

Communities, Equality and Local Government Committee

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

Response from : The Welsh Local Government Association (WLGA) and NHS Centre for Equality and Human Rights (NHS CEHR)

The Welsh Local Government Association (WLGA) and NHS Centre for Equality and Human Rights (NHS CEHR) would like to thank the Committee for the opportunity to submit evidence to its Inquiry. Our organisations have chosen to submit joint evidence in recognition of the fact that equality legislation has impacted on us in similar ways, but also because equality requires a partnership focus and we, along with other partners, are increasingly working together to deliver it.

The consideration of Wales' specific public sector equality duties and associated issues is welcome, particularly in light of the concurrent UK review of the Public Sector Equality Duty. Our evidence to the latter review demonstrates how, taken as a whole, the PSED is being used as an effective tool in addressing some of the prevailing public service challenges and meeting the needs of citizens and communities. The evidence included here provides an account of how the specific public sector equality duties are functioning in Wales, highlighting their areas of strength in supporting the achievement of the aims of the general duty, as well as some areas for improvement.

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

1. In line with the general policy direction in Wales, the PSED is challenging public authorities to become more evidence-based and outcome-focused in their equality work. The simplification of equality legislation has helped to secure a greater corporate focus and facilitated a stronger connection between equality and the wider public service improvement agenda. The specific duty to have a Strategic Equality Plan (SEP) and objectives has been instrumental in moving this forward by bringing previously separate strands together and encouraging discussion across departments and services.
2. This simplification has also enabled a partnership approach, increasing opportunities to join-up activity across sectors and improving links to priority areas such as tackling health inequality (see Appendix, item A). WLGA is also publishing an advice note to support local partnerships in their efforts to embed equality in integrated planning.
3. Equality work must continue to demonstrate a focus on outcomes rather than process and there has been good progress so far. In addition to ensuring equality work has and can demonstrate an impact, this shift has

the advantage of improving the reputation of equality and increasing the buy-in of staff from the front line to the chief executive.

4. We recognise the aim of the specific duties is to establish processes that will embed equality in day-to-day business and ensure transparency in order to improve outcomes and accountability. Our evidence includes examples of where the duties are achieving this.
5. However, whilst some of the specific duties are proving to be useful tools, certain duties have less potential to improve equality outcomes. We have therefore made reference below to those duties that require further consideration if we are to achieve a balance between the resources we allocate and the value we derive. One example is the prescriptive list of employment information, the collection and publication of which has proved to be time and resource intensive (see 3.5).
6. The points below identify areas of strength and development for each of the Welsh specific duties;

3.1 The specific duty to publish equality objectives, Strategic Equality Plans and annual reports

The strength of these specific duties is that they enable listed bodies to demonstrate compliance with the general duty and communicate their priorities and progress to the public in a transparent manner. Listed bodies' first SEPs were published by April 2012 and have been followed by the first annual reports, published by 31st March 2013. A significant amount of effort has gone into developing this works and we believe there are excellent examples of both SEPs and annual reports. However, it is vital that these plans fit into the wider body of corporate and partnership working. Collaboration is a core feature of the current policy agenda in Wales, with increased regional and national working and notable developments around plan and partnership rationalisation. Therefore we would encourage a flexible attitude here and a willingness to support joint-working across geographical or organisational boundaries in relation to the equality duty, recognising that some listed bodies may wish to integrate their equality objectives, plans and reports as part of their broader collaborative agenda.

3.2 The specific duty to engage

Engagement cuts across the duties and should be seen as an 'enabling' duty, supporting the development of objectives, SEPs, impact assessments and in turn procurement. This means that engagement is undertaken for a wider variety of purposes with an extensive range of stakeholders. There are accounts of how this was undertaken, with whom and how the information was used in the SEPs and annual reports. However, engagement is not seen as a 'one off' exercise but an ongoing dialogue. An example of this is the NHS 'Stakeholder Reference Group' which currently has 29 member organisations representing diverse communities and

providing an 'expert' panel for the health service in Wales. In relation to procurement, the private sector is a major stakeholder and Appendix, item E outlines an example of how Caerphilly County Borough Council is engaging with local business. This clearly demonstrates how the duties inter-relate, with engagement, awareness raising and procurement illustrated in this example.

