

Paper 1

Equality and Human Rights Commission

Written submission to the Communities, Equality and Local Government Committee

The Equality and Human Rights Commission welcomes the Communities, Equality and Local Government Committee Inquiry into the future of equality and human rights in Wales. A number of opportunities exist at the present time to secure the strong and distinct equality and human rights agenda in Wales.

We are pleased to provide written evidence under each of the four topics referenced in the Inquiry's terms of reference. We will be happy to expand on any of these points during the oral evidence session.

1. How well the specific public sector equality duties are functioning in Wales

1.1 The Public Sector Equality Duty (PSED) has the potential to transform public services if implemented effectively and with support from public service leaders. The EHRC has a unique role as regulator of the duty. Our strategy for regulating the duty in these early stages has three key elements: guiding, encouraging and monitoring. As part of this we are:

- providing authoritative and accessible guidance
- highlighting and sharing good practice, particularly through our Equality Exchange network
- helping the voluntary sector to see the potential of the equality duty to improve public services
- working with regulators to encourage them to incorporate equality, good relations and human rights into their work
- sharing trends and emerging issues with government and other partners.

1.2 Initially, our performance monitoring is concentrated on four key topics in four key sectors – assessing equality impact in local government, engagement in health, disability issues in fire and rescue services and tackling gender pay gaps in universities. Public authorities have told us they have found the duty a useful tool to raise the profile of equality issues in their workplaces. The duties are beginning to deliver real outcomes. Earlier this month, we provided detailed reports on the four key areas to the respective Ministers. A summary of those reports is attached as

appendix 1 to this submission. The full reports will be on our website by April 23.

- 1.3 Welsh Ministers have a specific duty to publish a report by December 2014 on how devolved public authorities in Wales are meeting their obligations under the equality duty. The Welsh Government may choose to commission further monitoring work to aid this process.

2. The Equality and Human Rights Commission Wales

- 2.1 The Equality and Human Rights Commission (EHRC) is the independent advocate for equality and human rights in Britain. Parliament has set us the tasks of promoting equality, enforcing the law, protecting the human rights of all and bringing people together to build stronger communities.
- 2.2 The Equality Act (2006) established the statutory EHRC Wales Committee to advise the Equality and Human Rights Commission about the exercise of its functions. The committee sets the strategic direction of the Commission's work in Wales. The EHRC's funding is not nation-specific, and it is for the Commission to determine how much resource it allocates to Wales (but the EHRC is legally required to ensure that the Committee receives a share that is sufficient to enable it to exercise its functions.)
- 2.3 The EHRC has a specific work programme in Wales, taken forward by a dedicated Wales team. This work programme is focused on addressing the greatest equality and human rights challenges in Wales, as identified in the EHRC's How Fair is Wales? report. The Welsh Government's, and other public authorities', equality objectives are based on the equality challenges identified in HFIW? This has created an agenda for change in Wales.
- 2.4 The Welsh Government could take steps to strengthen the relationship with the EHRC and, particularly, the Wales Committee and Directorate. The Welsh Government's response to the Silk Commission states that 'the National Assembly should have competence to give functions to the Equality and Human Rights Commission.'
- 2.5 For example, the EHRC could undertake additional programmes of work in support of the Welsh Government's priorities under an agreement. Increasing the strength of the EHRC's relationship with the Welsh Government, through an agreement to fund specific programmes of work, would ensure equality and human rights in Wales are regulated at a level that meets the Welsh Government's requirements.

2.6 The basis for a stronger relationship between the EHRC and the Welsh Government could be set out in the form of a Concordat. An agreement would be a clear and transparent way to:

- Enable the Welsh Government to access the regulatory activity required to achieve Programme of Government objectives
- Provide resource to ensure the EHRC is an effective promoter and regulator of equality and human rights in Wales
- Strengthen the relationship between the EHRC and the Welsh Government
- Protect the independence of the EHRC

2.7 Although finances are tight, resources invested in the regulation of equality and human rights will result in public authorities intervening at an earlier stage to prevent problems escalating and to save money.

3. The link between poverty and equality and the socio-economic duty

3.1 The EHRC Wales is particularly pleased that the Committee is exploring the link between poverty and equality, and the socio-economic duty.

