



Review of the Public Sector Equality Duty

FDA response to the call for evidence

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Background and introduction

The FDA is the trade union for senior managers and professionals in public service, with the majority of our members being civil servants, although we also have a substantial number of members who are managers in the National Health Service. As such, we have been working with the Public Sector Equality Duty and its predecessor duties for many years, including working with management in the civil service on providing guidance to departments on how they can demonstrate that they have met the requirements of the duty. FDA members are involved in decision making and service delivery, as well as being service users themselves.

The FDA is disappointed that the Government Equalities Office (GEO) has been tasked with conducting a review of the Public Sector Equality Duty at this time, as it is clearly premature. The Public Sector Equality Duty only came into existence in April 2011 and the specific duties in September 2011. Indeed, the technical guidance only came out in January 2013. It is, therefore, difficult to produce evidence as to the success or otherwise of the duty. The civil service has long been advocating good practice in this area, and produced guidance on how best to ensure equality and fairness in its employment practices as well as the provision of services.

The FDA welcomed the inclusion of the Public Sector Equality Duty in the 2010 Equality Act. Our experience of the previous equality duties is that they helped to place equality at the heart of decision making and to improve the delivery of services to those who need them. However, it was often difficult for organisations to ensure compliance with the three duties, when the requirements were slightly different for each one. Bringing these together in an all-encompassing duty was helpful in reducing the bureaucratic burden on organisations, and built on the best practice of those bodies who had recognised the appropriateness of ensuring their policies and practices did not discriminate against any groups or individuals.

Public Sector Equality Duty

The Equality Duty was introduced in order to encourage public authorities to be proactive in ensuring they do not discriminate against sections of society, and therefore reducing the likelihood of individuals needing to seek redress as a result of discrimination. This should save resources and money, as well as ensuring good practice.

There is widespread acknowledgement that eliminating discrimination and advancing equality benefits society. The Government's own Equality Strategy states that *'Failure to tackle discrimination and provide equal opportunities, harms individuals, weakens our society and costs our economy'* and concludes that *'Equality is not an add-on, but an integral part of this Government's commitment to build a stronger economy and fairer society'*. It is clear that ensuring public authorities adhere to the Equality Duty effectively will provide a way to demonstrate and implement this commitment and reduce inequality.

We believe that any review of the Equality Duty should consider strengthening the specific duties which underpin the Duty. The FDA responded to the consultation in 2011, when we said: *“The fact that it is still necessary to remind public bodies of the social and cultural need to promote equality and diversity, despite 40 years of equality legislation in this country, emphasises the need to clarify that this is also a legal requirement, and to ensure that public bodies adhere to centrally and collectively determined objectives both in terms of collecting and publishing data, and in the development and implementation of action plans to deal with any issues highlighted by the data.”*

We believe this to be an important factor for the Government to consider in this review of the Equality Duty, and would urge you also to take note of the report produced by the Equality and Human Rights Commission [“Publishing equality information: commitment, engagement and transparency”](#) which assessed how well public authorities had complied with the Equality Duty in the first quarter of 2012, and which concluded that only half of them met the requirement to publish information on their workforce and service users by April 2012, although they also went on to say: *“Aspects of good practice are evident within all sectors and types of public authority and this demonstrates that all public authorities should be able to publish equality on both their workforce and on their service users in the short term.”*

How well understood is the Equality Duty and guidance?

The Equality Duty only came into force two years ago, so it is too early to measure its impact, particularly as this would need to include an assessment of how effectively adherence to the duty has avoided discrimination claims by ensuring that authorities addressed potential discrimination in advance.

This is particularly true of those aspects of equality which were not covered by the previous duties, such as age, religion or belief, and sexual orientation, so there is unlikely to be much evidence available as to the impact of the duty on these characteristics. There is, however, evidence of the effectiveness of the previous duties on race, sex and disability, where it is clear that public authorities have changed their behaviour in order to ensure they do not discriminate.

