

Public Office (Accountability) Bill – Equalities Impact Assessment for the Duty of Candour Measures

Introduction

- This document records the equality analysis of the Duty of Candour measures being introduced by the Cabinet Office (CO) in the Public Office (Accountability) Bill. Public authorities are required to consider the likely effects of their policy proposals on people with protected characteristics under the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010 (EA). This document records the analysis undertaken to fulfil this requirement.
- The measures considered in this Equalities Impact Assessment (EIA) are:
 - a) Duty of Candour and Assistance at Inquiries and Investigations
 - b) Standards of Ethical Conduct
 - c) Offence of Misleading the Public

Equality Duties

Section 149 of the EA places a duty on Ministers, when exercising their functions, to have 'due regard' to the need to:

- a. Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the EA;
- b. Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- c. Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Duty of Candour

A) Duty of Candour and Assistance at Inquiries and Investigations

Introduction

- When things go wrong, public bodies and officials should serve the interests of the public - not aim to protect their own reputation. At inquests, inquiries and other investigations, they should give full, truthful and candid accounts - to serve accountability and to enable lessons to be learned.

Policy summary

- Public officials and authorities will be under a legal duty to assist inquiries and investigations. The duty will include requirements on public bodies and officials to:

- o Act with candour;
 - o Provide all relevant information without favour to their own position;
 - o Draw attention to information likely to be particularly significant.
 - o Co-operate with the inquiry/investigation in whatever way the inquiry/investigation requests (in so far as they are able to do so);
 - o Act with expedition.
- The duty will apply to current and former public authorities and public officials. This includes ministers, officials, employees of public authorities including police forces and local authorities, and any person exercising public functions.
 - This duty will apply to statutory inquiries established under the Inquiries Act 2005, non-statutory inquiries established by ministers, inquests and Fatal Accident Inquiries. These will be set out on the face of the Bill.
 - It is also intended that the duty will apply to a range of other investigations. This level of detail will appropriately be set out in secondary legislation following formal consultation. A further equalities assessment will be carried out when secondary legislation is made.
 - The duty will be subject to exemptions for sensitive or privileged information that are intended to mirror those in the Inquiries Act 2005 and other relevant legislation.
 - The duty may be applied on the day that it is brought into force by a commencement regulation which will be after the Bill reaches Royal Assent. Once in force, the duty may be applied in respect of an inquiry or coroner's investigation that is in progress on the day the duty comes into force.
 - The Bill will contain criminal sanctions for the most serious breaches.

B) Standards of Ethical Conduct

Introduction

The Bill ultimately aims to change the culture in public services away from institutional defensiveness - or what Bishop James Jones has called "*the patronising disposition of unaccountable power*" - and towards openness to challenge.

Policy summary

- Public authorities will be required to promote and maintain standards of ethical conduct. They will be required to have a code of ethics that includes a professional duty of candour for their employees.
- The approach here is to set minimum standards but to apply them flexibly. Authorities will define their own candour obligations on their staff. The

approach will be to learn from experience and to tailor obligations to the nature of the organisation.

- To minimise the burden on individual organisations, authorities will be able to meet the obligation by updating or amending existing codes or adopting codes from umbrella bodies. Central government will issue guidance and draw together examples and best practice. To ensure proper coverage of public services, powers will also be taken to apply the duty to private bodies discharging public functions.

C) Offence of Misleading the Public

Introduction

- For the most serious cases of wrongdoing, the Bill contains an offence of 'misleading the public.' This offence is designed to capture the most serious incidents of misleading the public.

Policy summary

- The offence is targeted at misleading the public, and will not apply to individual interactions. It is intended to have limited implications for frontline health, education and local government workers in their daily work - only capturing cases of widespread cover-up, and serious dishonesty.
- To have committed the offence, a public authority or official must have (i) acted with the intention to mislead the public or be reckless as to whether their actions would do so and (ii) known, or ought to have known, that their act was seriously improper. By "reckless", we mean the criminal standard of a person acting with the knowledge that there is a risk that they might mislead the public and taking that risk without reasonable justification. It does not include accidental mistakes or inaccuracies.
- For an act to be considered seriously improper it must meet certain conditions, including that the behaviour departed significantly from what is expected in the proper exercise of functions.
- The Bill provides for defences, including a reasonable excuse defence.
- The offence will extend to England and Wales, but only will apply to England and in Wales in respect of reserved matters. Engagement with the devolved governments will be undertaken to give them the opportunity to extend the duty fully to Scotland, Wales and Northern Ireland, in line with the rest of the provisions on the Duty of Candour which apply UK-wide.

Equalities Data Analysis

In line with our responsibilities under the EA, the Department has considered the "protected characteristics" – namely race, sex, disability, sexual orientation, religion and belief, age, gender reassignment, pregnancy, and maternity. The Department's

assessment is that none of the proposals (duty of candour and assistance at inquiries and investigations, duty to promote and maintain ethical conduct and offence of misleading the public) are either directly or indirectly discriminatory within the meaning of the EA. They apply in the same way to all individuals and do not treat people less favourably because of their protected characteristics.

Affected Persons

- This legislation will affect public authorities and public officials and private bodies with a health and safety responsibility or who carried out activities as a service provider to a public authority in relation to an incident which had a significant impact on members of the public.

Sources of Data

- N/A

Sex

- The Department anticipates the impact of this legislative change to be felt equally by males and females.

Race

- The Department does not anticipate any impacts on the basis of race from this measure.

Age

- The Department does not anticipate any equalities impacts based on age from this legislation.

Other protected characteristics

- The Department does not anticipate any impacts of this policy on the other protected characteristics of disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief.

Eliminating unlawful discrimination, harassment

Direct Discrimination

- Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. The duties and the offence provisions will apply equally to all those subject to them regardless of their protected characteristic. As a result, these measures do not involve direct discrimination within the meaning of the Equalities Act because they do not treat people unfavourably due to their protected characteristics.

Indirect Discrimination

- Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not.
- The Department has concluded from the information available that any impacts of this policy on the protected characteristics is likely to be minimal.

Discrimination arising from disability and duty to make reasonable adjustments

- The Department does not consider that there is likely to be any discrimination in relation to disability and will continue to make reasonable adjustments for disabled people impacted by the policy proposals.

Harassment and victimisation

- The Department does not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act 2010 as a result of these measures.

Advancing Equality of Opportunity

- The Department has had regard to this aspect of the equality duty and considers these changes may affect the advancement of equality of opportunity by ensuring that public officials must act fairly and appropriately or face criminal consequences.

Fostering Good Relations

- The Department's assessment is that these changes may also have a positive impact on fostering good relations between groups with different protected characteristics because they aim to ensure public officials act ethically and with candour in their official capacity.

Mitigation

- As there are no adverse impacts identified, the department is not planning any mitigating action.

Decision Making

- This legislation will affect public office holders, certain private bodies and the general public who interact with public office holders. Having considered the possible impact on the protected characteristics of sex, race and age the department concluded that it would be reasonable to proceed with the policy given the minimal impact expected on any of them.