The Lesbian & Gay Foundation's response to the Specific Duties Policy Review

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Introduction

1. The Lesbian & Gay Foundation (www.lgf.org.uk) will respond to the policy review incorporating any likely impact upon itself and its lesbian, gay and bisexual, and trans (LGB&T) service users. The Lesbian & Gay Foundation is a vibrant charity committed to achieving more positive outcomes for LGB&T people, with a wide portfolio of well-established services and new initiatives. The LGF is also the lead organisation of the Department of Health funded National LGB&T Partnership.

2. The Lesbian and Gay Foundation is based in Manchester, and supports over 40,000 LGB&T people each year. In addition to a wide range of health and advocacy services, it also undertakes research, information provision and policy campaigning on a national scale. As a result, the Lesbian & Gay Foundation provides more direct services and resources to more LGB&T people than any other organisation of its kind in the UK. The LGF is reported by service users to be one of the first points of contact for them when they have been at a crisis point in their lives. We campaign for a fair and equal society where all lesbian, gay and bisexual people can achieve their full potential, and our mission is: 'Ending Homophobia, Empowering People'.

3. It is unfortunate that the changes made to the specific duties following the consultation that were 'considered carefully' by the Government

have now largely been reversed. The Lesbian & Gay Foundation welcomes and supports the Equality Act 2010, and appreciates the value and importance of the general duty that is now in force. We know there are risks that need to be mitigated to ensure the specific duties work for public authorities of all types and sizes, and that bureaucracy needs to be minimised, especially in the current economic climate.

4. There are however, other risks that need to be mitigated. While some public authorities represent the very best national practice in LGB&T inclusivity, others do not and have very poor practice even in their basic public functions. It is for these worst performers that the duties must be drafted; consequently the Lesbian & Gay Foundation believes the requirement for public authorities to publish their equality analysis and the engagement undertaken should be retained.

5. The scale of homophobia and transphobia that still exist in the public services and in wider society, and the affect this has on LGB&T people needs to be borne in mind when framing equality legislation:

- One in five trans people have found their GP to be unhelpful[1]
- 99% of teachers witness homophobic abuse on at least a termly basis[2]
- 20% of health care professionals admit to being homophobic[3]
- LGB people are more likely than heterosexuals to say their health is poor: more likely to experience tension and worry; to abuse drugs; suffer from asthma; be victims of sexual abuse; or to smoke.[4]
- 35% of trans people report having made at least one suicide attempt prior to accessing the treatment they are seeking.[5]

[1] Whittle, S. Turner, L. and Al-Alami, M. (2007), Engendered Penalties: Transgender and Transsexual People's Experiences of Inequality and Discrimination
[2] Prevalence of Homophobia survey, Oldham Division of NUT, 2008
[3] Stonewall (2007), Sexual Orientation Research Review
[4] Conron, Kerith J., Mimiaga, Matthew J., Lander, Stewart J. (2010), A Population-Based Study of Sexual Orientation Identity & Gender Differences in Adult Health, American Journal of Public Health (Jun 2010)
[5] Reed, B., Rhodes, S., Schofield, P. and Wylie, K. Gender Variance in the UK: Prevalence, Incidence, Growth and Geographic Distribution (2009) GIRES

- Only 1 in 3 older LGBT individuals believes their health professionals to be positive towards them[6]

6. The Lesbian & Gay Foundation believes this evidence demonstrates why equalities legislation for the LGB&T communities needs to be as strong as possible.

7. The Lesbian & Gay Foundation welcomes and supports the movement from process to performance, but also recognises there is interdependence between them both. The requirement to publish equality analysis and engagement undertaken does not seem overly prescriptive. The January regulations do not specify the types or method of analysis or engagement, just that public bodies have to be transparent in their decision-making, which is one of the main aspirations of the Government.

8. Setting out that analysis of the effects and engagement needs to be done in the legislation, may save time and resources while public authorities work out what they must do to demonstrate minimum compliance to the general and specific duties.

9. The Lesbian & Gay Foundation supports public authorities being able to approach equalities in their own way. However, with the January regulations being potentially changed to remove some legal requirements on public authorities with regards to equalities, this sends the message that equality work is a bureaucratic 'add-on' as opposed to an economic necessity (inclusive and open organisations have been proved to be more cost efficient[7]) that should be embedded throughout the policymaking, service delivery and procurement of all publicly funded bodies.

