Submission to the consultation on the Public Sector Equality Duty

Police Federation of England and Wales

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Introduction

1.1 The Police Federation of England & Wales ("the Police Federation") is the staff association for all police constables, sergeants, inspectors and chief inspectors in the 43 home office police forces of England & Wales. It was created by the Police Act 1919, with a statutory responsibility to represent and promote the interests and welfare of its members. The Police Federation has approximately 135,000 members and provides support in respect of litigation in accordance with its fund rules. Our members hold the office of constable and do not have contracts of employment. They can however access employment tribunals for assessment of claims of discrimination.

1.2 All Police Forces, Police and Crime Commissioners and Police and Crime Panels are subject to the public sector equality duty, as is the Home Office. The Police Minister has indicated that the College of Policing is currently subject to the duty in so far as it delivers public services, but will be included in Schedule 19 to the Act in due course.

Background

2.1 In his report into the death of Stephen Lawrence, Sir William McPherson identified systemic failures in the way the Metropolitan Police Service had dealt with Stephen, his friend and his family at the time of his death. McPherson said that this failure was the result of institutional racism. As he was at pains to point out in his report, neither the term nor the concept of institutional racism was new, yet many in the Police Service reacted as if this notion was unknown and offensive to all those police officers and staff who worked within the Service.

2.2 Over the coming months, senior officers in the Police Service and other public sector organisations considered the evidence in their own institutions and declared that they could see parallels within their operations which were also capable of being classified as institutional racism. A report into Equality and Fairness in the Fire Service published in 1999 by her Majesty's Chief Inspector of Fire Services declared that the Fire Service in England and Wales was both institutionally racist and sexist, and furthermore that matters of sexual orientation were taboo within the Service.

2.3 Despite nearly 25 years of equality legislation in respect of race and sex, it was evident that little progress had been made to integrate the needs of a diverse community within the employment practices and service provision of major public and private sector organisations in the UK. Any progress that had been made had been at the expense, both financial and personal, of individuals who had challenged the practices and arrangements of organisations through the Courts. Whilst some had been successful in achieving change to practices, many had not.

2.4 The equality legislation had not worked as anticipated or as required.

2.5 Discrimination is pernicious; it damages personal and professional lives. It leads to a lifecycle of inequality where individuals cannot achieve their full potential and are condemned to poverty and disadvantage in old age. It means that employers are deprived of the best people in their workforce. It is an intractable social problem which needs legislation and government leadership to remove it from all aspects of the lives of people in this country.

2.6 The first laws to promote equality of opportunity were introduced by the Race Relations Acts of 1965 and 1968. Further legislation built on the success and failures of the law over the coming decades. Laws to prevent discrimination against women and later disabled people paved the way for a comprehensive Equality Act that now covers nine protected characteristics.

2.7 The Equality Act 2010 implemented comprehensive coverage of the public sector equality duty which recognised the important changes that had been made in the achievement of equality through the operation of the equality impact assessment process. When first introduced, the equality impact assessment process was generally misunderstood and as a consequence, widely disregarded.

2.8 There remains a persistent body of opinion that regards the equality impact assessment process as overly bureaucratic and ultimately of no real value. This is a sad reflection of the value placed on equality within our society in 2013.

2.9 It is also an indictment of the failure of the Equality and Human Rights Commission (EHRC) and the Government Equalities Officer (GEO) to issue either statutory or non-statutory guidance to public authorities as to how they should meet the requirements of the PSED until the beginning of this year. The specific duties were consulted on and changed several times leading to massive confusion and cynicism about the government's real commitment to promoting equality.

Current Situation

3.1 Inequality of opportunity still persists in our society. It can be seen in different outcomes for people from different groups in education, health care and in work. It can be seen in different outcomes experienced by people engaging with the Police Service as an employer and as a deliverer of services.

3.2 The Police Service has to take responsibility for ensuring equality is advanced for all people inside and outside the Service with whom it has dealings. The new landscape of policing makes this particularly relevant; the Police and Crime Commissioners, the Police and Crime Panels and the College of Policing are all new organisations with no corporate knowledge or practical understanding of the importance of taking equality into account when making decisions.

3.3 The Police Service has a particular and important role in society. The men and women in the Service can only police with the consent of the public. To do this they must have the confidence of the communities they serve. They cannot have that confidence if they do not reflect the diverse communities across the country.

