



NAT submission in response to *The public sector Equality Duty: reducing bureaucracy*

NAT is the UK's leading charity dedicated to transforming society's response to HIV. We develop policy and campaign for change to stop the spread of HIV and improve the lives of people living with HIV. We provide fresh thinking, expert advice and practical resources.

NAT are very concerned about these late changes to the draft Regulations. Reducing the specific duties to a nominal level will not only mean that public authorities are left unclear as to how to meet the general duty, but it will also lead to confusion at a local level and could result in more disputes being taken to court. These changes send a clear and misleading message that the equality duty can be met with a minimum of effort.

As is made clear in the policy review, a formal consultation process looking into the specific duties already took place at the beginning of the year. We are troubled that some of the important changes agreed as a result of the consultation have now been taken out. This undermines trust in the consultation process and has certainly made NAT question how genuinely the Government takes the views and opinions of stakeholders into account.

Lighter-touch transparency requirement

NAT are concerned by the removal of the word 'sufficient' in Regulation 3 so that it now reads that public bodies will have to 'publish information to demonstrate its compliance with the duty'. The Government has made it very clear that challenge from the public will be the key means of holding public bodies to account for their performance on equality. Therefore, all information published must be timely, accessible and appropriate so that it can be practically used to hold them to account. The removal of 'sufficient' appears to undermine this, implying that any information, regardless of how accessible or comprehensive it is, will meet the duty. We therefore strongly recommend that this word is included, as this will send a clear message to public bodies that they need to publish information which is appropriate.

Transparency can only aid decision-making if the data in question is available to those affected at the time the decisions are made so the people who are affected by the decision have the opportunity to use the data to put their point of view and to challenge any misinformation or misunderstandings. Data that is published up to a year after the decision in question will not be able to influence the decision, which will already have been put into effect; it will be more likely to set up a mechanism for confrontation and dissatisfaction between public authorities and affected groups. This does not assist good decision making.

It is also worrying that the new Regulations state that public bodies will not have to publish evidence of analysis it has undertaken to see whether its policies and practices further the aims of 149(1). Again, the emphasis on communities holding public bodies to account seems to be undermined by the fact there is little requirement on public bodies to provide information which will practically equip people to do this. Since promoting equality for those with protected characteristics should be integral to public bodies' work, it is essential that they publish evidence of the analysis they have done to ensure that they eliminate discrimination and harassment, promote equality of opportunity and foster good relations in their work.

Perhaps of greatest concern is the removal of the requirement to publish details of the engagement the public authority took with those persons whom it considered to have an interest in furthering the aims set out in section 149(1) of the Act, and details of the engagement it undertook when developing its equality objectives. Regular and thoughtful engagement with groups with protected characteristics is essential if the duty is to be met. Within all the equality strands there are those groups and individuals who are less vocal. For example, HIV is a disability under the Equality Act 2010, yet many people do not realise this when thinking of disabled groups and equality obligations. Those with stigmatised conditions such as HIV may be less likely to raise their voice and become involved. If there is no duty on engagement, and the views of people living with HIV are not actively sought, it is even less likely that their needs will be taken into account.

It is essential that public bodies meet real need, as opposed to perceived need; this can only be done with the meaningful engagement of groups with a protected characteristic and that there is proactive engagement of those who are less likely to speak out as opposed to the 'usual suspects'. Engagement needs to happen from the beginning of the process, and groups with protected characteristics should be involved in setting equality objectives, rather than only being expected to challenge public bodies on the basis of published data once there is a problem or lack of progress.

NAT recommends that the Government adheres to the Regulations it published in January 2011, after consulting on the specific duties, prior to this policy review. In particular: having a requirement to publish sufficient information, to publish evidence of the equality analysis it undertook, and to engage with interested groups.

Equality objectives

NAT welcome the setting of equality objectives which are measurable outcomes. However, it is troubling that the language has changed from public bodies having to prepare and publish 'objectives' to prepare and publish 'one or more objectives'. Again, a clear message is being sent that it is acceptable to take a minimal approach to equality. Public bodies could choose to set one objective across all their functions and all equality groups in a four-year period. Currently with the Disability Equality Duty it is still very difficult to get public bodies to think about HIV in their approach to disability equality; with this new approach, there is an even greater risk that the needs of people living with HIV will be completely ignored.

Clearly, it is not helpful to have a raft of bureaucratic requirements that public bodies have to meet, but there is a considerable danger that public bodies will choose to ignore elements of equality in favour of one particular objective that may be more achievable or popular. This will not enable people to judge how successful the body

has been in advancing equality and will mean that some equality strands are neglected. Instead, public bodies should be required to state a range of objectives which will help them meet the general duty.

In addition, by removing the requirement to set out how progress will be measured, those holding public bodies to account are again not being provided with the information required to do this effectively. Public bodies should be able to explain how progress will be measured so that progress can be evaluated and any problems or concerns can be flagged up in a timely and efficient way. This, yet again, seems to be undermining the purpose of these duties.

NAT are concerned with the failure to require the engagement of groups with protected characteristics in the setting of equality objectives. It is important that these groups are involved in this process, and that proactive work is done to seek the views of those with stigmatised conditions and 'unseen disabilities' such as those living with HIV. Without engagement at this stage, the process is undermined and the eventual objectives are unlikely to adequately address equality.

NAT recommends that the Government adheres to the Regulations it published in January 2011, after consulting on the specific duties, prior to this policy review. In particular: having a requirement to prepare and publish objectives and to set out how progress will be measured.

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