

## Report for Information

**Report to** Executive  
14 October 2009  
**Report of** Director of Transformation  
**Subject** Single Equality Bill Consultation

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### Purpose

To inform Executive of the Single Equality Bill consultation on the scope of the 'specific duties' regarding equality, accompanying the new 'general duties' and the response sent.

### Recommendations

To note the Norwich City Council response to the Government Equalities Office consultation on specific duties within the new Single Equality Bill.

### Financial Consequences

None

### Risk Assessment

Not responding might risk our reputation and ability to influence central government decision making.

### Strategic Priority and Outcome/Service Priorities

The report helps to meet the strategic priority "Opportunities for all – communities to be able to access the wide range of services in the city provided by the Council" and the service plan priority OA1 achieving appropriate equality standard levels, 2, equality impact assessment review of services and 3, accessibility of services.

**Executive Member:** Councillor Waters - Corporate Resources and Governance

**Ward:** All Wards

### Contact Officers

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### Background Documents

Nil

## Report

### Single Equality Bill Consultation by Government Equalities Office

1. The Single Equality Bill aims to amalgamate all equalities legislation, and as such has a significant impact on social inequality across the country. The objective is to clarify existing complex legislation, and the promise is to lift the burden of bureaucracy and focus on local activities achieving equitable outcomes
2. The Bill has implications for local authorities as it extends our general and specific duties currently regarding race, disability, and gender, to religion/belief, sexual orientation, age, transgender and pregnancy and maternity.
3. As an organisation, the direct impact will be on how we choose to demonstrate our achieving corporate equality **objectives**, how our **procurement** practises promote equality of opportunity, and how our **workforce strategy** addresses persistent inequalities.
4. The Government Equalities Office is now consulting on the key elements within the Bill. A copy of the Executive summary of the consultation document is attached as Annex B (a copy of the full consultation document, which runs to 88 pages, is available on request).
5. In particular the consultation asks for views on the **specific duties**, which provide a framework to assist public bodies in carrying out the requirements of the general duties. The specific duties will be underpinned by the following principles:
  - Use of evidence (knowing the community and how to use information effectively)
  - Consultation and involvement
  - Transparency (in addressing stubborn inequalities such as the gender pay gap)
  - Capability (leadership and commitment).
6. The Bill proposes that:
  - Objectives and steps to be taken towards achieving them are published,
  - Equality schemes may not be a requirement so the above objectives could be incorporated into any format.
  - Equality Impact Assessments move away from describing processes towards demonstrating outcomes and impact in a transparent, accountable way.
  - Central government won't mandate the delivery of training on equality (previously a requirement from race relations legislation).
  - The publication of employment statistics on long standing inequalities such as ethnic minority employment rates or gender pay gap for organisations

employing 150 people or more, but won't expect full data sets which might divert attention away from using data effectively.

- Contracting authorities consider using equality related award criteria and consider applying equality related contract criteria to performance monitoring of contracts.
- Key government departments set out in detail their equality objectives over a three year period.
- it will not require public bodies to report employment rates for all protected characteristics.

7. Potential areas of concern are:

- Less prescriptive legislation may cause confusion amongst authorities in what is already a complex legal landscape.
- The drive for transparency in publishing pay information may have reputational implications
- The potential requirement for public authorities to deal with suppliers' breaches of discrimination law would have cost and resource implications, as well as relationships with partners and contractors being affected.

8. The City Council has responded on the draft Bill by the 30 September 2009 deadline. A copy of our response is attached as Annex A. Broadly our views are that despite the less prescriptive nature of the specific duties, the general duties still apply, and evidence of how we carry out those duties will be required by the Audit Commission whose new CAA process emphasise equalities in their inspections. Bearing in mind the I&DEA Equality Framework requirements, and the established processes at the council, it is proposed that the council continues to:

- produce a Single Equality Scheme
- undertake diversity impact assessments
- provide equality and diversity training for employees
- analyse and respond to workforce diversity monitoring data.