3.4 The Police Service has a history of being a predominantly white male workforce. It is only by an active and consistent assessment of the equality impact of its recruitment and retention policies that this has changed.

3.5 There is still significant room for improvement and the Service cannot afford to be complacent. Recent history shows that there have been many missed opportunities for a proper assessment of equality at both national and Force level to have made positive changes to equality and diversity in the Police Service.

4. Examples of inadequate assessment of equality in the Police Service

4.1 Fitness Testing for Recruits

4.1.1 In 2003, the Police Advisory Board for England and Wales (PABEW) discussed the matter of fitness testing for the police service, prompted by a paper on the operation of recruitment fitness tests submitted by the Police Federation. This showed that the national fitness tests then used for recruits had a disproportionate adverse impact on women: men passed at an average rate of 97%, at 47%.

4.1.2 The indirect discrimination provisions of the Equality Act require that any provision, criterion or practice (in this case, a fitness test) that puts persons of one protected characteristic (in this case, women) at a particular disadvantage … must be justified as being a proportionate means of achieving a legitimate aim.

4.1.3 The PABEW undertook a complete review of fitness tests to ensure that all standards were job and competence related; that they were applied consistently across all Forces, and were non-discriminatory. The discriminatory impact of the recruit fitness tests was identified only by monitoring of the impact after implementation. An equality impact assessment process would have identified this problem before implementation and ensured that women were not unjustifiably disadvantaged in the recruitment process.

4.2 Recruitment Standards

4.2.1 In 2005 the pass mark for the “SEARCH” assessment centre for recruits to the Police Service was raised from 50% to 60% for most components. One of the reasons for this was to assist in the management of waiting lists of those who had been successful in SEARCH. Over the next two years there were concerns raised at the PABEW National Recruitment Standards Working Party that there had not been a sufficiently robust equalities impact assessment of the proposal as it became apparent that the raising of the pass mark had had an adverse impact on recruitment of black and minority ethnic candidates in some Forces.

4.2.2 The indirect discrimination provisions of the Equality Act require that any provision, criterion or practice (in this case, a pass mark) that puts persons of one protected characteristic (in this case, black and minority ethnic people) at a particular disadvantage … must be justified as being a proportionate means of achieving a legitimate aim.

4.2.3 There is no evidence that the 50% pass mark was set at the wrong level. It had been tested through predictive validity studies, and forces were content with the calibre of recruits obtained using it. The pass mark reverted to 50% in 2007. An equality impact assessment process would have identified this problem before implementation and ensured that black and minority ethnic recruits were not unjustifiably disadvantaged in the recruitment process.

4.3 Stop and Search

4.3.1 The potentially discriminatory use of Stop and Search by Police Forces under the Police and Criminal Evidence Act (PACE) has been a source of major concerns from community groups in many parts of England and Wales for many years.

4.3.2 In 2010 the EHRC were minded to take legal action against a number of police forces because of significant and persistent race differences in their use of Stop and Search. This followed a comprehensive review of the use of stop and search powers across England and Wales over the preceding 10 years by the EHRC and its predecessor the Commission for Racial Equality (CRE). The review showed that black people were at least six times as likely to be stopped and searched compared to white people. Asians were around twice as likely to be stopped and searched compared to white people.

4.3.3 The indirect discrimination provisions of the Equality Act require that any provision, criterion or practice (in this case, the policy for stop and search) that puts persons of one protected characteristic (in this case, black and minority ethnic people) at a particular disadvantage … must be justified as being a proportionate means of achieving a legitimate aim.

4.3.4 In addition the direct discrimination provisions of the Equality Act require that people should not treated less favourably because of a protected characteristic (in this case, race). Direct discrimination cannot be justified.

4.3.5 The EHRC said that “Stop and Search needs to be used fairly. The evidence is that it isn’t and the Commission is acting to try to change this.” Although the EHRC came to agreed settlements with the Forces concerned, it is clear that a properly conducted equality impact assessment process would have identified this problem before implementation and ensured that black and minority ethnic people were not unjustifiably disadvantaged in the use of stop and search.

