

## Communities, Equality and Local Government Committee

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

Response from : Citizens Advice Cymru

### **1 Introduction**

Citizens Advice Cymru welcomes the opportunity to submit evidence to this inquiry. In the 12 months to December 2012 Citizens Advice Bureaux in Wales helped with 499,149 issues including over 2,000 discrimination cases. Citizens Advice Bureaux are charities that provide free, confidential and impartial advice to help people resolve their problems.

In our equality and diversity strategy 2012 – 2015 key principles are identified as:

*“making sure we are able to give consistently high quality advice on crucial equality problems and that our advice reaches the most marginalised groups.”*

Our strategy argues:

*“Our aims and principles and our definition of equality are all rooted in, but go beyond our legal obligations under the Equality Act 2010. This means we take into account all the protected characteristics under the Equality Act as well as other key aspects of equality such as socio economic background, Welsh language ,rural isolation and low basic skills. Essentially equality and quality drive us to be better.”*

Our core aims are to:

- Challenge discrimination through advice
- Promote equality through advocacy
- Value diversity through our role of employer, volunteer agency and contractor

We have included our values position as it underpins our response to the consultation questions and contextualises supporting equality and challenging discrimination as essential within our core work. Our general approach to the Equality duties stems from the 2004 decision of the Citizens Advice Trustee Board to act within the principles of the Equality duties. Although not a public body and not bound by them they provide a sound and useful framework for our work progressing equality. We concur with a recent paper by the Equality and Diversity forum ( 2012) which argued

*“ The duty is an effective and efficient way of operating that allows public bodies to recognise peoples different needs, make the best use of limited resources and achieve better outcomes for all their users.”*

## **2 How well the specific public sector equality duties are functioning in Wales**

The duties implemented under the Equality Act 2010 fall into two types of duty, the general duty and the specific duty. The general duties [Section 149 of the Equality Act 2010] focus on the needs of people with protected characteristics<sup>1</sup> and Public Authorities having due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity between different groups
- Foster good relations between different groups

The specific Public Sector Equality Duties which came into force in Wales on April 6<sup>th</sup> 2011 and which are different to England and Scotland broadly relate to administrative processes which support the general duty.

Following the introduction of the duties one of the most important developments is the introduction of Equality Impact Assessments (EIA). We do not intend identifying individual organisations within our response. We know of both positive and negative examples in Wales of how Public Authorities respond to their equality responsibilities.

In our view when EIAs have been done well they have ensured that responsibilities towards people who have protected characteristics are identified and responded to effectively. We know of other examples where the process has begun before the policy is developed and meaningful engagement has taken place.

Where EIAs do not work is when they are treated as no more than a 'tick box' exercise and the process results in little or no material change. However there is nothing intrinsically tick box about the EIA process. Whether they are done well or badly is often down to the leadership, ethos and understanding of the issues by the body conducting them. Or an EIA can exacerbate an already difficult situation when the EIA says there is no discrimination and the opposite is in fact true. Responding in an EIA in a uniform way that there will be no change in the policy for any group with a protected characteristic is questionable. It suggests to us that that Public Authority has not taken the process seriously where changes will affect people if the changes are enacted.

As it is still a relatively new process we want its impact evaluated before there are any fundamental changes to the process. However our view is that the duties have enormous potential and need time to bed in before their impact is evaluated. Whilst some protected characteristics have had over thirty years of policy interventions targeted at them, others have had far less time and the impact on building a better society which is less discriminatory in our view, still needs a regulatory framework which is implemented via the general and

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<sup>1</sup> age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.

specific duty. As an example we have seen real progress in the way that the Gender Duty is interpreted. We are aware of several examples where the EIA has changed policy and practice when a gender perspective is effectively incorporated for example. Gender budgeting as one example is implemented by some Public Authorities as a direct result of the Equality Impact Assessment. We do have some recommendations for how the process can be improved based upon our experience of them thus far:

- Ensuring that feedback is always provided once the impact assessment is submitted so that learning is shared and the process improved
- Ensuring that it goes beyond the protected characteristics and explore other factors which can cause discrimination e.g. rurality, poverty and discrimination against Welsh Language users
- Using the National Principles of Public Engagement in Wales within the process
- Extending the process to organisations receiving grants from Welsh government
- Integrating it to other monitoring frameworks so that practice is integrated e.g. sustainability, anti poverty and so on
- Having a clearer definition of 'due regard ' introduced as the general duty requires more than this and it is used as a 'floor 'rather than a 'ceiling ' target
- Implementing the equality duties alongside good management and leadership practices so that the values approach which the equality duty promotes becomes embedded throughout all organisations

Welsh Government has led and implemented the process of equality impact assessments on its budget and this is to be applauded. We would like to see this process extended so that meaningful and effective use of EIA take place. Producing these assessments is complex and challenging. It would be helpful if an organisation like this committee or the Wales Audit Office could review the process of EIA and share lessons learnt to all relevant organisations in Wales.