8. Executive is asked to provide retrospective approval to the response to the consultation, attached as Annex A.

## Chapter 2: Executive Summary of consultation document

- 2.1 Everyone has the right to be treated fairly and to have the opportunity to fulfil their potential. The public sector equality duties are key to achieving our goal of firmly embedding equality of opportunity at the heart of our public services. The new Equality Duty provides a golden opportunity to build on the success of the current race, disability and gender equality duties, to retain their successful features whilst learning from what has not worked so well. In order for the Equality Duty to fulfil its promise, we need specific duties which will help public authorities deliver improved equality outcomes.
- 2.2 We want a set of specific duties that are *flexible*, so that public authorities are not constrained into taking action which is unnecessary or unproductive; *light-touch*, so we avoid placing unnecessary burdens on our public services; and *proportionate* so that what we expect from a small primary school or a big government department reflects their size and resources. We want to avoid rigid bureaucratic processes or a “tick-box” approach resulting in the publication of documents which, once produced, stay firmly on the shelf.
- 2.3 To that end, we have worked from a set of principles set out originally in the Discrimination Law Review consultation: A Framework for Fairness in 2007. These are: use of evidence, consultation and involvement, transparency and capability. Based on these principles we have developed a number of proposals for the specific public sector duties and we welcome your views on these. The proposals include:
- Public authorities should develop and publish equality objectives, with reference to the relevant evidence and the requirements of the general duty, and set out the steps they intend to take to achieve them (paragraphs 5.9 – 5.10).
  - In developing their objectives public authorities should take into account certain priority areas as directed by the relevant Secretary of State (paragraph 5.9).
  - Public authorities should report annually on progress against their objectives, and review their objectives at least every three years (paragraphs 5.12 and 5.15).
  - Public authorities with 150 or more employees should publish their gender pay gap figures, their black and minority ethnic employment rates and their disabled people employment rates (paragraphs 5.17 – 5.23).
  - Public authorities should demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives and what difference this has made (paragraphs 5.24 – 5.27).

- Public authorities should take reasonable and proportionate steps to consult and involve representatives of employees, service users and other relevant groups they have identified as having an interest in how they design their policies and deliver their services (in particular those from protected groups whom the duty is designed to help) when they are setting their equality objectives, developing their action plans and reviewing progress (paragraphs 5.28 – 5.32).
- Relevant Secretaries of State should report on key equality achievements/ challenges across their policy sectors at least every three years (paragraphs 5.45 – 5.50).

2.4 We also propose a set of specific duties which will help public bodies to use public procurement to contribute to delivery of their equality objectives under the Equality Duty. These consist of requirements on contracting authorities:

- when setting out their equality objectives and the steps they intend to take to achieve them, to include how they will ensure that equality factors are considered as part of their public procurement activities to help contribute to the delivery of those objectives;
- to consider the use of equality-related award criteria where they relate to the subject matter of the contract and are proportionate;
- to consider incorporating equality-related contract conditions where they relate to the performance of the contract and are proportionate (paragraphs 5.33 – 5.44).

2.5 We think this is a balanced and sensible package, which shifts the focus away from process and towards achieving improved equality outcomes on the ground. We look forward to hearing your views on our ideas.

## ANNEX A

<b>Respondent name: Nadia Aman</b>	<b>Address:</b> Room 332 City Hall St Peter's Street Norwich NR2 1NH
<b>Organisation: Norwich City Council</b>	<b>Date: September</b> <b>email: <a href="mailto:nadiaaman@norwich.gov.uk">nadiaaman@norwich.gov.uk</a></b>
<b>Consultation questions</b>	<b>Response</b>
Q1: Do you think the criteria set out above are the right ones? Please give your reasons	<p>Criteria for which bodies are subject to the specific duties:</p> <ul style="list-style-type: none"> <li>▪ Is the organisation a significant employer in terms of either size or impact?</li> <li>▪ Could the organisation for example in the decisions it takes or the services it delivers have a significant effect on the lives of people from the protected groups?</li> <li>▪ Does the organisation have significant direct dealings with service users?</li> <li>▪ Is the organisation of a sufficient size to operate the specific duties without them being unduly burdensome?</li> </ul> <p>The criteria may be adequate but are considerations weighted equally? It is not clear how it will be applied.</p> <p>For example, NICE might not have significant direct dealings with service users but have a significant effect on the lives of people.</p>
Q2: Are there any other criteria we should use? If so, what do you suggest?	
Q3: Do you agree that public bodies should have a specific duty to publish equality objectives with reference to the relevant evidence and their wider general Equality Duty obligations?	Yes, we agree that equality objectives and action points should be publicly set out and published. However it is not clear why the equality scheme idea has been scrapped, as we understood that the issues with bureaucracy were regarding the

