

Government Equalities Office discussion paper on the proposed duty on public bodies to tackle socio-economic inequality

Equality and Diversity Forum response, March 2009

Summary

All Equality and Diversity Forum members welcome the Government's recognition of the need to address socio-economic disadvantage and most of our members support the proposal for a new duty for public bodies to tackle it. Some support the idea very strongly. However, a minority would prefer a different approach, for example, tackling disadvantage in the context of social and economic policy.¹

Although the majority of EDF members support a new duty to tackle socio-economic disadvantage, our chief concern is that the duty as proposed is likely to have insufficient impact on socio-economic inequality. We feel that the design of the duty needs to be more robust if it is to have a significant impact. In addition, it needs to be accompanied by appropriate measures to monitor, evaluate and enforce it.

Many EDF member organisations will no doubt be submitting individual responses to the discussion paper. Here, rather than attempt to answer all the questions in the paper, we draw together some of the shared views and concerns of our members.

A. What are your views on the Government legislating to ensure that addressing socioeconomic disadvantage becomes a core consideration of key public bodies in setting priorities/strategy?

We recognise that disadvantage based on discrimination and group barriers to opportunity are closely related to disadvantage based on chance circumstances of birth, locality, class and community. The evidence of the impact of the latter on

¹ Equality and Diversity Forum members that are signatories to this submission are Advice UK, Age Concern England, Board of Deputies of British Jews, British Humanist Association, British Institute of Human Rights, Children's Rights Alliance for England, Citizens Advice, End Violence Against Women Campaign, Equality Challenge Unit, Fawcett Society, Forum Against Islamophobia and Racism, Help the Aged, Institute for Public Policy Research, JUSTICE, Law Centres Federation, Liberty, Mind, National AIDS Trust, Policy Research Institute on Ageing and Ethnicity, Press for Change, Race On The Agenda (ROTA), RADAR, Refugee Council, RNIB, RNID, Runnymede Trust, Scope, Stonewall, The Age and Employment Network, Trades Union Congress, UKREN, UNISON, Unite the Union (Amicus section), Women's Budget Group, Women's Resource Centre.

Equality and Diversity Forum observer organisations that are signatories to this submission are Equality South West and Friends, Families and Travellers.

life chances, including on educational attainment, housing, health and employment, is widespread and will be brought together by the National Equality Panel.

We note and broadly welcome the proposal that the new duty will be strategic, relating primarily to policy and the planning, commissioning and resourcing of services. However, it follows automatically that this will impact on operations wherever the aspirations of public policy in respect of socio-economic disadvantage have yet to be fulfilled and that performance data will measure the extent of operational progress made. Consequently we find the distinction between a strategic impact and an operational impact a somewhat artificial one: if the strategy is tackling socio economic disadvantage then the operational delivery must by definition follow the same line or be regarded as failing. We therefore find the statement 'Where bodies have both strategic and delivery responsibilities, we want the duty to bite only on the strategic responsibilities' (page 4) somewhat misleading as it can hardly be true that we want to have strategies that have no impact.

Similarly we think that the statement that 'our intention is that the duty should not require a public body to take any specific actions but it should be strategic, flexible and light-touch, requiring public bodies to consider socioeconomic disadvantage' creates the wrong impression. It must surely be the objective that public bodies whose policies are not making in-roads into evident wide socio economic inequality and disadvantage set a strategy and take action. We are concerned that using a light touch (in policy rather than bureaucratic terms) is unlikely to have a material impact on entrenched and deeply rooted forms of inequality.

We agree that there are already many relevant policies and targets in place through the Public Service Agreements and Local Area Agreements system (page1) and that the aim is that 'the intended effect would be to support such arrangements and to promote an increase in such good practice' (page 2) through the 4 routes set out in the following 4 bullet points. The comment that it is not 'intended that proposed new duty cut across any such existing arrangements' (page 1) is therefore hardly relevant unless one presupposes that there are public policies aimed to increase socio-economic disadvantage. We suggest therefore that the emphasis of future papers and guidance on a socio-economic duty should be different and take as a presumption that public policies will all be seeking to rise to the difficult challenge of promoting greater social and economic equality and that the proposed duty will be working with the grain of central government departments and public agencies, rather than seeking to impose something upon them.

B. What inequalities do you think should be covered by the duty?

We agree that patterns of disadvantage can run through the life course (page 2). Inequalities in terms of educational attainment, housing, environment, employment and training, health and life expectancy should clearly be covered.

In addition to inequality of income, it is important that inequality of wealth and assets should be covered. Less is known about this than inequality of income but the developing ONS Longitudinal Survey on Assets and Wealth should be pushed ahead to support this aspect of the duty.

There is now a considerable body of evidence on socio-economic disadvantage, as well as a number of expert teams and individuals working in this field. These resources can help identify the most extreme inequalities to be addressed, provide ways to measure inequality and to measure progress in addressing it. They include (but are not limited to) the work of the Equalities Review and its proposed capabilities approach, the work of the CASE/LSE team building on the capabilities approach to develop an Equality Measurement Framework for the EHRC, the recently introduced system of national indicators for Local Area Agreements, and the pending outputs of the National Equality Panel. To capitalise on resources, it would be good to take advantage of existing data and resources.