3.3 The specific duty to assess impact

As the process for assessing impact embeds and develops listed bodies are seeing how they can have a positive impact on decision-making (see Appendix, item D). Importantly, impact assessments enable public authorities to demonstrate due regard and mitigate risk. Whilst we are supportive of the duty, this is an ongoing area of development and WLGA and CEHR are currently undertaking work to support improvement.

3.4 The specific duties to identify, collect and publish relevant information

This duty is helpful in ensuring there is a solid evidence base to inform equality objectives, SEPs and impact assessments. It also has the advantage of not prescribing what constitutes relevant information. This enables listed bodies to focus on information most relevant to their area and reduces the time spent collecting data that might not be useful to them. Importantly, equality information is part of the broader service improvement and many organisations are developing a strategic, coordinated approach to how they use information corporately and in partnership.

3.5 Employment information

This duty has helped to drive improvements in employment data and analysis. However, the requirements of the duty are lengthy and prescriptive and certain aspects are not only a challenge to collect but are not considered to be especially useful in enabling listed bodies to meet the duty. We would welcome further discussions over the specifics of this duty with a view to revising the list to a more proportionate set of requirements. In addition, there may be an opportunity to consider shifting the requirement towards the development of employment objectives, rather than the collection of data, as is already the case in relation to gender pay.

3.6 Procurement

Commissioning is now playing a more prominent role in the delivery of public services, making this duty particularly relevant. Ensuring equality is embedded throughout the process can and is helping listed bodies mitigate risk, improve efficiency and effectiveness and add community benefits. Evidence included under Appendix, item B shows how some listed bodies are achieving this. The WLGA is also

developing an advice note to support local government in adhering to their legal requirements and deriving maximum benefit from their procurement in relation to equality.

7. In our response to the UK PSED Review we highlighted the fact that there have been no judicial reviews as a result of public authorities' in Wales failing to meet the duty, in contrast to the situation in England.¹ This may be attributable to the more comprehensive list of specific duties that enable organisations to meet and demonstrate they are meeting the PSED. As previously outlined, some duties are considered to be more useful than others in this regard, particularly the duties to set equality objectives, publish a SEP and assess impact.

The Equality and Human Rights Commission in Wales

8. The positive working relationship between the EHRC and WG has resulted in more robust duties in Wales, demonstrating a strong commitment to the agenda. We hope this relationship continues, in conjunction with a coproductive approach involving wider stakeholders. This will ensure equality requirements continue to be 'fit-for purpose' and reflect and adapt to the broader policy agenda.
9. However, there are concerns over the scale of activity required of the EHRC in regulating the specific duties and their capacity to meet this. Comments from listed bodies indicate that, whilst EHRC guidance documents have been helpful, they would value some general, high level feedback on their SEPs and annual reports to aid them in improving future iterations. This type of support from the EHRC is felt to be an important addition to a more compliance-oriented, regulatory role.
10. In addition, there are also doubts over the EHRC's capacity to fully regulate the specific duties. However, we are unsure of the extent of regulatory activity as we have little indication of how and where this is being undertaken.
11. The Committee will be aware of the plans to establish a Sustainable Development (SD) body in Wales. There are synergies between the work undertaken by the EHRC and the proposed responsibilities of the SD body. Therefore, any consideration of the role of the EHRC in Wales should link in to wider SD developments.