	required production of three schemes, and potentially being asked to write up to eight. We believe that a potential solution would be to streamline the number of schemes to reflect the bill and therefore require the production of one single equality scheme.
Q4: Do you agree that public bodies should set out the steps they intend to take to achieve their equality objectives?	Yes, public bodies should set out how they intend to achieve their equality objectives, and once again, the equality scheme seemed the right framework in which to do this in.
Q5: Do you agree that public bodies should be required to implement the steps they have set out for themselves within the business cycle period unless it would be unreasonable or impractical to do so?	Yes.
Q6: Do you agree that public bodies should be required to review their objectives every three years? If not, what time-period do you suggest instead?	Yes.
Q7: Do you agree that public bodies should set equality objectives taking into account priority areas set by the relevant Secretary of State?	This is not clear, as we would expect to collate evidence and data locally, in order to be best placed to identify priority areas for our services. If however the question is referring to persistent inequalities identified by national data, there may be some scope for central government guidance. In a district level, two tier system setting equality objectives of national relevance should take into consideration that this is proportionate to resources and levels of influence.
Q8: Do you agree that public bodies should not be required to set equality objectives in respect of each protected characteristic?	Not requiring the setting of equality objectives for all protected characteristics could cause long term inequalities between strands. Some strands may be neglected, data not collected, with advocacy groups losing influence as attention is focused on one area. This also runs the risk of greater competition between equality strands, particularly

	amongst voluntary sector groups seeking support and funding. It might be appropriate to emphasise proportionality instead.
Q9: Do you agree that public bodies should be required to report annually on progress against their equality objectives, but that the means by which they do so should not be prescribed in legislation?	Agree that there should be a requirement to report, but concerned that without legislation prescribing how to do it equality may be lost amongst other priorities in an annual report for example.
Q10: Do you agree that public bodies with 150 or more employees should be required to publish their gender pay gap, their ethnic minority employment rate and their disability employment rate? We would welcome views on the benefits of these proposals in encouraging public authorities to be more transparent.	Publishing data such as this is something that HR departments are used to; however with the BVPI's being phased out it may be more difficult to collect and analyse the data in a meaningful way.
Q11: Do you agree with the proposal to use the overall median gender pay gap figure? Please give your reasons. If not, what other method would you suggest and why?	The calculations used to establish the gender pay gap seems reasonable and fair.
Q12: Do you have any evidence of how much it would cost to produce and publish this information, and of what the benefits of producing and publishing this information might be?	Cost may well be a constraint, but it is impossible to estimate this at this stage without more information on what is required. However a benefit would be to ensure that we have a workforce which reflects the society it serves.
Q13: Do you agree with the proposal not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty? If not, what other data do you think should be reported on?	We understand that there is an expectation from the Audit commission that we collect and analyse this data both regarding our workforce and for the delivery of our services. We would therefore welcome a consistent message from all commissions about collecting data on such sensitive characteristics.
Q14: Do you agree with the move away from an emphasis on describing process, to requiring public bodies to demonstrate how they have taken evidence of the impact on equality into account in the design of their key policy and service delivery initiatives and the difference this has made?	We would welcome consistent, detailed, practical guidance perhaps including case studies as examples, on the implementation and development of impact assessments. Although we agree that there ought to be an emphasis on outcomes and how to achieve them, perhaps a



	<p>stronger emphasis on how to incorporate equality objectives into corporate goals (service planning, setting strategic objectives etc) might improve linking the assessment to strategic objectives.</p> <p>Though on the other hand, a process driven equality impact assessment does have the advantage of forcing the assessor to methodically consider the matter from all angles, we are not sure we would want to dilute that effect.</p>
<p>Q15: Do you agree that public bodies should have a specific duty – when setting their equality objectives, deciding on the steps towards their achievement and reviewing their progress in achieving them to take reasonable steps to involve and consult employees, service users and other relevant groups who have an interest in how it carries out its functions – or where appropriate their representatives; and in particular take reasonable steps to consult and involve the protected groups for whom the duty is designed to deliver benefits?</p>	<p>Yes, however it would be helpful if the relationship between representative, individual community member and advocacy groups is clarified. Some authorities may consider they are ticking the involvement box by hiring in consultants to talk to advocacy groups, using third and fourth parties without much interaction between the citizen and the authority.</p>
<p>Q16: Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?</p>	<p>Yes, this would be very helpful for larger contracts.</p>
<p>Q17: Do you agree that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities?</p>	<p>Yes, particularly in industries which are in receipt of contracts and yet have persistent inequalities identified.</p>
<p>Q18: Do you agree that contracting authorities should be required to consider using equality-related award criteria where they relate to the subject matter of the contract and are proportionate?</p>	<p>Contracting authorities should perhaps consider using it where proportionate and appropriate to the contract, for example where a contractor is providing a public service.</p>

