Office of the Children's Commissioner's response to

The Office of the Children's Commissioners response to the Governments Equality Duty Review

April 2013

children's commissioner
Championing Children and Young People in England

1. About the Office of the Children's Commissioner

The Office of the Children's Commissioner (OCC) is a national organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. The post of Children's Commissioner for England was established by the Children Act 2004. The United Nations Convention on the Rights of the Child (UNCRC) underpins and frames all of our work.

The Children's Commissioner has a duty to promote the views and interests of all children in England, in particular those whose voices are least likely to be heard, to the people who make decisions about their lives. She also has a duty to speak on behalf of all children in the UK on non-devolved issues which include immigration, for the whole of the UK, and youth justice, for England and Wales. One of the Children's Commissioner's key functions is encouraging organisations that provide services for children always to operate from the child's perspective.

Under the Children Act 2004 the Children's Commissioner is required both to publish what she finds from talking and listening to children and young people, and to draw national policymakers' and agencies' attention to the particular circumstances of a child or small group of children which should inform both policy and practice.

The Office of the Children's Commissioner has a statutory duty to highlight where we believe vulnerable children are not being treated appropriately in accordance with duties established under international and domestic legislation.

Our vision

A society where children's and young people's rights are realised, where their views shape decisions made about their lives and they respect the rights of others.

Our vision

We will promote and protect the rights of children in England. We will do this by involving children and young people in our work and ensuring their voices are heard. We will use our statutory powers to undertake inquiries, and our position to engage, advise and influence those making decisions that affect children and young people.

2. The United Nations Convention on the Rights of the Child

The UK Government ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1991. This is the most widely ratified international human rights treaty, setting out what all children and young people need to be happy and healthy. While the Convention is not incorporated into national law, it still has the status of a binding international treaty. By agreeing to the UNCRC, the Government has committed itself to promoting and protecting children's rights by all means available to it.

The legislation governing the operation of the Office of the Children's Commissioner requires us to have regard to the Convention in all our activities. An independent review of our office in 2010 carried out by John Dunford on behalf of the Secretary of State recommended that our remit be changed to promote and protect children's rights. Following the Secretary of State's approval of the report's recommendations, OCC's work seeks to realise this new responsibility.

In relation to the current consultation, the articles of the Convention which are most relevant to this area of policy are:

- Article 2: non discrimination
- Article 4: government must do all it can to fulfil the rights of every child
- Article 23: children with disability.

As signatories of the Convention with a duty to report to the UN Committee on the Rights of the Child in January 2014 on progress towards its realisation **we recommend that the Government considers carrying out a child rights impact assessment of any further changes it proposes to make to equality legislation or guidance.**

3. Introduction

The Office the Children's Commissioner's position and work to fulfil the Public Sector Equality Duty

Tackling discrimination and promoting equality is at the heart of the United Nations Convention on the Rights of the Child (UNCRC) and therefore integral to our remit to promote and protect children's rights. The Convention prohibits discrimination against children on the grounds of any status of the child or his or her parent/legal guardian (article 2 UNCRC).

We strongly believe that the Equality Duty has the potential to be an effective and efficient way of ensuring due regard is paid to:

a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

b) advancing equality of opportunity between people who share a relevant protected characteristic and persons who do not share it

c) fostering good relations between people who share a relevant protected characteristic and persons who do not share it.

Once embedded, it would help public bodies to recognise people's different needs, make the best use of limited resources, and achieve better outcomes for all of their users.

OCC supports the implementation of the Public Sector Equality Duty as *one of* the mechanisms by which all organisations delivering public services can achieving article 2: (non-discrimination) of the UNCRC.

The Public Sector Equality Duty (PSED) should be seen as a mechanism that helps public bodies deliver services fairly and accurately by focussing them onthe steps organisations need to take to realise their Equality Duty. We also believe that the Duty placed on public services should be seen as exemplifying good practice to private and voluntary sector bodies.

Over the past three years, the Office of the Children's Commissioner's (OCC's) work has highlighted why the PSED is needed. Our work has demonstrated that children and young people continue to face significant inequalities of opportunity and outcomes.