Thought is needed on how the duty would cover Government economic and fiscal policies. Fiscal policies can have major economic and social equality impacts. A duty which does not fully engage the Treasury will have a major gap in it.

The discussion paper suggests that the duty would not cut across existing policy priorities and gives asylum and immigration processes as an example. We have strong concerns about this statement. The drive to reduce socio-economic disadvantage must apply across society. There should not be a two-tier approach, with the poverty experienced by asylum seeker children – to take an example – remaining unaddressed.

C. What do you see as the advantages and disadvantages of giving bodies the flexibility to define the socioeconomic inequalities relating to their business area and how these should be identified, measured and monitored, rather than prescribing this in legislation?

We agree that the duty cannot be overly prescriptive about the definition of socio-economic inequality and that different criteria may apply in different policy areas (page 3). However, there is a danger that a total lack of prescription may lead to a lack of activity. Central government will need to consider minimum targets and key milestones for the duty. To have an impact, action will also need to be co-ordinated between different public bodies and be taken forward in partnership between public and other bodies. As this is a new duty, guidance to accompany it will be particularly important and will help to ensure that the key inequalities are addressed by public bodies.

We recognise that there is already a very extensive body of analysis and policy in areas such as health inequality, housing and education, and that issues of relative and absolute inequality are being addressed. The important requirement

is that public bodies identify, act and monitor progress on socio-economic disadvantage – and are seen to do so.

D. What else would it be helpful to cover in the guidance?

We agree that the 6 bullet points listed (page 3) cover the main topics for guidance to public bodies. We think it will be important to explain clearly the respective roles of the equality duty and the duty on socio-economic disadvantage.

E. Do you agree that the duty should apply only to strategic and commissioning bodies? If so, would it have sufficient impact on service provision? If not, who else should it cover and why?

It is difficult to answer this question on an abstract basis without knowing how a strategic body would be defined in practice and EDF members do not have a shared view on whether in theory the duty can be effective if it applies only to strategic and commissioning bodies. There needs to be clarity about which bodies are covered, and we recommend that the list of bodies to which the duty applies be reviewed after three years to assess how effective it has been.

We recognise that the speed of progress towards socio-economic equality may be affected by the availability of resources. However, the costs in public expenditure of handling the social and economic consequences of wide inequality and disadvantage are huge. These should be taken into account in considering what is affordable and proportionate (page 5).

We accept that the duty should not apply directly to decisions about individuals in the sense that individuals should not have a right to a personal remedy, such as damages (page 7). In this respect the proposed duty would mirror the existing equality duties, which are only enforceable by judicial review or action by the EHRC. If the new duty is framed in a similar way, it would affect the policies, methods and procedures that have an impact on individuals (as in the examples set out on page 7) and to that extent the outcomes for individuals would be seen in progress towards greater economic and social equality.

F. In your view, to which regional and local public authorities should the duty apply?

As stated above, there needs to be clarity about which public bodies are covered. At a minimum the new duty should apply to Government Offices of the Regions, Regional Development Agencies, and all local authorities. Applying it to Strategic Health Authorities, related health employers and to Regional Assemblies should also be considered. We are interested in the principle that the duty might apply to partnerships in their own right, e.g. Local Strategic Partnerships in England and their equivalents in Scotland and Wales, and would like this to be further explored.

G. What data do you think planning and commissioning bodies would need to collect and analyse to be able to implement the new duty effectively? Are there any challenges around data collection/analysis? Would there be costs associated with collecting any new data and, if so, what would they be?

Planning and commissioning bodies will need a range of data to be able to implement the new duty effectively. Decisions on what data to collect will need to address the circumstances of all marginalised groups. For example, a focus only on deprivation as defined by geographical regions risks overlooking the needs of mobile communities such as Gypsies and Travellers. Similarly, quantitative measures tend to under-emphasise the needs of numerically small marginalised groups such as transgender people.

All government departments and agencies will need to work in a coherent manner to gather equality and socio-economic data across all regions of the country.

See also points in the response to Question B

H. What programmes or activities are you engaged in which would be supported by the proposed new duty?

The new duty would support work that EDF has initiated in partnership with Runnymede and with the support of GEO to bring together stakeholders and academics from socio-economic and discrimination fields in a conference on 10 March 2009. We see this as the first step in establishing better engagement and working relationships between different individuals and organisations. The duty could also complement the work that we have done on multiple discrimination, where we have stressed that 'people do not simply fit into boxes as black, disabled etc. They are diverse, complex and multilayered, and sometimes they are treated badly for more than one reason' (EDF leaflet on 'Multi-dimensional Discrimination'). EDF has also made significant contributions to work on the Equality Measuring Framework and the National Equality Panel – although these are likely to inform the new duty rather than vice versa.

I. Are there any policy priorities you are trying to achieve or programmes you are engaged in which you are concerned might be cut across by the new duty? Please explain what they are and how you think they could be protected.