Q19: Do you agree that contracting authorities should be required to consider incorporating equality-related contract conditions where they relate to the performance of the contract?	We greet this suggestion with caution and would urge proper guidance from the appropriate authorities as this very process driven area needs defined processes to follow in order to develop a confident approach to equalities.
Q20: What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?	<p>The greatest power the authority has is terminating the contract. Our bigger contracts already have step in rights which are usually invoked for a contractor failing to do something which include breaches of discrimination law. However, at the moment this is mainly in relation to the delivery of the services so if a contractor for example discriminated during a recruitment process this would not necessarily enable us to step in. Yet the overarching requirements in contracts to comply with the law and not to discriminate would enable us to take action for breach of contract.</p> <p>There are therefore robust processes in place which allow councils to sanction poor performing contractor. We would argue that the emphasis should be on the use of the contract terms and conditions and the ultimate sanction to terminate should this become necessary.</p>
Q21: Do you support the proposal to establish a national equality standard which could be used in the procurement process? If so, do you believe this is achievable through a specific duty or is this better tackled through a non-legislative approach? Are there any practical issues that would need to be considered?	We would not wish to add to the mix of equality standards a separate one for procurement, and note that the Improvement & Development Agency Equalities Framework includes procurement for example. It would be more beneficial for authorities to receive clear guidance from OGC or EHRC on the practicalities of how to go about embedding equality in processes, monitoring best practice etc.
Q22: Which of the above four models do you consider achieves the best balance between joined-up working	<ul style="list-style-type: none"> <li>Model 1 A requirement for relevant secretaries of state to report every three years against</li> </ul>

<p>and senior accountability for equality outcomes, while avoiding unnecessary burdens? Please explain why.</p>	<p>the national equality priorities that they have set for their policy areas</p> <ul style="list-style-type: none"> <li>▪ Model 2 A requirement for relevant secretaries of state to include, in the third year of their departments annual reporting cycle an expanded report covering the policy area for which they have the overview</li> <li>▪ Model 3 To rely on reporting procedures attached to the PSA's covering equality.</li> <li>▪ Model 4 To require relevant secretaries of state to report on how equality data is gathering and used across their relevant policy sectors.</li> </ul> <p>If we are working on the basis that the equality duty applies to the departments anyway, then we would assume that Model 1 is already a requirement.</p> <p>Model 2 seems reasonable in addition to the general duty requirements, as it follows on from what the ODI has apparently reported has already succeeded, and it ensures accountability at a senior level. It is not evident what unnecessary burdens might develop, as greater transparency and better working across departments might lead to less duplication of work.</p>
<p>Q23: Do you have any other suggestions how this duty could be remodelled to retain the valuable features of senior accountability and joined-up working, whilst avoiding unnecessary burdens?</p>	<p>Current legislation instructs us that responses should be relevant and proportionate, so therefore it would follow that a department should not find itself carrying unnecessary burdens if planning equality objectives with those principles in mind.</p>
<p>Q24: Are there any specific requirements, other than those that we have proposed, which you think are essential to ensure that public bodies deliver equality outcomes in an effective and proportionate manner?</p>	<p>Equality Impact Assessments and Schemes are a positive framework with which to deliver outcomes. Smaller authorities with few resources need such frameworks and detailed guidance on them in order to improve services. Providing less substantial</p>

	<p>guidance might prove to mean poorer evidence of outcomes in comparison to larger organisations may have the resource to develop their own frameworks or invest in software etc. We urge those drawing up this bill to take this into consideration.</p>
<p>Q25: What role do you think the guidance from EHRC should play in helping public bodies implement the specific duties in a sensible and proportionate manner? What do you think it would be helpful for such guidance to cover?</p>	<p>Guidance should have good case studies for complex cases, particularly regarding the outcomes of recent legal cases.</p> <p>Guidance should be simplified and always relate back to authority functions. An advice line or FAQ's page on how to practically apply the equalities duties would be very helpful. Support on responses to local issues and developing effective services for disadvantaged groups would be much appreciated.</p> <p>The recent EHRC equality framework seemed to actually be a very detailed explanation of all the data gaps in national data, and it is not evident whether a framework is being developed out of this mapping of data.</p>