3.2 As *How Fair is Wales?* demonstrates, the inequality which dominates the Welsh landscape is socio-economic, not least because of the scale of its impact, the breadth of its influence and the depth of the inequalities created. Across the board, people from lower socio-economic groups do not, on average, enjoy the same quality of life as people from higher socio-economic groups, whether it is lower life expectancy, lower educational attainment, or lower incomes and wealth. Moreover, inequalities are proving very enduring, with many worsening in recent years despite government efforts to reduce them. The sheer scale and challenge presented by socio-economic inequality in Wales should not, however, obscure other inequalities that exist alongside and which are interwoven with socio-economic disadvantage.

3.3 The Welsh Government has acknowledged that policies to tackle inequality and poverty should be more closely aligned. The Welsh Government has set ambitious targets to eradicate poverty, but progress towards these targets is proving difficult to achieve. It is unlikely that sufficient momentum will be built to deliver the objectives unless a fresh look is taken at the approach that underpins work. Now that a more strategic approach to the promotion of equality is underway requiring public authorities to pay due regard to equality in setting priorities, making policy and resource allocation, the time may be right to adopt a similar approach in relation to socio-economic disadvantage.

- 3.4 Commission research outlines links between the areas. For example, the Welsh Government is committed to improving educational attainment and achieving higher grades across Wales in order for people to have better life chances. There is plenty of data to show where support and interventions are needed.
- 3.5 As an illustration it is worth looking at GCSE results. A*-C grades in the core subjects are achieved by:
- 50% of all pupils
 - 31% of Black pupils
 - 20% of pupils from the poorest households
 - 12% of pupils with special educational needs
- 3.6 To improve standards across Wales, targeted interventions are needed to support each group of pupils who are currently not reaching their potential. The implementation will be different for each group but could be assessed as part of a single process as actions are likely to be delivered by the same staff and funded from the same budget. There would be an advantage in having a single strategic approach, but with separate clearly defined actions. This approach would maximise efficiency and effectiveness.
- 3.7 The Welsh Government and the EHRC are committed to understanding the different and overlapping drivers of inequality and socio-economic disadvantage. If this analysis is not done effectively any strategies to address inequality or poverty are unlikely to have the desired impact.
- 3.8 The current time presents a significant opportunity to take steps on this agenda. The recent Cabinet reshuffle has resulted in the Minister for Communities and Tackling Poverty, Huw Lewis, having a portfolio covering equality issues and tackling poverty, as well as areas such as welfare reforms, children, Communities First and sustainable development.
- 3.9 Furthermore, the UK Government has stated that it is working with the Welsh Government to agree an approach that allows the commencement of the socio economic duty for Welsh bodies (as specified in the Equality Act 2010). The Welsh Government's Silk Commission response states that 'the National Assembly should have full competence over the socio-economic duty in section 1 of the 2010 Act and its objective of reducing inequality of outcome resulting from socio-economic disadvantage, in respect of the devolved public sector.' A number of other organisations, including the Children's and Older People's Commissioners, also highlighted links between inequality and poverty in their Silk Commission responses.

3.10 The current EHRC Wales work programme includes a project to explore the benefits of aligning poverty and inequality strategies across Wales.

4. Accountability for equality and human rights legislation in Wales

4.1 The Welsh Government's Programme for Government includes a commitment 'to explore how stronger Welsh accountability for equality and human rights legislation, including enforcement of Wales specific duties, can be achieved'.

4.2 The then Equality Minister, Jane Hutt, wrote to the EHRC Wales Committee for advice in fulfilling this commitment. The Wales Committee responded in November 2012, saying that EHRC advice is that to achieve this goal the Welsh Government needs to be able to set the equality and human rights agenda in Wales and regulate delivery by the public sector. This will best be achieved by:

- Making the most of the Welsh Government's new strategic approach to equality which is embedded in its 2012 Strategic Equality Plan and Objectives.
- Full devolution of the Public Sector Equality Duty from the UK Government to the Welsh Government
- Seeking increased powers to build on the Equality Act 2010 and the Human Rights Act 1998
- Strengthening the EHRC relationship with the Welsh Government, including, as appropriate, through funding specific work
- Making stronger links between tackling poverty and reducing inequality.

