



**POLICY REVIEW OF THE PUBLIC SECTOR
EQUALITY DUTY SPECIFIC DUTIES**

Response from the Bar Council's Equality and Diversity Committee

April 2011

The Bar Council is subject to the general public equality duty and the specific duties. It is committed to meeting its public equality duty. This requires us to give clear and proportionate regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act;
- Advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between people who share a relevant protected characteristic and persons who do not share it.

The Bar Council's Equality and Diversity Committee considers the Equality Act 2010 public sector equality duty covering the protected characteristics much improves on and simplifies the approach taken by the 3 previous public sector equality duties in respect of race, sex and disability equality.

The draft regulations published in January provided a clear framework for meeting the general duty and did not appear to us as being unduly bureaucratic. The aim of the specific duties, as set out in the Equality Act, section 153 (1) is to enable the better performance by a public authority of the general duty.

The Policy Review states that its aim is "to strip out unnecessary process requirements and to make public bodies truly transparent and accountable to the public for their performance on equality". We consider that in supporting public bodies to deliver equality of opportunity, the Government should strike a balance between providing sufficient detail to assist bodies to meet the general duty and avoiding unnecessary prescription on the steps required to implement the duty. The new proposed specific duties in the Policy Review do not strike the right balance and leave paying "due regard" to the general duty open to interpretation. This lack of clarity is likely to lead to confusion as to what is required and possible recourse to the courts unless the GOE or EHRC issues clear guidance on the expected steps. We do not consider that the proposed revised specific duties will enable sufficiently the better performance of the general duty.

We consider the reduced transparency resulting from the revised proposals most damaging to the goal of making public bodies transparent and accountable to their stakeholders.

The key differences outlined in the Policy Review are:

- Removal of the duty to publish information on engagement when determining policies and when determining equality objectives;
- Removal of the duty to publish details of equality analysis undertaken in reaching policy decisions and information considered when undertaking such analysis.
- Removal of the requirement to publish sufficient information to demonstrate its compliance to publish information;
- Change public authorities must prepare and publish objectives to public authorities must prepare and publish one or more objectives;

- Removal of the requirement on public bodies to describe the process of how they will measure progress against their objectives.

We do not see how Stakeholders will be better able to hold public bodies to account without the above information being made available to them and consider these changes will limit and not aid transparency. We recommend that public bodies be required when publishing their objectives to set out the reasons for their choice and the evidence they relied upon when reaching their choice of objective/s.

The Government states at paragraph 19 of the Policy Review Paper that information to help public bodies comply with the duties and understand what constitutes good practice will be delivered through guidance not regulation. We presume this implies a watering down of the regulations and is likely to weaken the duty. The courts will have to take account of GOE or EHRC guidance but this again leaves interpretation to the courts and to some lack of clarity as to how to interpret the regulations.

Equality and Diversity Committee

General Council of the Bar

21st April 2011