

Response to consultation on Specific Duties, Equality Act 2010

Fair Play South West

Fair Play South West (FPSW) has a long history of representing women's voices in the South West, having been established under the last Conservative administration. It has evolved and broadened its scope over this period and is representative of women from urban, semi-rural and rural part of the South West. Its membership includes individuals and representatives of organisations from Cornwall to Bournemouth and Poole, from Swindon to Gloucester and Bristol. The Fair Play South West Board of Management includes representatives of local gender equality networks in Somerset, Dorset, Devon and Bristol, as well as individuals, including businesswomen who have particular expertise in relation to gender equality issues. FPSW is supported by the regional pan-equality charity Equality South West.

Previous Consultation responses

Fair Play South West was pleased to respond to consultations on the Equality Act, the Public Duties more generally and the Specific Duties proposed by the previous Government in September 2009 and by the current Government in November 2010. We have been consistent in saying that the Gender Equality Duties under previous legislation were helpful to public authorities and equality groups alike in specifying what needed to be done to demonstrate compliance with Duties to eliminate discrimination and promote equality of opportunity between men and women.

We particularly regret the loss of specific reference to the gender pay gap as an indicator of inequality between men and women more generally. We were also particularly critical of the draft specific duties in November 2010 in that it would be very difficult for local groups and activists to hold local public authorities to account if they were not required to publish how they had analysed need and engaged with affected people in determining aims.

We welcomed the response to the consultation published in January 2011. The new draft regulations met the needs of local people for information on how priorities for action had been determined and would have made explicit who had been engaged in local decision making.

It is therefore a cause for dismay that, having received and responded to consultation input in an exemplary way, the Government has seen fit to reopen the consultation apparently under pressure from certain public authorities. We wonder - can this be proper?

Our new response

We are concerned that the new draft regulations include a fundamental contradiction between on the one hand, the government's expressed aim of empowering local communities to hold public authorities to account and on the other, the withdrawal of the requirement for them to publish key information that enables communities to do this.

The government's intention to be transparent and open with the electorate as a pre-requisite to the success of the 'Big Society' has been much welcomed. However, the overall impact of the changes to the specific duties, as proposed, place unfair and unrealistic burdens on individuals and civil society organisations to seek out and interpret data for themselves.

This is particularly important, given the parallel withdrawal of a range of key mechanisms for holding local public authorities to account with regard to their equalities performance. For example, the significantly reduced resources of the EHRC, the removal of Comprehensive Area Assessments, the proposed changes to the Ofsted inspection framework, and the proposed abolition of Audit Commission.

Statistical data alone cannot inform either public bodies or civil society as to the ways in which discrimination is experienced and in which inequalities impact on people's lives. Qualitative data and proactive engagement with people whom the legislation is designed to protect is essential and should be a specific duty, set out in the regulations. The underlying assumption that public bodies will do what they evidently should, in an effective way and at the right time, is not supported by people's experience, as focus groups conducted by Equality South West have shown very clearly.

Meaningful analysis of equality impacts is demonstrably not a routine part of public authorities' normal decision making. This is currently being demonstrated in the actions of some local authorities in the South West. The government needs to pay heed to the ways in which some councils are proceeding in their decision making and build safeguards into the specific duties accordingly.

It is difficult to see how civil society is encouraged to challenge decision-making that does not comply with the public duty if the evidence on which decisions are made is not published in advance in full. The data underlying the proposed objectives should be publicised before the final decisions are made.

Involvement of and consultation with protected groups in order to inform decision making was proposed in the earlier version of the draft specific duties. The draft specific duties now proposed represent a retrograde step in this regard and the quality of decision making will almost certainly suffer. If the evidence and data that authorities publish do not provide an accurate and full picture of the nature as well as the extent of inequalities across all strands, the priorities and objectives set are

unlikely to bring about the most significant and needful changes, but may reflect those that are easier to effect and measure. Engagement with protected groups is essential to gather qualitative information.

We fear that an outcome of these combined measures will be the emergence of a 'postcode lottery' in relation to the elimination of discrimination and the promotion of equality of opportunity. We also believe that an unintended consequence of the changes to the earlier draft specific duties will be to increase bureaucratic burdens on some public authorities. The Policy review paper (17th March, Para 19) says that:

"Under the requirements of the general duty to have "*due regard*" to the matters set out in the Act, public bodies will need to understand the effect of their policies and practices on equality – this will involve looking at evidence, engaging with people, staff, service users and others and considering the effect of what they do on the whole community."

This indicates that public bodies will need to carry out the work of evidence gathering, engagement and analysis, but not to publish it. This could well lead to equality groups resorting to Freedom of Information requests to secure access to the data, engagement activities, and the analysis undertaken.

FPSW remains of the view that use of the phrase "one or more" objectives will encourage those less committed authorities to cherry pick the easy targets and not address all of the protected characteristics.

Overall, in our view, the 12th January 2011 draft regulations struck the right balance. The provisions enabled civil society to hold local public authorities to account, shifting the emphasis away from bureaucratic processes to a transparent, analytical evidence-based, outcomes-focused one. We urge the government to revert to the 12th January draft.