

Mr Rob Hayward OBE
Chair, Steering Group
Review of Public Sector Equality Duty



19 April 2013

Dear Mr Hayward

Review of the Public Sector Equality Duty

I am writing to set out the Law Society's views on the importance of retaining the Public Sector Equality Duty (PSED).

Public sector equality duties were introduced to place an obligation on public authorities to positively promote equality, not merely to avoid discrimination. The PSED replaced the original equality duties covering race, disability and gender, with a comprehensive single equality duty covering all protected characteristics. In doing so, the PSED provides an important source of support for public authorities taking action to promote equality and good relations. If this framework were to be weakened, there is a significant risk that the emphasis on promoting equality and diversity would slip back into mere avoidance of discrimination.

If the responsibility on public authorities to identify and resolve equality and diversity issues is removed or reduced, it will shift the onus for tackling discrimination onto individuals. This would undoubtedly have a negative impact on those individuals with protected characteristics, many of whom will face significant access to justice barriers preventing them from seeking redress, following cuts in legal aid and the introduction of fees for taking a case to the employment tribunal.

The PSED requires public authorities to prioritise equality objectives on the basis of evidence. That requires engagement with key stakeholders, particularly from protected groups, and for rigorous and consistent monitoring to measure success. It is inconceivable that any equality objective in the public sector, whether in relation to a workforce, customer base or student community, could be successfully pursued without equality monitoring. It is vital that organisations use such information in their decision-making and planning.



The Law Society

Although we see the value of conducting a review to evaluate the effectiveness of the PSED with a view to ensuring it works well, we question the value of a review being carried out now, when the duty has been in place only since April 2011 and is a new duty in respect of all the protected characteristics with the exception of disability, race and gender. While the EHRC has issued several versions of non-statutory guidance in respect of the PSED, the excellent technical guidance was only published in January of this year. Organisations have not had enough time to use this guidance when considering how to meet the requirement, so it is too early to comment on how well it is understood (it is disappointing that this Government has chosen not to produce further statutory codes of practice in relation to the Equality Act 2010, as they are a valuable and authoritative source of advice and guidance for everyone concerned with implementing or benefitting from this legislation).

We note that the Welsh Assembly has chosen not to review the PSED yet, even though the requirements of the specific duties in Wales are significantly more prescriptive than their English counterparts. The First Minister of the Welsh Government in a letter to Doreen Lawrence and Dr Richard Stone of 19 December 2012 said: *'The Welsh Government shares your concern and agrees that it is entirely premature to review the Public Sector Equality Duty, after only 19 months since the duty came into force, particularly if the purpose is to genuinely make an objective assessment of the effectiveness of the duties. In the current economic downturn, the Public Sector Equality Duty is vital in protecting those who are most excluded and discriminated against in society.'*¹

Those sentiments reflect our views on the importance of the PSED as a safeguard for people with protected characteristics and as a support and encouragement to public authorities at a time when they are under significant resourcing pressures.

Yours sincerely

Mark Paulson
Head of Family and Social Justice

¹ http://www.edf.org.uk/blog/wp-content/uploads/2012/12/Outgoing_2.pdf

