

## Communities, Equality and Local Government Committee

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

Response from : Barrie Ledbury - Equality Practitioner

### **1. How well the specific public sector equality duties are functioning in Wales?**

The following observations and proposals were noted as a direct result of discussions with a wide range of stakeholders, organisations representing protected characteristic groups, and individuals themselves, prior to the development of the first Annual Equality Report 2011/2012 for Cwm Taf LHB.

Although it is understood that responses to the consultation `should' be limited to 5 pages, they are clearly appropriate to be submitted in their entirety, in relation to this particular question.

#### **Key components to progress the equalities agenda:**

##### **- 1.1 Equality Impact Assessment**

The principle of Equality Impact Assessment (EQIA) is clearly sound, yet the process by which it has traditionally been undertaken elicits very little evidence of effectiveness. In some way, it can be argued that this has been compounded by the specific duty to `publish a report' which in itself suggests, and has generally been interpreted as, a separate document.

This in turn has inadvertently promoted EQIA as an `add-on' document, and subsequently contributed to a practice of completing it separately after the event, rather than being undertaken at the same time the policy or strategy is being developed.

Although the Equality & Human Rights Commission (Wales) has acknowledged that it has never been a specific intention that it should be a separate document, this practice is now generally well embedded throughout all public service organisations, and consequently there is a natural reticence amongst public service organisations to change a well-established process, despite the fact that it may not be as effective as it could be.

##### **- 1.2 Engagement**

The benefits of engagement are now well-known and well established amongst public service organisations. However the approach is quite generic in nature, often seeking the views of `the public' or service users as if they were a homogeneous group. Additionally the principle often expressed is that engagement events are `open to everyone', and therefore equal opportunities are being provided for anyone representing a protected characteristic to engage with public service organisations. This is sometimes supplemented by an offer to provide relevant facilities if requested. As there are often no such requests, it is interpreted as a lack of interest to engage.

The perspective of protected characteristic groups is however somewhat different, as previous experiences tells them that appropriate and effective facilities are still not made available. Added to this is sometimes a reticence to raise particular issues within a general public environment, which itself is often unappreciative of `unique' issues and challenges, leading to comments such as `what's so special about them!'.

In some cases a realisation of these issues has subsequently led to organisations 'going out' to organisations or groups representing the protected characteristics.

Although this is an encouraging development, it also raises its own challenges in that there are a considerable number of such organisations and groups, and often many representing the same characteristic. Additionally different public service organisations are often attempting to access the same representative organisations and groups leading to 'consultation overload', often with no well-established or agreed mechanisms to feed back what has changed as a result of the consultation. This can clearly lead to consultation apathy, and worse, having the potential to generate mistrust.

Engagement events, particularly from a protected characteristics perspective, tend to highlight two key issues as a recurring theme – access and attitudes. Once again time spent on engagement subsequently detracts from the time required to address these recurring themes i.e. if we already know with confidence what the key issues are, then shouldn't we now spend time effort and resources working with protected characteristic representatives/organisations (a co-production approach <http://neweconomics.org/publications/challenge-co-production>) rather than simply continuing to elicit the issues, involving substantial resources.

Engagement with the general public is however a different issue as it provides an opportunity to air concerns and respond to them, hopefully building up a relationship of trust and openness. But whatever the concerns are, the themes of access and attitudes will be a constant and it is difficult to develop and sustain trust if the unique issues relating to the protected characteristics continue to be overlooked by public service organisations and often by the general public themselves.

There are different challenges in relation to engagement with staff who represent the protected characteristics as they may, for a number of reasons, be reticent to disclose their characteristic.

It is essential to at least recognise these challenges which public service organisations are trying to address in good faith, and following this consider appropriate opportunities to make progress (see Opportunities).

### **-1.3 Information/Data**

Most sources of information and data provide aggregated figures, rather than identifying data at an individual level.

There is a paradox therefore – aggregate data may suggest for instance that ethnic minority groups represent 2% of the population. This can lead to a view, when trying to address whole population issues, that 2% is a 'small number' and consequently such a focus cannot be justified. The argument that this 2% is already worse off than the whole population gets overlooked.

Also some organisations representing specific protected characteristics groups actively promote that any attempts to collate individual data is not about 'you', but for reasons of planning services.

However disaggregated data (i.e. at an individual level), provides the only opportunity to be responsive to individual protected characteristic requirements. Attempts to collate such data are thwarted by poorly promoted messages as to why the information is requested, un-coordinated methods to collate it, mistrust as to why it's requested, and information governance issues i.e. consent, security, confidentiality, data sharing:

<http://www.bbc.co.uk/news/uk-14760046>

Effectively this is the 'elephant in the room' which is holding back real progress in relation to the equalities agenda.