The link between poverty and equality and the socio-economic duty

12. The socio-economic and protected characteristic components of equality cannot be seen as separate from one another. This has been identified in a number of SEPs, with objectives linking the protected characteristics to priority areas such as unemployment and health inequality (see Appendix, item F). Whilst evidence shows they are likely to inter-relate the relationship between the two, particularly at level of policy and legislation,

¹ R (Rahman) v Birmingham City Council (2011)
<http://www.bailii.org/ew/cases/EWHC/Admin/2011/944.html>

is so far under-explored. A strengthening of this relationship will be vital if we are to make measurable improvements in these seemingly separate but ultimately related areas of work.

13. The alignment of equality and tackling poverty under the new Minister for Communities and Tackling Poverty presents real opportunities to make this connection from the 'top' down.

Accountability for equality and human rights legislation in Wales

14. As noted by the committee, the combination of devolved and non-devolved elements of equality legislation presents a challenge and the potential for the specific duties to fall if the general duty were ever repealed is cause for concern.
15. Moreover, there is a 'disconnect' between WG's ability to legislate on specific duties and its limited influence over the EHRC in Wales. As previously stated, the EHRC has limited and diminishing capacity and this is likely to impact on its ability to fully regulate the specific duties.
16. Finally, it is important to note that accountability is not only 'upward' to the EHRC but also 'downward' to communities. SEPs and annual reports help to communicate priorities and progress, thereby building confidence and improving accountability to citizens and communities. Embedding equality considerations in scrutiny (Appendix, item C) and ensuring there is meaningful, ongoing engagement will also be essential.

Appendix – Supporting Evidence

A: Increased collaboration

North Wales Public Sector Equality Network

Equality leads in all six North Wales Local Authorities, Betsi Cadwaladr University Health Board (BCUHB), North Wales Fire and Rescue Service, Welsh Ambulance Service NHS Trust, National Parks Authority and North Wales Police have shared good practice for many years. With the introduction of the new legislation, these organisations have been working collaboratively under the North Wales Public Sector Equality Network, to advance the equality agenda and to tackle issues on inequality that cut across the public sector throughout North Wales. During 2011 the network conducted joint activities to develop a set of shared objectives which every partner has signed up to. Each objective has an accompanying set of 'Action Areas' which give definition to the six objectives and provide the basis from which each partner has planned their contribution to the achievement of the six objectives. Different partners have agreed to contribute to different Action Areas and have detailed this in their Strategic Equality Plans. This work shows how the legislation has both supplied the impetus for and enabled partners to extend their collaborative working in order to tackle the most pressing equality issues in North Wales. More information can be viewed here <http://www.wales.nhs.uk/sitesplus/861/page/59490>

Embedding equality in procurement

Using community benefit clauses when commissioning for a regeneration scheme in Blaenau Ffestiniog

One of the Gwynedd Council's prime political drivers is the need to develop and protect the local economy, and procurement is seen as a key contributor to this aim. The council undertook a regeneration programme in partnership with Blaenau Ymlaen, a local community group, and the Welsh Government to deliver a significant change to the town. The council formally included community benefit requirements as part of the tender process using a mixture of 'core' and non-core' elements. Some of the benefits achieved include;

- Pathways to Apprenticeships started for a 5 week period from a local College
- Unemployed person appointed on an Intermediate Labour Market
- Local young person with mental health conditions given work experience
- Placement given to a local young person as part of his HND qualification
- Young person appointed, on work experience, by main contractor over summer period and retained by contractor post project
- A number of workshops held with schools in the area to develop an understanding of careers within construction and to raise awareness of Health and Safety

- 2 groups from Ysgol Ardudwy visited site during installation of the slate pillar sections as well as a school visit to learn about careers in the construction industry
- Balfour Beatty assisted Construction Skills and Careers Wales as construction ambassadors
- H&S presentations were given to over 250 pupils in local schools, by Balfour Beatty staff.

Whilst considering that the core requirement in terms of community benefits for this project was to provide 4 work experience / training opportunities, expectations were far exceeded through the additional use of the non-core approach.

