

## Communities, Equality and Local Government Committee

Inquiry into : The future of equality and human rights in Wales

Response from : Adele Baumgardt

### **Terms of Reference:**

- How well the specific public sector equality duties are functioning in Wales;
- The Equality and Human Rights Commission in Wales;
- The link between poverty and equality and the socio-economic duty; and
- Accountability for equality and human rights legislation in Wales.

In working with public sector duties in Wales on the implementation and understanding of the general and specific duties in Wales I would offer the following comments in respect of the above issues:

- The Equality Duty is neither a luxury nor red tape. It is a practical tool for modern government and one that is particularly useful during times of austerity - such as we are currently experiencing. The duty is an effective and efficient way of operating that allows public bodies to recognise people's different needs, make the best use of limited resources and achieve better outcomes for all their users. The duty provides a framework for providing the efficiencies required by the public sector and ensures best use of their resources. An example is the South Wales police force providing an and engagement group – PACT specifically for the Deaf community and engaging with that community enables them to reduce costs of providing BSL interpreters at all PACT meetings. This is just one of many examples of how the duty and knowing your citizens can reduce costs.
- Because the current Equality Duty only came into force in April 2011, it is too early to measure or assess its impact. Time is needed for the Equality Duty to become fully embedded within

organisations' working processes. As yet there is very little information about its impact on outcomes in relation to age, religion or belief and sexual orientation, which were not previously covered by an equality duty. However, there *is* evidence of the benefits that the 'old' race, disability and gender duties generated, including how equality duties can help public bodies to make difficult spending decisions on a better-informed basis that encompasses equality considerations.

- The Equality Duty is not a panacea for all the shortcomings of society; it is an important lever but leadership, skills and knowledge within organisations are just as significant. The engagement requirements can strengthen organisations work and help them to understand the issues faced by groups and to tap into the expertise within such groups.
- The Equality Duty should work as a tool that helps public bodies to deliver their services fairly and more accurately. Commercial organisations routinely gather and use information about their customers and target markets to help them to produce goods or services that meet their customers' needs: the equality duty prompts public bodies to do likewise. When difficult choices have to be made about the allocation of resources there is a significant risk that groups of people with protected characteristics will be disproportionately affected unless active consideration is given to making cuts as fairly as possible.
- Due regard, which is central to the duty, is an inherently proportional concept. It requires public bodies to consider equalities issues in a proportionate manner and not in an excessive or irrelevant way. However, there appears to be some confusion about what it means in practice, and this has been exacerbated by recent government comments about what equality impact assessment means and whether it is beneficial or required. For example, it is becoming common to paraphrase 'due regard' as 'giving consideration to equality' even though case law indicates that the general duty requires more than this.

- It is important that the Duty is designed, implemented and supported in such a way that it has the greatest possible impact on equality outcomes. This may challenge public bodies to do better but that should not be a burden.
- Public authorities need appropriate guidance to ensure that they do not adopt risk-averse practices, such as collecting more information than they really need or not putting data they have collected to good use. If there is evidence of public bodies taking inappropriate actions in the mistaken belief that these are required, the response should focus on strengthening understanding of what needs to be done rather than on changing the actual requirements.
- There is much that could be done to improve understanding and strengthen implementation of the Equality Duty and thus to maximise the benefits both for public bodies and for those who still face inequality of opportunity. The key elements are:
  - Positive and visible leadership from elected and management leaders that focuses on goals and outcomes that will advance equality of opportunity.
  - Decision making that takes robust but proportionate account of the likely impact of a decision on the three goals of the Equality Duty.
  - Action to make sure that organisations have the capacity to implement the Equality Duty effectively.
  - Clear equality outcomes and objectives that an organisation commits itself to achieving and that inform its business planning. These should reflect priorities that are based on evidence and community engagement.
  - Active engagement with the service users, residents and employees, particularly those from protected groups. This is likely to lead to better quality and more appropriate decision making.
  - Active use of qualitative and quantitative evidence to inform understanding of the likely impact of policy, service and employment decisions. Collecting information is not an end in itself but must inform action.

- Openness and transparency, including clear and publicly available information about the progress a public body is making towards achieving the Equality Duty's three goals.
- Regulatory regimes that have equality and diversity embedded in their assessment criteria and are assessed rigorously.
- A statutory Code of Practice giving authoritative, concise guidance on what the duty requires.
- Information and awareness raising amongst the public in respect of the duties and what they can expect from authorities subject to the duties in Wales.
- Since different specific duties have been adopted in England, Scotland and Wales it would be very useful for an independent research project to be conducted into their impacts to try and identify which model will have greatest impact. It is notable that while there have been a number of judicial reviews of the operation of the Equality Duty in England there do not appear to have been any in Scotland or Wales since their new specific duties were implemented.
- The functioning and effective implementation of the general and specific duties in Wales is still patchy, with some good practice being clearly evident. Some bodies are still largely ignoring the requirement of the duty, but these are fewer than those genuinely trying to implement the duty in a meaningful way.
- Equality Impact Assessments are similarly patchy in their implementation. However there has been an increased demand in the last year for training on EIAs across the public sector.
- The Ministerial Duty in Wales offers an opportunity to draw together some of the evidence of the impact of the general and specific duties and could be used as an opportunity to highlight good practice and to encourage collaborative working on this agenda. This could also be an opportunity to work with and expose those organisations that have no Strategic Equality Plan, objectives, published data or EIA process in evidence.

- The practical monitoring and measuring of the duty in Wales cannot be done without sufficient resources and the cuts to the EHRC in Wales have significantly impacted on their ability to work on this agenda. Consideration should be given to devolving more of the resources and allocation to the EHRC in Wales which will be commensurate with ensuring that the spirit and the letter of the duties in Wales are bearing the fruit they should
- Similar devolution issues should be considered regarding the enactment of the socio-economic duty and the production of any Wales specific duties under it. Guidance and resource allocation to this work will have similar implications as above.