#### **- 1.4 Use of Evidence**

Most evidence is collated by organisations representing the protected characteristics, which is then traditionally provided to public service organisations in the form of comprehensive reports and subsequent recommendations. Although many of these may be making the same recommendations, albeit worded differently, public service organisations are expected to respond directly to the stated recommendations.

The time, effort and resources required to do this then directly detracts from any opportunities to make real progress, and the governance mechanisms required to measure and monitor progress are ever changing. Add to this major reorganisation, redesign, financial constraints, consumer expectations and changing demographics and the opportunity to add value is severely compromised.

#### **- 1.5 Quality of Evidence**

There are many perspectives of what can be considered as 'evidence'. Most public service organisations require evidence which will stand up to academic scrutiny, and be robust and credible.

If assumptions are promoted based on poorly acquired data or insufficient sample populations, then they may be disregarded by the very professionals that the 'evidence' is intended to influence.

#### **- 1.6 Awareness & Training**

Considerable misunderstanding persists relating to what is 'awareness' and what is 'training'. For the purpose of this analysis, the focus is on awareness.

Awareness in relation to equalities has grown up piecemeal over the years, reflecting the piecemeal development of equality legislation. This has necessarily presented challenges in updating awareness courses, managing and securing attendance, and measuring/monitoring changed behaviour or attitudes.

Many attempts to improve this 'process' have then led to the development of an e-learning solution to aid flexibility and updating. However this does not allow for staff having learning preferences and styles; difficulties accessing relevant equipment; I/T phobia etc: It is a solution for those providing awareness sessions, not for those receiving them.

Additionally the most consistent comment from service users is that 'you need to train all your staff'. This is then promoted by all organisations representing protected characteristics, often suggesting that they need to provide the training themselves. The result has been a substantial overload of training sessions relating to individual issues, sometimes taking frontline staff away from providing services to service users, and leaving their colleagues under even more pressure.

#### **- 1.7 Working with Partner Organisations**

The benefits of working in partnership with other organisations are well understood and acknowledged, particularly in relation to a common focus.

However it is apparent that approaches and priorities can differ, particularly in relation to the equalities agenda. Although various attempts have been made to explore common ground, operational pressures often override such attempts.

#### **- 1.8 Inspectorates/Regulators**

Inspectorates and regulators have themselves recognised that a generic approach is ineffective due to the sheer scale and practicalities of the task, and consequently there is a need to focus. For instance Healthcare Inspectorate Wales now focus on themes, and the EHRC's NHS-focus for this year is on engagement. Although the downside of this approach is that it can subsequently generate a time delay in addressing other key foci, the key benefit is to be able to concentrate on effectiveness and outcomes, rather than mainly assessing processes.

However there are a wide range of inspectorates and regulators, and many have simply maintained their original approach, for instance wanting to know how many EQIA's have been completed, or how many staff have been trained etc:

Again therefore the time, effort and resources required to respond to disparate requests directly detracts from just being able to get on with it. An imbalance is being created in that we are increasingly spending more time on saying what we do, rather than just being able to do it.

### **- 1.9 Judicial Review**

There have now been a number of Judicial Reviews which can be linked to the aforementioned key components to progress the equalities agenda:

#### **Rahman, R v Birmingham City Council [2011] EWHC 944**

**The Queen on the Application of Janet Harris and The London Borough of Haringey and (1) Grainger Seven Sisters Ltd (2) Northumberland and Durham Property Trust Ltd and the Equality and Human Rights Commission [2010] EWCA Civ 703 – Duty to consider the impact on racial groups when proposing redevelopment.**

**R (Kaur) v London Borough of Ealing [2008] EWHC 2062 (Admin) – the need to impact assess before making a decision. Southall Black Sisters (SBS) provides specialist services to Asian and Black Caribbean women, particularly in relation to domestic violence issues.**

**R (Chavda and others) v London Borough of Harrow [2007] EWHC 3064–the importance of taking Public Sector Equality Duties into account**

Curiously no such Review has taken place in Wales – yet! However the Judicial Reviews have certainly raised consciousness in relation to the requirement to have 'due regard'.

What is required though is a sensible, well-considered approach to achieving due regard, rather than a knee-jerk bureaucratic response which may produce considerable documentation, but no real added-value for protected characteristic groups.

This needs to be acknowledged by regulators and the public themselves if efforts to improve services, or at least make them equally accessible, are to be achieved.