C: Embedding equality in scrutiny

Scrutinising equality in the NHS

The NHS CEHR has produced a [guide](#) for NHS organisations in Wales, and, in particular, Executive Directors and Independent Members/non Executive Members. Its purpose is to help Boards take forward issues of equality with regard to patients and the workforce, particularly in respect of complying with the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 and specific duties in Wales. It focuses on assessing the effect of decisions on protected groups under the Act, and how Board members can ensure both compliance with the law and improved outcomes for patients and staff.

Publication: NHS CEHR Guide

<http://www.wales.nhs.uk/sites3/page.cfm?orgid=256&pid=63612>

Scrutinising equality in Neath Port Talbot

During the development of the SEP a Member Task and Finish Scrutiny Committee Group was established to undertake a review to develop and facilitate further understanding of equality issues within the Council. The group also assisted in the identification, development and consideration of equality objectives for inclusion in the SEP.

This Task and Finish Group remains active and one of its responsibilities is to monitor and where necessary revise current objectives as well as play a role in the development of future objectives. Monitoring of the SEP is a multi-level process. The Policy and Resources Scrutiny Committee is responsible for monitoring the implementation of the Strategic Equality Plan on an annual basis a part of the executive reporting process.

In addition, Elected Members who have undertaken equality training with the WLGA have become the Scrutiny Equality Champions and together with the two Cabinet Equality Champions endeavour to ensure that the Council not only talks the talk but is willing, able and well placed to walk the equalities walk.

D: Embedding equality in wider policy and practice

Welsh Health Specialised Services Committee improving services through impact assessment

Within Wales recent work by the Welsh Health Specialised Services Committee (WHSSC) has demonstrated the positive benefits that EIAs offer if conducted at the outset of a policy or decision.

Within WHSSC's Adult Mental Health portfolio, gender reassignment accounted for less than 1% of the budget, but accounted for 45-55% of the time spent by the Adult Mental Health team. In the main, this was time spent dealing with enquiries about the service and handling complaints. When WHSSC decided to revise the gender reassignment care pathway they took the opportunity to use an EIA process to engage with the trans community so that the views and needs of the service users could be incorporated into its redesign.

Through the EIA process WHSSC ensured that they did more than just pay lip service to the trans community, but actively engaged with them by setting up a working group which contained representatives of the trans community. Sub-groups of the working group were allocated work streams which allowed members of the trans community and clinicians to work together. This approach enabled WHSSC to develop a more detailed and nuanced understanding of the trans community, and its diverse needs. It also provided WHSSC with more accurate data on the trans community by accessing their knowledge and expertise (e.g. Trans Helpline data).

The collaborative approach of the EIA process has resulted in benefits to both WHSSC and the trans community. WHSSC have estimated that there has been a cost saving of £15-20K in reduced complaints alone. WHSSC has also seen a reputational benefit as well. Where previously they were seen very negatively by the trans community, their steps to engage with the trans community on the care pathway redesign has improved this. For the trans community the EIA process was considered to be empowering. It demonstrated that by engaging constructively with WHSSC, their concerns would be listened to, and that they could influence the design of the service provided to them. The EIA process was also found to have inspired members of the trans community to become more positively engaged with the health service (e.g. volunteering to help deliver training to NHS staff on trans issues), and inspired them to become change agents.

The Project lead for the Gender Reassignment pathway noted that:

"The EIA process, may seem as an additional overhead at the time, and there are some worries by senior management that it will add pounds onto the bill. I think it is the reverse. I think you reduce a lot of wasted effort. You manage to develop consensus much quicker, and you can then develop action plans to

address any issues that occur. It's an investment worth making in terms of the time and effort to put this in at the earliest stage."