4.3 Responses to the Silk Commission on Devolution in Wales are outlined in Appendix 2.

5. Appendix 1

Overall progress on the PSED in Wales

Progress report on engagement across the health sector

- 5.2 Almost every health organisation described the positive impact of the Specific Duty on Engagement. As a result of the Duty most of the health service increased engagement with people with protected characteristics. This was often facilitated by health organisations working in partnership, for example, with Community Health Councils, Local Authorities, and the voluntary sector. Engagement methods varied from large scale events to individual meetings and the use of social media to ensure a more inclusive approach.
- 5.3 Engagement with the protected groups enabled most health organisations to identify people's different needs. For example, learning disabled people highlighted communication issues whereas for lesbian and gay service users recognition for their partners is a priority issue. Some protected groups are notably heavier users of health services. In relation to the reconfiguration programme it appears, from the evidence we received, that the greater the use of services, the greater the level of anxiety about change.
- 5.4 There may be some issues of trust here, with doubt surrounding the benefit of improved services versus the location of services and the distance to be travelled.
- 5.5 A number of common themes emerged from the Health Board engagement on reconfiguration. Many service users understood and accepted the rationale for relocating services. They wanted to take advantage of the better outcomes from specialist units but they also expressed concerns about travel distances and the lack of public transport. Some people in protected groups have less access to resources such as money and private transport.
- 5.6 As part of the reconfiguration Health Boards have gathered the perspectives of different protected groups. Some Health Boards have then incorporated these different views into Board papers on the reconfiguration process.
- 5.7 For example, Betsi Cadwaladr Health Board, took decisions on reconfiguration based on papers that identified the adverse impact of proposals on different protected groups. The January 2013 Board minutes record that *"where negative impact (on protected groups) had been identified, mitigating actions had been developed"*.

5.8 Other Health Boards are yet to publish relevant Board papers and decisions.

Progress report on Equality Impact Assessment in Local Government

5.9 From the responses we received from Councils in Wales, a number of key points emerge.

5.10 It is clear that senior leadership plays an important role in whether proper consideration of equality issues is built into the work of the Council. Many Councils have progressed towards ensuring that evidence of equality impact assessment is a requirement that underpins decision-making. Most Council Committees and Cabinets receive supporting documentation on the Equality Impact Assessment of the proposals under discussion. Some authorities have made more progress than others in engaging with EIAs.

5.11 The value of EIAs includes the collection of additional information to assist the making of difficult decisions concerning allocation of resources. Transparency and the publication of EIAs assists with holding authorities to account for their decisions.

5.12 Whilst Councils report that the EIA process is valuable, EIAs are yet to be thoroughly embedded into budget, service delivery and policy decisions. Some Councils are training Heads of service delivery and producing guidance as a step towards integrating EIAs into decision-making.

5.13 Councils were asked to provide examples of EIAs they had undertaken. The majority of these examples show that the EIA has enabled the Council to identify and mitigate the disproportionate impact of a policy decision on people with protected characteristics. There is less evidence that EIAs have fundamentally changed decisions.

5.14 It is clear from the specific examples provided that EIAs have value beyond the policy area that has been subject to assessment, in terms of building competence and confidence. As a result EIAs are being rolled out and are generating policy reviews more widely within the Councils.

Overall progress and approach in Fire and Rescue Services

5.15 All three Fire and Rescue Services say they have found the Public Sector Equality Duty and Welsh Specific Duties useful in highlighting equality issues and strengthening existing initiatives. They have taken a positive approach towards the Duties and every Fire and Rescue Service has set equality objectives.

5.16 Each Service is addressing disability issues in relation to the workforce and in relation to service users. A key workforce issue is to ensure there are robust mental health policies in place. Support has been introduced for staff with particular impairments such as hearing loss and dyslexia.

5.17 The main focus of the Fire and Rescue Service work on the Specific Duties is in community safety and fire prevention. There are new, more effective, strategies to increase engagement with disabled people and disabled people's organisations. The system for Home Fire Safety Checks has been reviewed and the checks now record whether occupants are disabled and the nature of their impairment. This enables tailored safety equipment to be fitted, such as vibrating smoke alarms.

Progress report on gender pay difference duty in Universities

- 5.18 We have found the Public Sector Equality Duty and Welsh Specific Duties have been helpful in getting university leaders to place a greater emphasis on equality issues. Furthermore, our evidence suggests that universities are finding the duty a useful tool rather than a burden. Universities report that it has enabled separate initiatives to be brought together into an action plan and built upon to increase momentum.
- 5.19 Every university has complied with the requirement to have an equality objective relating to gender pay differences. Together universities are addressing the three main causes of the gender pay gap - discrimination in pay systems, job segregation and the need to balance work and home life.
- 5.20 In our report below on individual universities we highlight which methods of addressing the pay gap are being employed by each of them. The range and volume of new initiatives to tackle the long-recognised problem of gender pay differences in universities appears to indicate that the Specific Duty is having a positive impact.
- 5.21 Firstly, discrimination in pay systems is being addressed by reviewing starting salaries, overtime pay, senior staff pay, market pay rates and other 'discretionary' aspects of pay. This often builds on pay audits conducted within the past few years.
- 5.22 Secondly, job segregation is being tackled by promotion policies and training and mentoring programmes aimed at assisting women to reach senior grades. There are initiatives to encourage more women into science and universities are keen to achieve Athena Swan accreditation for their efforts in this regard. Bangor, Cardiff and Swansea universities currently hold this award.
- 5.23 Thirdly, the need to balance work and home life is being addressed by reviewing work patterns and widening access to flexible working.

