



Championing Children and Young People in England

**Office of the Children's Commissioner:**

**Response to 'The Public Sector Equality  
Duty: Reducing Bureaucracy'**

**April 2011**

## **Office of the Children's Commissioner**

The Office of the Children's Commissioner 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.

# Office of the Children's Commissioner: Response to 'The Public Sector Equality Duty: Reducing Bureaucracy'

## Summary

As an organisation committed to protecting and promoting children's rights as defined by the United Nations Convention on the Rights of the Child (UNCRC), we believe it is essential that any change to regulation or duties enhances these children's rights (article 41). While we believe the whole convention is applicable to this submission, we draw the Government's attention to the following articles that should underpin equality policy:

- Article 2:** The Convention applies to every child whatever their ethnicity, gender, religion, abilities, whatever they think or say, no matter what type of family they come from.
- Article 3:** The best interests of the child must be a top priority in all actions concerning children.
- Article 4:** Governments must do all they can to fulfil the rights of every child.
- Article 12:** Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously.

## Introduction

This response builds upon our previous work with Government, including the Children's Rights Impact Assessment of the Equality Bill 2009.<sup>1</sup> In undertaking this work, the Office of the Children's Commissioner (OCC) highlighted a number of evidenced-based concerns regarding discrimination against children and young people. This included children and young people's experiences reported directly to us by them. As a result of our work in this area we supported calls to establish a strong and clear positive commitment within the public sector to promote equality and tackle discrimination, especially that which was based on age.

Since our work on the Equality Bill 2009 we have continued to monitor progress in this area and note that further evidence of the need for strong and clear duties and guidance has been produced by several organisations. This body of evidence includes work by members of the Young Equals campaign that has highlighted the continued unfair age discrimination experienced by children and young people.<sup>2</sup>

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<sup>1</sup> *The Children's Rights Impact Assessment of the Equality Bill*, 11 MILLION (now the Office of the Children's Commissioner), 2009. Available at: [www.11million.org.uk/content/publications/content\\_368](http://www.11million.org.uk/content/publications/content_368).

<sup>2</sup> *Making the Case: why children should be protected from age discrimination and how it can be done*. Children's Rights Alliance for England, 2009.

## United Nations Convention on the Rights of the Child

As a signatory of the United Nations Convention on the Rights of the Child (UNCRC) the UK has a responsibility to implement the Convention's articles and report to the UN Committee on progress towards realising them. The UK is next due to report in 2014, having last done so in 2008. As part of this last report to the UN Committee, issues of inequality and discrimination were noted by the report produced by the UK Children's Commissioners, and the joint voluntary sector report. The Committee accepted these criticisms regarding the lack of progress made by the UK Government in promoting equality across several areas, referencing these in its Concluding Observations.

The OCC shares the concerns raised by UN Committee in its Concluding Observations (2008), including inequality in access to services such as health, social care and education, and in relation to family income. Importantly, these inequalities also relate directly to inequalities in health and education outcomes, and play a key role in policies designed to tackle poverty and social mobility. Many of the areas of concern to the UN Committee will be addressed by the Public Sector Equality Duty (PSED), which, in turn, is why we are concerned about any move to dilute or weaken the Duty.

While we encouraged even stronger provisions to the Equality Act during its passage through Parliament, we did nevertheless welcome its Royal Assent. We were optimistic about the impact the Duty would have on children and young people's experience of public services. We are now equally concerned about the effect any further changes will have on the Duty's impact.

If progress is to be realised over the course of the current UNCRC reporting cycle we believe that the Government must demonstrate how its proposals address specific issues raised by the UN Committee. For example, the most recent UK report from the UN Committee on the Rights of the Child (October 2008) stated:

*"...Despite the State Party's efforts to tackle inequalities in access to health services through, inter alia, substantial investments, inequalities remain a problem, as demonstrated by the widening gap in infant mortality between the most and least well off groups."*

We would ask that the Government considers and publishes details about how any proposed changes to the Equality Act 2010 support the aim of the PSED in eliminating discrimination and harassment, advancing equality of opportunity and fostering good relations. We also believe that it would be useful to demonstrate how the delegated legislation helps public authorities identify how they can meet the general duty.

## Equality objectives

We believe that the purpose of the specific duties is to give effect to the general duty in practice. The OCC is concerned that if the new specific duties only require the setting of a single equality objective, the duties will become far too narrowly focussed. The removal of the requirement to set out how progress will be measured is also of concern.