The Equality and Diversity Forum has been a key partner to the Government and the Government Equalities Office in working for a single Equality Act to harmonise and strengthen anti-discrimination law. Our members are keen that a new duty should complement the measures contained in the Equality Act, in particular, that it should work alongside and not undermine or compete with the proposed public sector equality duty covering all grounds. However, it is important that the new duty is seen as a separate duty and not confused with the equality duty.

There is a risk that, in the current economic climate, a new duty will be seen as an equality measure too far and a further burden on overstretched public bodies. It would therefore be helpful for the GEO to carry out awareness-raising activities and develop a communications strategy for the proposed duty to ensure engagement from NGOs working on the discrimination grounds, the public bodies that will need to implement it and the general public.

J. Are there any areas of your business which you are concerned may be jeopardised of the duty were to be implemented?

Not if the duty is implemented in the way that we suggest here.

K. Are you aware of any programmes or activities which would be in breach of the duty proposed in this paper? What might be the implications of this (operationally and financially)?

No EDF response.

L. What is the best way to minimise the risk of unmeritorious or frivolous legal challenges?

The existing equality duties specifically rule out individual legal action in relation to an alleged breach (except by an individual seeking a judicial review). If a similar approach is taken to this proposed duty, the only possible legal challenge would be judicial review. We believe the courts can be relied on to refuse permission for any judicial review that is frivolous or unmeritorious.

M. What is your view of the proposal to make the duty bite at regional and local level on key organisations through their participation in partnership planning processes?

We agree that for the duty to be effective it will need to be taken forward through partnerships involving regional and local organisations. The new duty should include processes for consulting and engaging such organisations, as well as national NGOs, unions and other stakeholders, as these organisations are important sources of evidence of socio-economic disadvantage as well as experience in addressing it.

N. To which regional and local planning processes do you think the duty should apply if the partnership proposal is adopted?

The priority appears to be local area agreements and their equivalents in Scotland and Wales. Applying the duty to Regional Assemblies should also be considered.

O. How in your view would the new duty impact on implementation of other statutory duties?

Individuals discriminated against on one of the discrimination grounds are also more likely than others to experience socio-economic disadvantage, so the new duty is a welcome opportunity to increase the levers for improving the lives of women, people from ethnic minorities, disabled and older people etc. However, it should not be seen as a substitute for addressing the specificities of identity-based forms of discrimination.

We are therefore pleased to see the discussion paper emphasise the complementary relationship between the socio-economic duty and the single equality duty. Any new duty must not lead to a reduction in efforts to address discrimination on the basis of age, disability, gender, gender identity, race, religion or belief and sexual orientation. Rather, it should improve the ability of public bodies to tackle the lived experience of disadvantage and discrimination which is complex and often cannot be reduced to a single factor. There are opportunities here to identify and address the cross-cutting nature of inequality. To take an example, the introduction of the minimum wage not only reduced socio-economic disadvantage in general, it was specifically beneficial to women workers who constituted the majority of low-paid workers. Using both duties – socio-economic and equality – to address such overlaps should in no way undermine the dedicated work on poverty and on each of the discrimination grounds that will always be required.

As with the existing duties, involving people who are most affected by discrimination and disadvantage is key to ensuring the new measures are effective. Guidance will therefore need to emphasise the importance of involvement and consultation.

P. What are your views on the proposed monitoring and enforcement arrangements?

Our view is that they are insufficient and that there is too great a focus on a 'light touch' duty; the danger is that with no new reporting requirements and no enforcement arrangements (beyond the fairly extreme measure of judicial review), public bodies will have little incentive to take action under the new duty. The old s71 duty on local authorities to promote racial equality that preceded the current race equality duty showed how wholly ineffective a duty that has no monitoring or enforcement mechanism can be. There is a contradiction in the proposals between the recognition that addressing socio-economic disadvantage is a 'must do' at the beginning of the paper, and the very 'light touch' measures that follow.

We suggest that this is the main area for improvement in the proposal, and should include transparent reporting, monitoring and enforcement measures. Recognising the need to involve the people most affected in the design of the duty is also important.

Q. What do you consider to be the most appropriate body(ies) to inspect for compliance with the new duty?

We see the relevant public sector inspectorates and EHRC as being the appropriate bodies.

R What factors in your view should be taken into account in setting the date of commencement?

It might help minimise the burden on public bodies not to implement the new duty at the same time as the new equality duty.

S. What is your view of the likely familiarisation and set-up costs for public authorities of implementing the proposed duty?

This is a matter for public authorities themselves, however, costs can be reduced if public bodies work together on this and avoid duplication of activities.

T. Do you agree that local authorities (including police and fire authorities), and the other public authorities to which the proposed strategic duty would apply, would be able to comply with the duty without incurring net additional ongoing costs? If not, what changes could be made to the design of the duty to ensure that there were no ongoing costs? Failing that, what is your view of the likely ongoing costs?

This is a matter for public authorities themselves.

Equality and Diversity Forum, 5 March 2009