### **- 1.10 Leadership**

More of the same is simply not an option particularly in view of the enormous and diverse pressures that the NHS faces i.e. financial pressures; an ageing population; ambitious national targets; changes in medical and nursing education; the European Working Time Directive; intense technological and process innovation; difficulties recruiting, retaining and keeping staff up-to-date; high consumer expectations.

The Annual Equality Report 2011/12 has provided an opportunity to 'draw a line in the sand' and be open and transparent about the current challenges, but more particularly raise debate with stakeholders and the public about greater opportunities to make effective progress. A key issue is that service users themselves have a major role to play in achieving this.

An assessment of opportunities therefore to progress this are outlined as follows:

### **1.11 Opportunities**

There is often a tendency to simply try and address or make improvements to recognised individual barriers and challenges.

However it is suggested that a transformational approach is required, as otherwise the equalities agenda will continue to be perceived as a form filling, bureaucratic, and politically correct exercise.

### **1.12 Focus**

The Equality Act 2010 allows public service organisations to focus and to justify its focus. This is welcomed.

Any attempts to divert that focus or introduce new priorities should be challenged.

The focus of Cwm Taf LHB's equality objectives are on mental health and emotional well-being. If there are strong evidence based links between this and other issues (i.e. sensory loss), then it should be encompassed, but should not be a separate exercise with different priorities, or measurement and monitoring processes.

### **1.13 Awareness**

It is unsustainable to develop equality awareness training specific to protected characteristic issues, in its own right as it is competing with even more emerging topics, at a time of increasing operational pressure on staff.

Equality needs to be included in all existing training and relate to the training topic. In this way an appreciation of EQIA will build up, as it will be directly relevant to the topic.

### **1.14 Engagement**

In acknowledgement of the reticence of staff to 'disclose', there is a potential for 'virtual engagement', similar to the existing and well-utilised 'Grapevine' Intranet site. In this way issues can be raised and debated, whilst the anonymity of the participants is secured.

### **1.15 Embedding**

In the early days of the equalities agenda, efforts were mainly targeted at the EQIA of policies. However as there were hundreds of them, attempts were then made to 'assess relevance'. The assessment of relevance itself became an exceptionally bureaucratic form filling process, which has continued to taint the perception of equalities.

At that time there was very little effort undertaken in relation to the EQIA of service developments. However significant opportunities now exist to 'embed' the EQIA process in service developments, service redesign and the regional re-organisation of services.

In order to do this a different approach needs to be explored to ensure appropriate buy-in to the equalities agenda, so that it becomes part and parcel of existing practice rather than an 'add-on'.

The seeds of such an approach have already been sown in Cwm Taf LHB, but it needs to extend to the inequalities; waste, variation and harm; concerns; and research agendas.

### **1.16 All – Wales approach**

There are significant opportunities for an all-Wales approach. For instance all LHBs will be looking at redesign issues based on health conditions or regional service models i.e. mental health; cardio vascular disease, diabetes, stroke or centres of excellence considerations.

Clearly it is inefficient that they should be undertaking equality impact assessments of these common issues separately.

All-Wales task and finish groups which would include equality practitioners and organisations representing protected characteristics should work together on such issues, rather than separately.

Additionally there are many national 'systems' that could encompass protected characteristic issues i.e. National Staff Survey; National Patient Experience Survey; Champions for Health; Datix; Myrddin (Patient Administration System); e-Referral; My Health On-line; CORE (Mental Health database). There is however often reticence to do this as it does not feature in respective priorities and there is very little understanding and appreciation of the benefits to patients and staff of including this. Clear and co-ordinated explanatory information can be developed on an all-Wales basis, rather than by individual public service organisations. Otherwise this will continue to be seen as information being collated for no purpose.

### **1.17 Disclosure**

The reluctance to disclose equality profile information is the single-most issue which will hold back any opportunities to demonstrate improved experience and outcomes, yet there is very little co-ordinated effort in this regard.

Aligning disclosure to equality objectives foci is necessary to demonstrate improved outcomes:

*'Because the general equality duty requires you to analyse the effect of your organisation's functions on all protected groups, public authorities will not be able to meet the duty unless they have enough usable information'*

EHRC website

This needs to be piloted in order to demonstrate that a difference can be made, but other stakeholders and the public themselves need to acknowledge and understand this.

It is certainly achievable if the benefits are appropriately promoted, and the principles of the Data Protection Act are duly complied with.

### **1.18 Effect on Clinical Outcomes**

There is now a wealth of robust national evidence that equality characteristic issues have a direct effect on both experience and subsequent clinical outcomes.

This needs to be accounted for and embedded in national campaigns such as the *Save a 1000 Lives* campaign.

