



## The public sector equality duty: reducing bureaucracy

### FDA Response to the GEO Policy Paper

April 2011

#### Background

The FDA is a trade union and professional association representing the interests of senior managers and professionals in public service. Our 18,000 plus members include civil service administrators, policy advisers, senior managers in HM Revenue and Customs, NHS managers, lawyers, economists, diplomats, senior museum staff and statisticians.

We previously responded to the consultation in November 2011, when our concerns were largely about the need for accountability, and for public bodies to be required to publish meaningful data in a timely and transparent manner, in order to facilitate the ability of citizens, their representative groups, and trade unions, to hold organisations to account. In particular, in our previous response, we stated: *“The fact that it is still necessary to remind public bodies of the social and cultural need to promote equality and diversity, despite 40 years of equality legislation in this country, emphasises the need to clarify that this is also a legal requirement, and to ensure that public bodies adhere to centrally and collectively determined objectives both in terms of collecting and publishing data, and in the development and implementation of action plans to deal with any issues highlighted by the data.”*

#### Introduction

The FDA is disappointed at the Government’s decision to weaken still further the specific duties Regulations, particularly as this appears to be happening out of a belief that the duties create an unnecessary burden on authorities, which we do not accept.

We previously said: *“We are very concerned that the new duties must build on, and improve upon, those previously in place, and are not convinced that the*

*regulations as currently drafted, ensure that this is the case. The codes produced by the EHRC are important in this context, and must be enshrined in the regulations.”*

### **Reducing bureaucracy**

The changes are being made, it is said, to reduce bureaucracy and the burden on public authorities. However, having information published to demonstrate that issues are being dealt with is likely to be a lesser burden on a public authority than reacting to numerous questions being raised about the same issue; if the information is already out there, the authority don't need to do any more than point the questioner to it.

In addition, the question of whether a public body has delivered its equality duty will rely on specific challenges about whether the equality improvement has been delivered rather than an ability to look at published information about whether a specific process was followed. Despite the apparent aims of this reduction in duties under the proposed new Regulations this would appear to reduce rather than increase the transparency of the public authorities and, potentially, place a greater burden on them when required to demonstrate that issues are being dealt with.

### **General equality duty**

The proposals in the policy review paper weaken the specific duties so that they provide little support for those individuals and groups seeking to hold public bodies to account nor provide guidance to public bodies on how to meet the general equality duty, which remains a requirement.

It is not clear how public bodies and those carrying out public functions will be able to fulfil the general equality duty, or how they will be held to account by individuals and community organisations. We recognise that there is existing case law which sets out what public bodies should be doing to demonstrate due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations, but we believe that many organisations will not be aware of the case law and principles arising out of it and will look to the specific duties to guide them in the fulfilment of the general duty, as in the past. This is understandable, as the stated purpose of the specific duties has been to provide guidance to support the general equality duty.

We are particularly concerned that organisations that have been fulfilling the requirements of the previous equality duties, will gain the impression from the Regulations when these are published, that what they were previously doing to meet the general duty will become unnecessary.

## **Transparency**

The Government has stated that its new approach to the specific duties is about improving transparency and democratic accountability, which we welcomed in our response to the consultation at the end of 2011. However, we do not feel that the “light touch” approach to the Regulations gives the necessary power and information to allow citizens, community organisations and trade unions to question or challenge the equality commitments of public bodies, particularly if there is only the requirement for public bodies to commit to “a single objective” towards achieving equality. In our response to the earlier consultation, we were supportive of the stated aim of encouraging more open decision making, so we are disappointed that reference to these principles is absent in the policy review paper.

We believe the “lighter-touch transparency requirements” that are proposed in the paper will make holding public bodies to account an arduous, bureaucratic and lengthy task. The necessary information will not be readily available, so instead members of the public, trade unions and voluntary and community organisations are likely to resort to freedom of information requests which could impose an additional bureaucratic burden on public bodies, which would easily be avoided if meaningful equality impact assessments, equality analyses and other information, were published in a timely fashion.