4.4 National Police Promotions Framework

4.4.1 More recently the College of Policing has taken a decision to roll out a new system of promotion for Sergeants and Inspectors in the Police Service of England and Wales. We have serious concerns about the impact of the new process on women and people from black and minority ethnic (BME) groups.

4.4.2 Under the new National Police Promotions Framework (NPPF) process all officers seeking promotion have first to apply for a post in Force. It is highly unlikely that officers, particularly when they are young and about to start a family, will apply for or get a post outside their home Force. The person appointed is subject to a work based assessed over the next 12 months before they can be confirmed in the rank.

4.4.3 Women who are pregnant or on maternity leave will now have considerable difficulty accessing a promotion post under the NPPF; they will also be disadvantaged by the requirement to assemble a portfolio of evidence during the 12 month work based assessment period if they have dependent children or other caring responsibilities. This will make it harder for women to access promotion opportunities.

4.4.4. Almost half of the 6663 BME officers serving in Forces in England and Wales in March 2012 were in the Metropolitan Police Service (3259). Another eight Forces employed 1985 BME officers, meaning around 80% of the total number of BME officers serve in just nine Forces. As the number of promotion posts in-Force is limited, this practice will have a disproportionate adverse impact on access to promotion opportunities for BME officers. In 34 Forces the promotion pool will be wholly or mainly white.

4.4.5 Up to now officers have first gained the promotion accreditation and then been able to apply for a promotion post in any Force. The process has been by examination and assessment centre against national standards over two separate days. The NPPF has, in our view, introduced additional and potentially discriminatory barriers to the police promotions process.

4.4.6 The equality impact assessment was not developed at the proper time, nor did it properly address these concerns.

5. Conclusions

5.1 The examples set out above are not isolated examples. Whilst some Forces show a genuine desire to deliver equality through an equality assessment, it is clear that many are constrained by a lack of understanding of the purpose of an assessment process. The Police Federation believes that proper statutory guidance would improve understanding of the assessment process and lead to the effective promotion of equality by the Police Service.

5.2. We believe that the review of the PSED is premature. It was originally intended to be reviewed in 2015 but moved forward. There is therefore very little evidence to confirm the effectiveness of these duties in its current form as it is less than two years old. Therefore, this review is likely to be just wastage of public resources.

5.3. The specific duties in England have been lightened so that they allow public sector bodies to undertake a suitable proportionate response to assessing equality in their functions. The administrations in Scotland and Wales have taken different views of the specific duties required by their public bodies. We consider that this provides an invaluable opportunity for a proper assessment of the value of the duties over the next few years, allowing a comparison to identify what works.

5.4 The Prime Minister seemed to negate the effectiveness of the PSED when speaking to the CBI in November 2012 when he said that he was “calling time on equality impact assessments” because there are “smart people in Whitehall who consider equalities issues while they're making the policy”. The outcomes of challenges to government policies show a somewhat different picture. Both this government and the last (who introduced the duty) have been repeatedly shown not to have taken adequate regard for equality during their decision making .

5.5. The recent review of police officer and staff remuneration and conditions conducted by Tom Winsor was criticised by the Police Arbitration Tribunal for its inadequate consideration of equality in some of the recommendations.

5.6. It is clear that not taking equality into account when developing policy is significantly more expensive and time consuming than trying to get it right after the event. If decisions are made with equality in mind, all people will be included in the delivery of the function, and legal challenges will be much less likely. The removal of the duty to take due regard of equality will not prevent people from making legal challenges should a service provider not provide them with a service that fits their needs.

5.7 We believe that the current method of challenge to an organisation’s assessment of due regard via judicial review is overly bureaucratic and expensive for all parties. The challenge is to the decision-making process rather than the outcome or the rigour of the assessment. We consider that it would be helpful to have a simpler and easier route to challenge the assessment of due regard in a less confrontational forum which delivered a more equitable outcome. Our suggestion would be that a referral could be made to the Equality and Human Rights Commission who would be able to put a remedy in place in much the same way as the Information Commissioner decides on questions under its jurisdiction.

5.8 Finally, in summary, the Police Federation considers that the public sector equality duty has a vital role to play in taking us forward in the modern world. We cannot afford, as a society, to return to a time and a place where the assessment of the different needs of people within our diverse society was lessened or lost. The Police Service knows to its cost what can happen if equality is not given proper regard.