### **3 The Equality and Human Rights Commission EHRC in Wales**

Our key principle is that there should be an organisation independent of both UK and Welsh government with a monitoring, promotion and enforcement role in relation to equality and human rights within Wales. We have already seen the UK government indicate its desire to reform the EHRC at the UK level. This has led to a refocusing and restructuring of the organisation which we believe has weakened its impact in Wales.

We believe that its core functions should be laid down in statute and it become independent within a Welsh context. This is because the statutory obligations laid down under the Government of Wales Acts have a clear focus on equality. In addition there is broader cross party support for the development of a rights-based agenda in Wales and again this could be built into the statutory functions of the new organisation.

Our view is that it should be constructed in statute on the lines of the Welsh Language, Older People's or Children's Commissioner. We would want it to be fully compliant with the Paris Principles so that its monitoring function meets global standards of Governance in relation to Human Rights institutions. Any specific developments of the EHRC in Wales need to meet and exceed the role and function of its predecessors.

Moving on to the discrimination advice line which no longer exists. This was run by EHRC and replaced on October 1<sup>st</sup> 2012 by the Equality Advice Support Service (EASS). Whilst we are working with EASS to ensure that clients get the best service possible within our respective remits, we are concerned that the role and scope of the advice line has in effect been diluted. We would like this reviewed within the Welsh context. Its current role is defined as focussing on explaining legal rights and remedies, explaining options and referring people to mediation or conciliation. This is in our view not strong enough for the challenges people face in relation to discrimination and lack of equality. The narrow terms of reference are especially worrying in terms of the recent and newly announced changes to Legal Aid. It is interesting that in its first few months of its operation we have had no referrals from them.

As an example of the gap in service provision which we fill, two recent case examples demonstrate need and how we provide key services to ensure that people are not discriminated against. Equally as important, we ensure effective remedies through independent advice.

### ***Case Example 1***

A client suffered an accident in work which injured his back and caused permanent disability. The client was later selected for redundancy as he was unable to work full time although this was due to his disability. The bureau helped him challenge his selection and claim disability discrimination and unfair dismissal. He was awarded £9712.

### ***Case example 2***

The client was openly gay and harassed at work. A colleague searched through the clients eBay account then maliciously claimed he had been purchasing sex toys at work. The client was suspended and at risk of dismissal. The bureau assisted with his grievance and challenging his suspension included raising concerns about sexual orientation discrimination. The client was reinstated, received a written apology and the harasser faced disciplinary action.

We are concerned that the Red Tape Challenge wishes to repeal a number of clauses from the Equality Act 2010. These include:

- Section 3 which aims to make society fairer
- Section 12 monitoring progress in relation to making society fairer
- Section 10 the good relations duty
- Section 19 the good relations duty for the EHRC

- Section 8 on equality and diversity duties
- Section 9 on duties in relation to human rights

We consider that these clauses are essential in challenging discrimination and promoting human rights. If these clauses are repealed we believe that they should be incorporated into the public sector equality duties in Wales.

The rationale by the current UK Government which of course is challengeable is that

*“we consider that this package has the potential to transform the EHRC into the valued and respected national institution that we want to see.”*

In conclusion the UK government is proposing that the EHRC moves from an equality regulator to a strategic enforcer. We would prefer to see its role enhanced to include the two roles plus having an enhanced research capability. We would like to see its current monitoring of the law role being maintained so it can intervene not just *‘when there is an important point of principle or clarification at stake’* as is being currently proposed. Citizens Advice Cymru believes that it is already a credible institution and more could be done to enhance its role and function within the context of devolution in Wales.

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

The socio economic duty was developed under the Equality Act 2010 and has never been enacted. Whilst the UK government argued for its non implementation under the Red Tape Challenge for putting unnecessary burdens on business. It came into existence so that *“the need to provide important legal protection from discrimination with identifying which measures in the Equality Act 2010 are placing unnecessary or disproportionate burdens on business”*.

Our view is rather than being a burden, if implemented effectively it could be a major benefit. If enacted within a Welsh context it could have a number of positive effects that would include:

- Building on current work to reduce poverty in Wales
- Promote the idea of the ‘Welsh Pound ‘ and how this can be used to challenge poverty
- Promote the idea in Wales of a living wage as a tool to get people out of poverty
- Support the ideas behind guerrilla economics which would not only have a positive impact in addressing poverty issues but also address some sustainability issues

When the Equality Act 2010 was written, the socio economic duty was to work with the equality duty so that disadvantage was challenged from the perspective of socio economic and discrimination. With the socio economic duty never having been implemented, it will make it more difficult to eliminate

the economic impact of discrimination. We would like to see in Wales an evaluation of:

1. How the socio economic duty could be implemented
2. What effect it could have on challenging poverty in Wales

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

We believe that the current oversight arrangements with a named Minister having responsibility, with a Directorate within Welsh Government to deliver on this are effective. We believe however that a committee from within the Assembly needs to focus only on equality and human rights as otherwise they can be subsumed into other agendas. Whilst the strategic direction in Wales is a positive one, we see less evidence that equality and human rights is a cross cutting theme in policy making and this needs to be addressed.

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