The OCC has published a number of reports resulting from our investigations and research which contain evidence ofinequality. These include inequality in relation to: school exclusions[1]; health outcomes; young people who are detained in the youth justice secure estate; children subject to immigration controls; children living in poverty and/or in families receiving benefits; children in the care system or who have contact with social care and safeguarding services; children and young people who are bullied; and children who are sexually exploited in group or gang contexts.[2]

We have brought much of this work together in one document - *Children and Equality - Equality evidence relating to children and young people in England.*[3] This was used to inform and direct OCC's Strategic Plan up to 2015. We are currently responding to the issues it highlighted and working with groups at risk of discrimination or unfair treatment.

We believe it is important that others undertake similar reviews of their own work, and examine the inequalities faced by their service users, client groups or key stakeholders: the Government's Equality Strategy correctly states that a 'failure to

[1] They go the extra mile
[2] http://www.childrenscommissioner.gov.uk/content/publications/content_636
[3] http://www.childrenscommissioner.gov.uk/content/publications/content_566

tackle discrimination and provide equality opportunities, harms individuals, weakens our society and costs our economy'.[4] We welcome and support the Government's assertion that 'equality is not an add-on, but an integral part of this Government's commitment to build a stronger economy and fairer society'.[5]

5. How well understood is the PSED and guidance?

Over the past year our Inquiry into school exclusions has examined inequality in the exclusion system including why some groups seem to be at greater risk of being excluded from school.

In "*They never give up on you*", the report of the first year of the Inquiry, we found that schools' awareness of the requirements of the Equality Ac was very low. In some cases there was awareness that children with Special Educational Needs (SEN) need extra support. However, this was not necessarily the case for other protected characteristics and no explicit reference to the 2010 equality duty is made in school decision making regarding exclusion.

One year on from this work, we published "*They go the Extra Mile*," which indicates very little seems to have changed. In the course of visits we undertook to inform the report no school explicitly mentioned the need to pay attention to Equality duties when designing behaviour systems or making decisions about exclusions.

To help inform our work on school exclusions, we asked respondents to the NFER's Teacher Voice survey, to indicate whether or not they had been made aware by their school of equality duties. Just over a third (37 per cent) said that they had, while 40 per cent reported that they had not.

We also ran a series of focus groups, in which participants were asked about their knowledge of the equality duties and how they impacted on exclusion decisions. Awareness was mixed. However, there was a general view that, even where schools were informed of the requirements, they did not necessarily fully engage with them and they had little impact on teaching.
This cannot be attributed to the ineffectiveness of the Equality Duty as there has been little leadership and guidance around its implementation.

Throughout our work on this Inquiry, headteachers, teachers and their organisations consistently informed us that **they would welcome further guidance on equality law**. Many are concerned that, as things stand, they may inadvertently be breaking the law and would welcome advice and guidance on how to make sure that they are not. Others are concerned that they will be penalised by Ofsted for not "doing equality" correctly. Schools have told us that they would welcome clearer guidance on how to deal with equality issues so that they can benchmark whether, and in

[4] The Equality Strategy - Building a Fairer Britain, HM Government, December 2010, p8.
[5] The Equality Strategy - Building a Fairer Britain, HM Government, December 2010, p24.

what ways, they are complying with the law. In general, they do not see the availability and use of such guidance as a bureaucratic burden.

Our findings are consistent with those of major research conducted for the Equalities and Human Rights Commission (EHRC) about schools' responses to the duties for disability, ethnicity and gender:

> *"[W]hile many schools have good intentions and believe (often rightly) that they are taking effective action on inequalities, their positive intentions do not always follow the systematic and evidence based approaches emphasised in the equality duties from which their pupils should benefit. The study implies that the real benefits of implementing the duties for pupils can be further developed… Only a fifth of schools (20 per cent) believed established teachers have received enough training, with 24 per cent saying senior leaders and 22 per cent saying that new entrants to the profession have received enough… Schools would like better guidance on how to design and deliver training related to the equality duties, how to collect appropriate and relevant evidence, and guidance on the duties generally and what they mean for schools."*

The evidence of our Inquiry leads us to be convinced that the necessary change in schools' behaviour will not take place without intervention from the Government. That is why we recommended that statutory guidance for schools is needed and would be welcomed by the majority of professionals in education.

The Office of the Children's Commissioner supported the Government's initial intention that statutory guidance on implementing these duties in schools would be published jointly by the Department for Education and EHRC. However, it is disappointing that this guidance has not been laid before Parliament nor circulated as statutory guidance to schools. Instead, in December 2012, the EHRC issued technical guidance on the implementation of the duties for schools in making reasonable adjustments for pupils with disabilities. It has also published non-statutory guidance on implementing the duty in schools. As the guidance is non-statutory, we are concerned that the impact will be limited.

