21 that Impact Assessments can be conducted on all equality strands in a single assessment. We believe that this should be made explicit. If substantive gender equality is really the goal then multiple identities and forms of discrimination need to be understood and tackled. Through an integration of equalities work we will more easily be able to identify and challenge the complex and multiple inequalities that exist and lead to a better delivery of services to women who face severe discrimination as a result of compound inequalities and those who are on the margins of society such as sex workers and asylum seekers.

We believe that there needs to be more recognition in the duty of the diversity of women.

With the onset of a Singles Equalities Act, the anticipation is for further joined up equalities initiatives. To start incorporating the equalities areas now is therefore also likely to be effort and cost effective.

Guidance

There will need to be guidance on how to expand and bring together the existing duties and new equalities areas. Awareness and information should be given on conflicting issues between the different strands of equality where for example, beliefs held by some in the name of religion, are to the detriment of women and gender equality.

Enforcement

There are enforcement tools available in the event of non-compliance but we believe that the late stage at which they will be used undermines them significantly. There is a danger that as currently worded, compliance by Public Authorities will rely on good will. The consultation document has a strong emphasis on monitoring and there is inadequate discussion of compliance and scrutiny. We believe that the wording throughout the duty must impress upon public authorities that the duty is a legal requirement with which they 'must' comply or face penalties.

We believe that as well as penalties for non-compliance there should be rewards for those Public Authorities which do comply and demonstrate good practice.

The responsibility to comply must permeate beyond the organisational level. Senior management, which may often lack the necessary skills/ knowledge on equalities issues yet ultimately make the decisions, must be held accountable for any inactions regarding implementation.

It must be ensured that leave for non-compliance is not given to smaller organisations because they have a smaller budget.

Rather than burdening public authorities with further regulation, compliance could be linked with existing regulatory regimes such as a local authorities' Comprehensive Performance Assessment.

Strong leadership

It is essential that there is strategic and capable leadership. Even given the best framework in place for this Duty, without the political will and strong leadership, the goals will not be achieved.

This leadership must come from central government to ensure that there is a coordinated approach by all public authorities towards tackling gender inequalities. The government needs to be a champion and set the example for Public Authorities to follow.

Strong leadership by those within public authorities is also essential. Senior officials, who influence decision-making in the organisation will need to be trained and act as champions of gender (and other) equality. There should also be a

board level champion for implementing the duty who must be held accountable. Within local authorities, elected members must also understand their responsibilities. It must be made clear who the leaders and champions are in the organisations.