Therefore the OCC supports the Equality and Diversity Forum<sup>3</sup> in calling for:

- Ministers to make clear public statements that the changes to the specific duties in no way reduce the expectation on delivering the three equality duty goals of eliminating discrimination, advancing equality of opportunity and fostering good relations; and
- The Equality and Human Rights Commission must publish a statutory code of practice giving clear guidance based on case law as to what is needed to meet the requirements of the general equality duty. That code must emphasise that though there are a number of ways in which the general duty can be met, in no sense can it be met without thoroughgoing analysis of equalities issues during policy making.

## Engagement

Children and young people should be regarded as an essential element of any public engagement process, in line with the Government's commitment to Article 12 of the UNCRC. We believe that this commitment should be part of the general duties to inform and evidence that an authority has shown 'due regard' to the aims of the PSED. The previous draft regulations asked public authorities to publish information on their engagement when determining their policies and when setting their equality objectives.

However, the policy review paper states that 'challenge from the public will be the key means of holding public bodies to account for their performance on equality'<sup>4</sup>. This brings into question what tools or forums will be used by the public to challenge public authorities. By implication of these regulations the tools and forums required of public authorities will be minimal.

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<sup>3</sup> The Equality and Diversity Forum (EDF) is a national network of equality and human rights organisations. Its website brings together a wide range of equality and human rights information and resources provided by EDF and other organisations.

<sup>4</sup> 'Equality Act 2010: The Public Sector Equality Duty: reducing bureaucracy policy review paper', p.4. Available at: <http://www.equalities.gov.uk/pdf/110317%20Public%20sector%20Equality%20Duty%20-%20Policy%20review%20paper.pdf>

Furthermore, we would note that children and young people are disenfranchised from most of the democratic structures and therefore do not have the same means of holding public bodies to account or seeking recourse for where they have failed in their duties. The Government should outline how this democratic deficit can be redressed and bridged for children and young people.

### **The Office of the Children's Commissioner's work in relation to the Public Sector Equality Duty**

During 2011-2012 we intend to scope and launch a formal inquiry into the impact of the Public Sector Equality Duty and wider equalities legislation with regard to school exclusions. The inquiry will be conducted under the powers granted to the Children's Commissioner under part 1 section 3 of the Children Act 2004. It will specifically examine whether children's rights are being met as outlined in the UNCRC.

Our decision to undertake an inquiry in this area is based on concerns around the profile of children and young people excluded from schools and the potential for inconsistency in the provision of alternative arrangements that ensure they continue to receive an education. Research funded by the OCC also suggested that children are not always routinely given an opportunity to speak for themselves in this area, with decisions about exclusions and alternative provision being made for them, and leaving them no opportunity to appeal these decisions on their own behalf (Article 12).<sup>5</sup> We are concerned that proposals in the current Education Bill may further undermine these rights, and as a result we will examine these issues in more detail during 2011.

It is our intention to use the Public Sector Equality Duty as the main framework to assess the systems in place to review the exclusion process and the level and adequacy of provision for excluded pupils and students. In undertaking this work we have used the draft regulations as originally drafted and published in January 2011 and urge the Government to maintain its commitment to these.

### **Conclusion**

We agree with the Government and Equality Strategy's stated goal of embedding equality into all areas of public policy.<sup>6</sup> However, inequality of outcomes for children and young people across several areas of public services suggests that this will not be tackled by weakening the duties published in January 2010. Indeed we believe that the current changes outlined will not provide sufficient clarity for public authorities as to how they should meet their general equality duty.

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<sup>5</sup> *Children's participation in decision-making: a summary report on progress made up to 2010*, National Participation Forum, 2010. Available at: [http://www.childrenscommissioner.gov.uk/content/publications/content\\_412](http://www.childrenscommissioner.gov.uk/content/publications/content_412) [accessed 14 April 2011].

<sup>6</sup> *The Equality Strategy – Building a Fairer Britain*, H.M. Government, December 2010.

Therefore we call on the GEO to revert back to the draft regulations published in January 2011. These realised a degree of consensus that should not be overlooked. We would urge the Government to lay these before Parliament at the earliest opportunity in order that the PSED can be fully implemented.

In doing so we also ask the Government to consider how children and young people's rights can be realised through its equality framework and how the issues raised by the 2008 UNCRC Concluding Observations will be addressed and evidenced before the UK's next report to the UN Committee on the Rights of the Child in 2014.

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