Considering equality at Cabinet and Council

Many local authorities ensure that equality features as a consideration in decision-making by including equality information in their cabinet reports as standard. For example, Caerphilly County Borough Council introduced 'Equalities Implications' to all of their formal reports, attaching an EIA where necessary. Similarly, Merthyr County Borough Council's Executive Board took the decision to make EIAs a mandatory accompaniment to reports for Cabinet and Council.

E: Engagement

Positive engagement with the local business community

Caerphilly County Borough Council held an introductory Equalities Awareness session with the local Business Forum, with the aim of developing an agreement for the council to include them on their corporate Equalities and Welsh Language training programme. In the longer term this will widen access to courses and support local businesses to understand why they now have to comply with public sector duties and benefit from having the right processes in place to comply with the council's procurement and commissioning requirements.

F: The link between poverty and equality and the socio-economic duty

There is a substantial body of research that has highlighted the links between inequality and poverty. The EHRC's Triennial Reviews *How fair is Britain?* (EHRC, 2010), and *How fair is Wales?* (EHRC Wales, 2011) provide comprehensive reviews of the available evidence, and in particular draw upon findings from the National Equality Panel (2010) report *An Anatomy of Economic Inequality in the UK*, WISERD's (2011) *An Anatomy of Economic Inequality in Wales*, and the Marmot Review (2010) of health inequalities *Fair Society, Healthy Lives*.

The above reports find that a person's socio-economic status has the strongest association with a person's key outcomes such as educational attainment and health outcomes. For example, the National Equality Panel (2010)² found that within the protected characteristic strands (e.g. ethnicity), the differences in outcomes between socio-economic classes of a sub-group (e.g. White, Black, Indian) were greater than the differences between the sub-groups themselves. However, they also provide strong support for the need for the socio-economic duty as they show that a person's life experiences are strongly mediated by their protected characteristics.

² National Equality Panel. (2010). *An Anatomy of Economic Inequality in the UK*. London: Government Equalities Office.

Analysis of data for Wales by WISERD (2011)³ found that:

- Three quarters (74%) of disabled people - excluding those in education - are not employed.
- Almost half (46%) of Pakistani and Bangladeshi people are not in employment or full-time education. For Bangladeshi and Pakistani women this rises to 72%.
- Men's employment is highest up to the age of 45 and then it declines. For women employment is highest between the ages of 45-49.
- Levels of wealth are lowest among young people, lone parents, single households and those households that include a disabled person.
- Disabled men are 3 times more likely to have no qualifications (35%) than non-disabled men (12%). 37% of disabled women have no qualifications compared to 13% of non-disabled women.
- Bangladeshi men are 3 times as likely (at 47%) to have no qualifications as white men (16%), who are themselves more likely to have no qualifications than Indian men (10%).
- Over a third of Pakistani women have no qualifications (34%). Women of Indian, Mixed Race, and Chinese origin are more likely to have a degree than white women. Women of Muslim faith are twice as likely as those with Christian faith to have no qualifications.

Cardiff Council's Strategic Equality Plan, 'Everyone Matters'

Cardiff Council's SEP, [Everyone Matters](#), makes an explicit connection between socio-economic and protected characteristic components of equality. The document draws on the strategic needs assessment, undertaken to inform 'What Matters: The 10 Year Strategy of Cardiff', considering the socio-economic evidence in the context of the protected characteristics. Everyone Matters describes how 'a more sophisticated analysis of socio-economic deprivation in the city reveals connections with the nine protected characteristics. This helps us to understand how, by targeting our resources towards certain issues or populations, we can have an impact on some of the key issues for Cardiff'. The document goes on to identify objectives relating to reducing differentials in life expectancy, educational attainment and child poverty.

Publication: 'Everyone Matters'

<http://www.cardiff.gov.uk/content.asp?nav=2%2C2872%2C3257%2C6414>

³ Wales Institute of Social and Economic Research Data and Methods (WISERD). (2011). *An Anatomy of Economic Inequality in Wales*. Cardiff: Equality and Human Rights Commission Wales.