Examples of this include equality impact assessments (EIA) which were carried out when government departments were restructuring or moving office, including when some jobs were put “at risk”. In at least one instance of a major reorganisation an equality impact assessment identified that a high number of those who were still in the pool awaiting placement were disabled, which led to further work being carried out to identify why this was happening. The conclusion was that individual managers, who were budget holders, were concerned at the potential additional cost of reasonable adjustments, so had been prioritising the placement of individuals who were not disabled. Once the issue was identified, human resources management were able to deal with it effectively and the individuals were supported into roles. It is likely that, if this equality analysis had not been done at the time, the issue would not have been identified until a later stage,

potentially after the individuals affected recognised that they were being discriminated against, and may have led to claims against the employer.

In 2010, the civil service equality and diversity awards included one for “Transformative Equality Impact Assessments”, which was promoted as: *“an award for an individual or team who have achieved positive change through the use of Equality Impact Assessments (EIAs)”* and with the following criteria:

- *“Evidence of how EIAs have been mainstreamed into the organisation*
- *Demonstrated how EIAs have delivered transformational change*
- *Resulted in positive outcomes for service users, employees or stakeholders”.*

The FDA was pleased to acknowledge this recognition of the positive aspect of the duties at the time, and of the potential effectiveness of EIAs, which demonstrated that the civil service was encouraging good practice and the effective and transparent use of equality analysis. It was also part of an attempt to disseminate information about the requirements of the equality duties. The FDA was disappointed that this approach was not continued, and the award was discontinued.

The FDA is surprised and disappointed at the Government’s decision not to allow the Equality and Human Rights Commission to produce a Statutory Code to support the Equality Duty, as it is clear that all public bodies require clear guidance as to the requirements of the duty. The lack of a Statutory Code is likely to lead to unnecessary bureaucracy, as organisations struggle to understand the new duty and their commitments under this. It will also make it more difficult for stakeholders and individuals to access the information, if it is not provided in a consistent fashion across different authorities/departments, which will make timely challenge more difficult, and could lead to legal challenge if a department or authority gets it wrong.

What are the costs and benefits of the Equality Duty?

It is too early to assess the costs and benefits of the Equality Duty, since it has only been in place for two years, but it is important that the duty is implemented so as to ensure and allow challenge to public bodies to improve performance and provide measurable outcomes. We recognise that this will not always be easy for organisations, and it is important that the duty is not seen as creating bureaucracy for the sake of bureaucracy. The duty will have failed unless it leads to public bodies engaging in genuine consideration of equality issues, and looking at ways of ensuring they do not discriminate. We believe that the small cost of producing evidence to demonstrate compliance with the Equality Duty can and will be offset by changes which engage with society and avoid discrimination. An effective Equality Duty will allow public bodies to target their services more accurately, which will, in turn, make authorities more efficient. It will also help to ensure their workforce reflects the community they serve, which further improves efficiency as the public body is then more able to respond to the needs of that community, and help people who are currently most discriminated against,

and excluded from, society. This is particularly significant at a time of austerity, when public bodies have a specific need to ensure that their services are accurately targeted.

How organisations are managing legal risk and ensuring compliance with the Equality Duty

Within the civil service, it is clear that the Prime Minister's speech to the CBI which included his comments about equality impact assessments, and the letter from the Cabinet Secretary to government departments which followed it, have created unnecessary confusion about what is required of them, what the 'due regard' aspect of the Equality Duty means and what departments need to do to meet it. This is particularly concerning since the civil service, as the centre of government, had been seeking to demonstrate best practice on adherence to the public sector equality duty, and had produced guidance to departments on how to ensure they adhered to the public sector equality duty, which included advice on the production of equality impact assessments which are effective and not bureaucratic. As outlined above, in 2010, there was an award given within the civil service for "transformative equality impact assessments", which was seeking to share and reward best practice.

However, the obligation to assess the equality impact of policies and procedures, to do so transparently and openly, and to use this assessment to inform decision making, is unchanged. The Government has repeatedly emphasised the need for transparency in the work of public authorities, including the civil service, and this would require that such consideration must be visible and open to challenge. The FDA believes that well produced Equality Impact Assessments are an effective and appropriate way to achieve this.