6. Appendix 2

Silk Commission on Devolution in Wales

6.1 A number of organisations highlighted the issue of greater accountability for equality and human rights legislation in their Silk Commission responses.

6.2 The EHRC recommended:

- The National Assembly should be given powers to build on equality and human rights legislation including the Equality Act 2010 and the Human Rights Act 1998.
- The National Assembly should be given full primary legislative competence in relation to the Public Sector Equality Duty.
- The National Assembly should be given competence to strengthen its relationship with the EHRC.

6.3 The Welsh Government's submission recommended that:

- The National Assembly should be given primary legislative competence in relation to the three aims of the Public Sector Equality Duty in the 2010 Equality Act in relation to the devolved public sector.
- The National Assembly should have full competence over the socio-economic duty in section 1 of the 2010 Act and its objective of reducing inequality of outcome resulting from socio-economic disadvantage, in respect of the devolved public sector.
- The National Assembly should have competence to give functions to the Equality and Human Rights Commission and change its accountability structure, to ensure they match the devolved competence on equality which is being sought for the Assembly.
- The National Assembly should have full competence over whether, and the extent to which, positive discrimination on the grounds of the protected characteristics in the Equality Act 2010 is permitted in public appointments to the boards or governing bodies of devolved public sector organisations in Wales.

The UK Government's submission said:

6.4 Equality [of opportunity] is largely non-devolved. The Equality Act 2010 provides a comprehensive legal framework in relation to discrimination on the basis of specified protected characteristics. There are a few exceptions to the non-devolved nature of the Equality Act:

- 6.5 the power for Welsh Ministers to prescribe specific equality duties for public bodies in Wales (The equality duty comprises a General Duty which applies equally across GB, and specific duties (regulations) which are devolved); and the socio economic duty which requires public authorities to have due regard to reducing the inequalities of outcome from socio economic disadvantage. We have announced our intention to repeal this duty (which has never been commenced) in respect of GB-wide and English authorities. We are working with the Welsh Government to agree an approach which allows Wales to commence the duty for Welsh bodies (as specified in the Equality Act 2010).
- 6.6 The 2006 Equality Act established a decision-making committee for Wales to advise the Equality and Human Rights Commission about the exercise of its functions. The committee sets the strategic direction of the Commission's work in Wales. Ann Beynon OBE was reappointed as Welsh Commissioner in December 2012. The EHRC's funding is not nation-specific, and it is for the Commission to determine how much resource it allocates to Wales (but the EHRC is legally required to ensure that the Committee receives a share that is sufficient to enable it to exercise its functions.)”

7. Appendix 3

Gaps and inconsistencies in the current legislation

7.1 This appendix sets out the gaps and inconsistencies relating to the Public Sector Equality Duty, and the specific duties for Wales. These illustrate the weaknesses of current devolved competence.

They include:

Accountability to the National Assembly

- 7.2 The Equality Act 2010 confers powers on Welsh Ministers to enable them to introduce specific duties. **But** the National Assembly does not have the authority to contribute on the content of the duties, it only approves the regulations creating the duties.
- 7.3 The Welsh Ministers are accountable to the National Assembly in relation to the duties **but** only at a general level - in that they are accountable in the exercise of all their functions.
- 7.4 Welsh Ministers have a specific duty to publish a report on how devolved public authorities in Wales are meeting their general duty **but** these reports are not subject to Assembly scrutiny.

Coverage of the duties

- 7.5 The Equality Act 2010 gives Welsh Ministers the power to draw up the list of public authorities covered by the duties **but** the authorities covered must be agreed with UK Ministers.
- 7.6 The public authorities list requires UK approval **but** is not subject to Assembly Committee or NAW scrutiny.
- 7.7 The listed authorities have obligations arising from the specific duties set by Welsh Ministers **but** are not required to report progress back to them.

Effective guidance for public authorities

- 7.8 The Welsh Government is unable to issue Codes of Practice on the duties (Equality Act 2006). **But** if the National Assembly had legislative competence in relation to the PSED the Welsh Government could issue Codes to ensure effective delivery of the duties.