



Buckinghamshire & Milton Keynes Fire Authority

MEETING	Fire Authority
DATE OF MEETING	18 December 2013
OFFICER	Lynne Swift, Director of People and Organisational Development
LEAD MEMBER	Councillor Roger Reed
SUBJECT OF THE REPORT	Equality and Diversity Progress Report
EXECUTIVE SUMMARY	<p>This report summarises the outcomes of the Public Sector Equality Duty (PSED) Review and also provides a mid-year progress update on delivering the Authority's equality and diversity priorities. Annex A of this report details findings of the PSED review. The review arose from the government's Red Tape Challenge and was established to examine whether the Duty is operating as intended.</p> <p>Following the Authority's successful attainment of the 'Achieving' level of the Fire and Rescue Service Equality Framework, the emphasis during 2013/14 is to fully embed equality and diversity considerations within the day to day activities of the Authority. This so called 'mainstreaming' of equality and diversity considerations in the Public Safety Plan, Community Safety and Workforce Strategies, Area and Station plans ensures that an holistic approach is taken to achieving the Authority's strategic objectives.</p> <p>Appendix 1 of this report provides a mid-year progress update on embedding equality and diversity within the Authority and therefore how it is discharging its responsibilities under the PSED.</p>
ACTION	Information.
RECOMMENDATIONS	<p>Members are asked to note:</p> <ol style="list-style-type: none"> 1. The outcomes of the Public Sector Equality Duty Review as set out in Annex A of this report. 2. Mid-year progress in relation to embedding equality and diversity within the authority as outlined in Appendix 1.

<p>RISK MANAGEMENT</p>	<p>Discrimination in the workplace may give rise to a claim through an employment tribunal and there is no upper limit on the amount of compensation that can be awarded if a claim is successful.</p> <p>The service's equality, diversity and community cohesion programme aims to reduce litigation risk, improve fire safety and reduce risk for everyone within Buckinghamshire and Milton Keynes, and those who visit or travel through the area. It aims to improve the working environment for our staff, increasing satisfaction and motivation at work. It will also increase confidence within the organisation as well as raising the profile and engagement with the community.</p> <p>Other identified risks include organisational change programmes, equal pay audit and new policies. The authority's change policies are all impact assessed and the equal pay programme is supported by external experts and subject to internal quality assurance.</p>
<p>FINANCIAL IMPLICATIONS</p>	<p>The Equality and Diversity action plan for 2013/14 will be delivered from within existing budgets.</p> <p>Outcomes of the PSED review will not have any additional financial implications.</p>
<p>LEGAL IMPLICATIONS</p>	<p>The Equality Act 2010 (Specific Duties) Regulations 2011 (SI 2011/2260) currently requires, since 31 January 2012, the Authority to: publish information to demonstrate compliance with the general duty to have due regard to the need to:</p> <ul style="list-style-type: none"> a) eliminating unlawful discrimination, harassment and victimisation; and b) the advancement of equality of opportunity between different groups and foster good relations between different groups; and to prepare and publish one or more equality objectives that should achieve one or more of the aims set out in the general duty. <p>Guidance on how and what to publish is provided in the "Equality information and the equality duty: A guide for public authorities" (ECHR, Revised (second) edition, 19 December 2011).</p> <p>The Review of the Public Sector Equality Duty: Report of the Independent Steering Group (6th September 2013) discussed in Annex A concluded that there is considerable uncertainty as to the meaning of "due</p>

	<p>regard" which in many cases has resulted in public bodies adopting an overly risk adverse approach to managing legal risk; that the EHRC produce bespoke guidance for public bodies on the minimum requirements placed on them under the PSED; that public bodies ensure that they adopt a proportionate approach and do not seek to "gold-plate" the PSED; and that the government ensures that public bodies are proportionate in publishing information.</p>
HEALTH AND SAFETY	<p>There are no implications with regards to employee health and safety.</p>
EQUALITY AND DIVERSITY	<p>The service has a statutory obligation under equality legislation to have regard to the need to eliminate unlawful discrimination. If we have greater representation of our diverse communities then we will be able to find solutions to barriers in relation to employment and accessing services.</p> <p>Valuing diversity in the Service and Community is also one the Authority's core values.</p>
USE OF RESOURCES	<p>The authority aims to improve services for everyone within the community, ensuring that there is appropriate access to services to meet identified needs; thereby ensuring that resources are targeted effectively</p> <p>The Area Management structure as introduced in 2011 as part of the Moving Forward organisational change programme and refined in 2013 is now focusing clearly on area based community safety initiatives; ensuring planned activities reflect local challenges and demands.</p> <p>The authority has adopted a "golden thread" approach, translating Equality and Diversity objectives from the corporate plan through the appraisal system and provision of appropriate training. This is ensuring that all staff are involved in delivering equality and diversity objectives of the Service.</p> <p>Progressing and embedding equality and diversity within the authority follows the general format of the Equality Framework for the Fire and Rescue Service so that achievements and progress can be linked against a clear corporate framework, which sets out our future direction. The central aim of the authority's approach to equality, diversity and cohesion is to secure better outcomes for individuals and communities in Buckinghamshire and Milton Keynes.</p>
PROVENANCE SECTION	BACKGROUND PAPERS