## **Measuring and monitoring**

We are concerned that the further weakening of the specific duties means that there is no standard against which public bodies can be held to account, and we would urge the government to reconsider the proposed revisions, and revert to the proposals published in January 2011.

We would also urge the government to reinstate the requirement for public bodies to demonstrate the effect of their policies and practices, rather than just the data indicating the numbers of people who share a protected characteristic.

## **Publishing data**

The policy review paper recognises that evidence of equality analysis is a necessary part of showing due regard to equality. In addition, requesting equality impact assessments (or an equivalent form of equality analysis) is the most common starting point for those seeking to establish whether public bodies have paid due regard to equality. Without this requirement in the Regulations, public bodies may not publish such information, and are likely to be inundated with freedom of information requests from individuals and organisations seeking this analysis. We do not accept the statement that publishing evidence is “unnecessarily prescriptive”.

Removing the requirement on a public body to set out how it intends to measure progress against its equality objectives will make it difficult for citizens, including members of the public and representative organisations, and trade unions, to hold public bodies to account against published objectives or a consistent standard.

### **Guidance**

The Equality and Human Rights Commission should be asked to produce guidance on what information public bodies are expected to produce and, in particular, make it clear that gender pay gap information is expected (as the Government has repeatedly stated). Without this change, some public bodies may produce minimal information on their workforce for a few of the protected characteristics using data already gathered, rather than improving upon this, in recognition of the extension of the duty to cover all protected characteristics.

The Policy Review Paper recognises the need for public authorities to be able to refer to EHRC guidance & statutory Codes of Practice through the transition period but appears to leave them without such guidance following the publication of the Regulations which is proposed in July 2011.

### **Engagement**

We remain concerned that the Regulations as proposed rely on stakeholders holding public bodies to account only after the event. This appears to be counter to the purpose of the duty to pay 'due regard' and to be a costly and ineffective way of operating, as potential issues and concerns fail to be addressed at a formative stage so that policies may need to be reversed once resources have been committed.

We are disappointed that after placing more emphasis on engagement in the draft Regulations, the Government has now decided to remove all references to engagement. The policy review paper states that engagement is an integral part of showing due regard, in which case the Regulations should include requirements in relation to it.

If the draft Regulations are not amended then the statutory Code and any guidance must make clear the need for engagement with community organisations and, in the case of workforce, trade unions, in order to fulfil the general duty and also make clear the positive benefits of early engagement in terms of more effective policy making.

### **Single objective**

We are concerned that the Regulations as drafted imply that one objective will be sufficient to meet the requirements of the general duty, which applies to eight protected characteristics and has three elements to it (eliminating discrimination, advancing equality of opportunity and fostering good relations). The Government previously addressed these concerns by deleting the words “one or more” when the revised Regulations were published, but this wording has been reinserted.

We do not accept the explanation that this is a “proportionate approach which takes into account the size and role of the public authorities..., [and] in some circumstances a single objective could be appropriate”. Most public authorities to which the Regulations will apply are medium to large-sized organisations carrying out a range of public functions. Even small public sector organisations have the potential to impact on equality of opportunity for workforce, service users and others in the local community in a range of ways. The Regulations do not make it clear the circumstances in which a single objective would be acceptable, and must, at least, do so, in order to avoid the possibility of public authorities seeking to minimise their workload by only committing to one objective.

The Regulations should revert to stating that a public body must prepare and publish the equality objectives it thinks it needs to achieve to meet the general duty. This avoids the risk that a large number of public bodies will be encouraged to believe that a single equality objective over a four year period is sufficient.

## **Conclusion**

We urge the Government to reconsider its revision of the draft Regulations, and to revert to the position as published in January 2011, following the previous consultation. We do not accept that weakening the specific duties Regulations in the way proposed will deliver the outcome expected “to support delivery of equal treatment and equality of opportunity for all”.

Further we believe it to be essential that the Equality and Human Rights Commission produce a statutory Code of Practice that clearly states the principles derived from case law as well as good practice on what public bodies need to do to fulfil the general duty.

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