Given that the guidance is written and available, we recommend it is made statutory and clear messages given to professionals that they are expected to know and implement the guidance. Those that we have worked with know the difference between needless bureaucracy or red tape and the necessary guidance that they want and find useful in order to do their job well.

6. What are the costs and benefits of the PSED

Assessing the benefits of the PSED is challenging in terms of cost and related benefit, and we are not convinced that a review of this issue should be driven by a

cost or economic benefit.

One reason why a cost/benefit analysis of the PSED is difficult at this stage relates to the fact the PSED has been in force for less than two years. As a result, there is no substantive longitudinal evidence base concerning its economic or social impact. Addressing institutional discrimination and barriers and challenging practice need to been seen as long-term goals with the current provisions being 'work in progress' that will deliver continual improvements over the long term.

There will also be problems collecting sufficient data and evidence in relation to those grounds and protected categories that were not previously covered by the former PSED/equality legislation. These include age, religion or belief and sexual orientation. It is too soon, and potentially too risky, given the limited evidence available, to make a judgement on performance in these areas.

However, as outlined in our School Exclusions Inquiry we are concerned that some public sector bodies do not meet their duties because of a lack of understanding or willingness to cooperate and comply with the PSED. We are concerned that, at a time when the PSED should be supported, its review could actually serve to further undermine its implementation if organisations who are not compliant with the Duty believe that the review precedes a dilution of equality legislation.

The part of the duty that relates to collating equality data is particularly important. Our Inquiry into school exclusions has shown that collecting relevant equality data is vital if some of the most challenging issues in schools are to be successfully addressed. Our analysis shows that unless schools know which groups of pupils are likely to be disproportionately excluded it will be difficult (if not impossible) for them to take successful action to reduce exclusions and to raise the attainment of pupils in those groups. It is only since records of school exclusions by gender, ethnic origin, and disability have been collected that it has been possible to do this for these groups.[6] While it will take time for the impact of the new Duty to be seen, it is important that data is collected and learning incorporated across all the protected categories.

The lessons derived from our schools exclusions Inquiry are applicable to many other public services. We recommend that the Government notes the findings of our work and considers them in relation to other sectors, services and public service organisations.

7. What changes, if any, would ensure better equality outcomes (legislative, administrative and/or enforcement changes, for example)?

We recognise that improvements could be made to the effectiveness of the PSED. One of the most important factors is leadership with a focus on improving outcomes.

[6] http://www.childrenscommissioner.gov.uk/content/publications/content_654

The role of equality guidance is central to securing the benefits of the Equality Duty. In this context, we regret the Government's decision not to enable the EHRC to publish a Public Sector Equality Duty Statutory Code of Practice. Statutory guidance would lead to the single biggest improvement in the implementation of the PSED.

8. Conclusions and recommendations

The current Equality Duty only came into force in April 2011. We believe it is too early to measure the impact that the Public Sector Equality Duty has in a meaningful way as its impact may take many years to be fully realised.

- We do not want the Government to withdraw support before the potential benefit of the Duty can be assessed. Further time is needed for the Equality Duty to become fully embedded within organisations, and so conclusions should not be drawn about the success or failure of the Duty in addressing long term economic and social inequalities after only two years.

- We also believe that there needs to be clear leadership, guidance, and senior political support for the current Equality Duty for it to be as effective as we hope.

- Any further change to legislation concerning equality and inclusion should include a child rights impact assessment and consideration of its impact on children and young people – not only in terms of the protected category of age, but from the cumulative impact of those who may be covered by several protected characteristics.

- In our two reports on school exclusions, "They Never Give Up on You"[7] and "They Go the Extra Mile", we recommend that the DfE, Government Equality Office and EHRC should work together to produce statutory guidance for schools and other public educational bodies that assist them in interpreting the Public Sector Equality Duty should also be implemented.[8]

The PSED can make an important contribution to reducing inequalities in England, but to realise its potential the current provisions need to be supported by a policy context and guidance that encourages and supports public bodies to implement its provisions in a proportionate and effective manner. We do not believe that this is the time to withdraw or retreat from legislation or guidance that can reduce inequality in society.

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[7] http://www.childrenscommissioner.gov.uk/content/publications/content_562
[8] http://www.childrenscommissioner.gov.uk/content/publications/content_654