10. There are a significant number of Government consultations that are currently suggesting the removal of statutory duties of public authorities around general inclusion work and equalities in particular. They include:

[6] Heaphy B., Yip A. and Thompson D. (2004), Shaping futures: LGBT people growing older, p5
[7] 'Building a business case for diversity', Gail Robinson and Kathleen Dechant (Aug 1997; 11, 3) The Academy of Management Executive; ABI/INFORM Global

- The 'Red Tape Challenge' website which asks if scrapping the whole Equality Act is a good idea[8]
- The DCLG 'Best Value' Consultation which suggests scrapping the general duty to involve

11. These consultations are contributing to a perception that statutorily enforced equality and inclusion work is always 'bureaucratic' and is never of any benefit. This threatens the principles of the 'Big Society' and the ability of local LGB&T people and groups to hold public authorities to account. The Government must accept while some public authorities are examples of best practice, legislation is required to ensure minimum standards from the worst performing public authorities. This is further exacerbated by the reduction in public authority funding; the Lesbian & Gay Foundation is seeing reductions in local authorities' equality and diversity staff, for example.

12. There is a complex interaction between legalisation; codes and guidance based on that legislation; the actual policies and procedures that public authorities make or have; and the ability that LGB&T voluntary and community groups and people have to hold public authorities to account. In this context, the Lesbian & Gay Foundation believes that the legislation must be strong enough to support the highest possible minimum standards of equalities work in the public sector. Previous legislation may not have delivered the desired outcomes, but that is not sufficient evidence to conclude that legislation cannot deliver the desired outcomes.

13. How public authorities will interpret the general duty and the eventual specific duties, and resulting guidance, is unclear. Messages from Government have often linked equalities and bureaucracy in a way that is unhelpful for the voluntary and community sector. The sector is expected, and is very enthusiastic, to empower and support LGB&T communities and people in holding public authorities to account. Unfortunately, this perceived lack of clarity from Government, with the

[8] We realise the scrapping of the whole Act would be impossible in practice, but this point is relevant in the general discussion of what messages the Government is giving on the importance of equalities legislation.

January specific duties released and then subsequently reviewed, has created confusion in the public and voluntary sectors. This confusion would be helped by a clear message, in the form of the most robust possible specific duties.

14. The Lesbian & Gay Foundation recognises that under the general duty, public authorities will have to show due regard to lesbian, gay, bisexual people, and those persons who fit under the gender reassignment characteristic, for the first time. The issue is that voluntary and community organisations feel they have a very limited number of tools to ensure public bodies' compliance with the general duty:

    - Freedom of Information (FOI) requests have been suggested as a key tool for the voluntary and community sector to hold public authorities to account. However, voluntary and community bodies are aware that public authorities (who may fund the voluntary group) can find FOI request process burdensome and resource intensive.
    - Judicial review is only practical for those decisions that have a very significant financial impact, due to the high costs associated with going to Court.
    - Case law will be developed to further support the general duty, but this could take years. The extremely precarious economic situation for the voluntary and community sector means that, for example, specialist LGB&T services funded by the public sector could be cut before the case law is in place to support the principle of high quality specialist LGB&T service provision.

15. The Lesbian & Gay Foundation therefore, supports the January version of the specific duties, in order to give voluntary and community sector organisations, and the LGB&T people we support, the broadest range of accountability methods as possible. Also, given the proposed re-organisation of the Equalities and Human Rights Commission, there is also a risk that the ERHC may be focused on internal changes at precisely the time when non-compliance to the general and specific duties is most likely to occur.

16. While the Lesbian & Gay Foundation recognises that one equality objective may be suitable for some very small public authorities, the majority of public bodies will be of a sufficient size to need at least one objective for each protected characteristic group in order to fully demonstrate due regard to the general duty. The regulations should therefore be drafted to apply to the majority of public authorities, rather than for the smallest. The reference to 'one or more' equality objectives should be removed, and the way progress is measured for the objectives needs to be as transparent as possible in the regulations.

17. The Lesbian & Gay Foundation supports the Government's aspirations for communities to hold public authorities to account. This approach does however lead to risks that need to be mitigated. Government Equalities Office itself, through research by the Office of Public Management, has identified barriers to greater participation in public life by LGB&T people. This is why the January version of the specific duties would be especially helpful to LGB&T communities, because LGB&T people are less likely to have the confidence and skills to challenge public authorities on the general duty.