### **1.19 Research**

Research activity has traditionally had an entirely 'clinical' focus, and consequently the link between non-clinical issues and eventual clinical outcomes has not been well recognised or supported.

Although this anomaly has been recognised in Cwm Taf, this needs to be acknowledged and addressed by national bodies who provide research funding.

### **1.20 Information Technology**

Considerable opportunities exist if individual equalities information/data is captured, shared and analysed using Information Technology. In fact the fields already exist but there is a reluctance to use/populate them as it is perceived as a purely administrative exercise, rather than an opportunity to identify and therefore improve patient care, in relation to the equality profile of the individual.

### **1.21 Influencing others**

All public service organisations should be open and transparent in identifying the challenges to progress the equalities agenda, otherwise Inspectorates, regulators, funders and the public themselves will simply maintain the status quo, in view of their own competing priority issues.

### **1.22 Governance**

Governance mechanisms need to routinely account for the differences and disparities of outcomes in relation to equality characteristics. This principle is acknowledged by Healthcare Inspectorate Wales:

*'adequate and appropriate information to enable an effective level of scrutiny and to gain the assurances needed regarding the quality and safety of service delivery'* – Recommendation 6: A Review of Governance Arrangements at Cwm Taf Health Board, Health Inspectorate Wales March 2012.

*'The Health Board should think creatively and innovatively about indicators that focus on patient outcomes; .....* Recommendation 14:- A Review of Governance Arrangements at Cwm Taf Health Board: Health Inspectorate Wales March 2012.

Additionally, relevant measurement and monitoring processes need to be agreed nationally in order to compare respective outcomes, and share best practice.

### **1.23 Effect of Policy shifts and Redesign**

The focus of efforts in relation to the equalities agenda has tended to be on service users coming to us. However a major policy shift is taking place in the NHS based on providing care at home or in the community, where possible.

An entirely different level of thinking is required now to appreciate equalities issues in a person's own home or in the community.

## **2 The Equality and Human Rights Commission in Wales**

Clearly if there is an argument to support the National Assembly being given full primary legislative competence in relation to the PSED, then a consequence is that either Wales should have its own EHRC, or some other body. However if the principle of devolved powers provides an opportunity to improve equality and human rights issues in Wales, then clearly a review of the effectiveness of the existing PSED and the potential distinctive role of the EHRC in Wales is required. Consequently I believe the existing unique powers need to be reviewed so there is more of a focus on outcome rather than processes.

There is substantial national evidence to show that an individual's health experience and outcome is affected in relation to protected characteristic issues, including socio-economic considerations. However these continue to be addressed on a generic basis and as such lose all focus, with no resulting opportunity to demonstrate that any intervention has actually made a difference. Basically we don't need even more reports and recommendations, we need a joint effort to explore interventions to practically improve experience and outcome.

I also note the work undertaken by the EHRC to collate 'intelligence' in relation to a correlation between strong performance in relation to the PSED and high performing public authorities. The methodology and assumptions made to come to this conclusion are highly questionable and does little to support the credibility of the PSED. In fact various pieces of 'research' would not always stand up to academic rigour.

The current EHRC in Wales also clearly suffers from a capacity issue and are simply unable to exercise their existing unique powers. A stronger partnership is therefore required with Welsh Government and public authorities, with a view to establishing a joint focus on advancing equality and human right issues in Wales. Without this it is inevitable that a perception of unnecessary bureaucracy will prevail.

### **3 The link between poverty and equality and the socio-economic duty**

There is already substantial national evidence to show a link between poverty, equality and socio-economic issues. However I'm already noting a trend towards using the words inequality and equality interchangeably as if they mean the same thing. Inequality and socio-economic issues are very much 'place-based' (i.e by geography or community), and this further promotes a generic approach to the equalities agenda, thereby 'overpowering' it and diluting the experience and outcomes of individuals by such a generic, group approach. In a way it inadvertently promotes stereotyping.

A person-centred approach is required which can only be measured and progressed by capturing relevant data.

Significant opportunities are already available to capture data at an individual level re protected characteristics, poverty and socio-economic issues, yet this is poorly understood by individuals, mainly because it's poorly explained by public service organisations, including the EHRC and Welsh Government. If ever there was an opportunity to take a distinct approach to the equality and human rights agenda, this is it.

### **4 Accountability for equality and human rights legislation in Wales**

A distinctive Welsh approach should establish a joint accountability for the equality and human rights legislation in Wales, with a focus on individual outcomes rather than generic processes.

Otherwise equality and human rights issues can become blurred or fudged.