Examples of effective EIAs which have helped government departments to adhere to the duty include one relating to the restructuring of the Crown Prosecution Service in London. The restructuring involved displacing staff from approximately 90 locations throughout London into three hubs. An EIA considered the potential consequences of this and led to disabled staff being allocated to their first choice location, while non-disabled staff entered a preference exercise. This mitigated to some extent the problems which would have been caused to disabled staff by increased journeys in both length and time.

A recent EIA relating to a new performance management procedure in the Department of Energy and Climate Change drew attention to the possibility for direct discrimination in the implementation of the policy, so the Department are working to avoid this, through training and support to ensure that all staff are treated fairly and equitably throughout the process. This includes training to recognise and mitigate unconscious bias, which is now being recognised as a barrier to equality and fairness.

Another example relates to the new civil service pension scheme which comes into force in 2015. The EIA which was produced identified some areas of potential discrimination and led to the establishment of tapering to protect the position of those civil servants who will be close to pension age when the new scheme is introduced. In addition, the

EIA led to a specific mitigating action in relation to death in service benefit for those in the Premium scheme when they transfer to the new scheme.

In 2008, the Ministry of Defence decided, as part of a “green initiative” and to save costs, to shut down most of the lifts in their main office building for some of the week. It wasn’t until an EIA was carried out, that they recognised the impact this would have on disabled staff who relied on the lifts, and the decision was reversed.

There is little doubt that such issues would have come out through individual or collective challenge once the new scheme was implemented, which could have led to reputational damage as well as unnecessary use of resources, and that the EIA, and the mitigating action which was taken, has reduced the risk of this happening in each case.

What changes to the Equality Duty framework would ensure better equality outcomes?

The FDA believes that a very important factor in ensuring the most effective implementation of the duty is leadership from senior management and political leaders. It is, therefore, unhelpful that some parts of the Government have characterised equality as unnecessary ‘red tape’. Such statements, particularly when coupled with the comments from the Prime Minister and Cabinet Secretary about Equality Impact Assessments as detailed above, are having a negative effect on, and undermining the effective implementation of, the Equality Duty.

We would expect that the Equality Duty framework would be developed and improved over time, as best practice becomes apparent. This requires open and positive leadership focussing on goals, genuine outcomes and results to show how departments, agencies and other public bodies can adhere to the public sector equality duty, and how this will improve their performance and effectiveness.

The FDA is concerned that implementation of civil service and public sector “efficiencies” and the reduction in departmental posts in human resources with the consequent loss of equality expertise, will affect the ability of organisations to gain an understanding of the Equality Duty and ensure that they are able to comply with it. This is also true of the Government Equalities Office itself, which has been subject to several machinery of government changes since it first came into existence, and which is currently working to restructure and reduce its workforce numbers, thereby reducing its ability to develop and retain the necessary expertise and knowledge to support the equality duty. We would expect government departments, agencies and other public bodies to work to develop understanding and awareness, and up to date information to allow consideration of equality issues in policy and decision making processes and enable equality implications to be considered before decisions are made.

It has been recognised that active engagement with service users, including employees, particularly those from protected groups, is an important aspect of the public sector equality duty. Such engagement leads to better quality and more appropriate decision making, and reduces the chance of later challenge.

We are also concerned that cuts to the Equality and Human Rights Commission, and frequent restructuring, are undermining their ability to provide support to public bodies, and to help individuals and groups to hold public bodies to account, and also to ensure a regulatory regime which will ensure that public bodies are adhering to the requirements of the duty. We are further concerned that budget cuts, consequent reductions in staff numbers, and the additional responsibilities which have moved from the EHRC, will affect the ability of the Government Equalities Office itself to provide oversight, conduct effective reviews, and offer advice, guidance and support to public bodies in order to ensure that they are adhering to the requirements of the public sector equality duty.

Enclosures

Background

1. FDA response to the consultation relating to the specific duties regulations in April 2011

Equality Analysis/Impact Assessments:

2. Proposed changes to the Principal Civil Service Pension Scheme (PCSPC)
3. Summary and action plan relating to the PCSPS EIA
4. Ministry of Defence proposal to shut down lifts
5. Department of Energy and Climate Change proposed changes to performance management policy
6. Crown Prosecution Service office centralisation proposals