<p>& BACKGROUND PAPERS</p>	<ul style="list-style-type: none"> ▪ The Equality Act 2010 ▪ "Equality information and the equality duty: A guide for public authorities"(ECHR, Revised (second) edition, 19 December 2011) ▪ Home Office, Equality reforms cut burden on business (15 May 2012) http://homeoffice.gov.uk/media-centre/news/red-tape-challenge ▪ Home Office Review of public sector Equality Duty https://www.gov.uk/government/policy-advisory-groups/123
<p>APPENDICES</p>	<p>Annex A: Outcomes of the Public Sector Equality Duty Review.</p> <p>Appendix 1: Embedding equality and diversity within the authority- mid-year progress update November 2013</p>
<p>TIME REQUIRED</p>	<p>10 minutes.</p>
<p>REPORT ORIGINATOR AND CONTACT</p>	<p>Shaz Choudhry, Equality and Diversity Manager schoudhry@bucksfire.gov.uk 01296 744625</p>

Summary of the Public Sector Equality Duty Review

Introduction

The review arose from the government's Red Tape Challenge and was established to examine whether the Public Sector Equality Duty (PSED) is operating as intended. A key aim of the PSED was to sensitise public bodies to equality while addressing the bureaucracy associated with the previous duties on race, disability and gender.

The government appointed an independent Chair, Rob Hayward OBE, and Steering Group to oversee the review. Over the course of 2013, supported by government officials, they have led an extensive programme of engagement and evidence gathering, including a series of roundtables with experts, site visits to public bodies, an open call for evidence and independent qualitative research.

Background to the Duty

The first public sector equality duty related to race and was introduced in 2001 in response to the Stephen Lawrence Inquiry Report. Since then, duties on disability (2006) and gender (2007) have followed, and more recently via the Equality Act 2010, a Single Duty was introduced encompassing all of the characteristics protected under the Act.

The PSED consists of a general duty, with three main aims (set out in s149 of the Equality Act 2010). It requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- Advance equality of opportunity between people from different groups;
- Foster good relations between people from different groups.

The general duty is underpinned by a number of specific duties, set out in secondary legislation to accompany the Equality Act 2010, which provide a framework to help bodies meet the general duty. The specific duties commenced in England in September 2011 and require public bodies to:

- Set and publish equality objectives, at least every four years;
- Publish information to show their compliance with the Equality Duty, at least annually. The information published must include information relating to employees (for public bodies with 150 or more employees) and information relating to people who are affected by the public body's policies and practices.

Methodological Issues

The terms of reference for the review specified that it should "explore the impact of the Duty in terms of costs, burdens and a range of benefits (including policy improvements, efficiencies and equality outcomes)."

There have been four key methodological issues:

- **Separating the requirements of the Duty from wider equality work**

The review found it difficult to establish whether action taken is directly in response to the PSED or driven by other factors. The conclusions and recommendations reached through the review may therefore go beyond the operation of the PSED to examine wider equality practice. The review has tried to distinguish where possible between the requirements of the Duty and the interpretation of these requirements by public bodies.

- **Lack of evidence on costs and benefits**

There was little understanding of costs and benefits even by those most closely involved in implementing the Duty. Despite the current financial climate, the review has not found any public bodies that have sought to monetise either the costs or benefits of applying the Duty as a whole (although some have been able to monetise certain aspects of compliance). To some extent this is unsurprising as public bodies found this similarly difficult under the previous equality duties, where research suggested that they did not have the data to enable them to do so, particularly because of the thrust towards “mainstreaming”.

- **Engagement with business**

Recognising that the review arose from the Red Tape Challenge, the Steering Group were keen to engage with the business community to explore how burdens related to the PSED may be passed on to those organisations that bid for and deliver public contracts. Despite the best efforts of review team, there has been very limited engagement by the business community as a whole to the review.

- **Engagement with E&D practitioners**

By contrast, the greatest engagement by far has been with E&D practitioners who generally champion the PSED and promote its value to public bodies and the community. The balance of evidence received reflects the views of those individuals and organisations who responded to the review.

Context

The Steering Group believes it is important to recognise that some of these implementation challenges are a direct result of the broader political, economic and legal context and related uncertainties. For example:

- **Political context**

There has been a change of government since the Equality Act received Royal Assent in April 2010. The coalition Government has a different approach to equalities, with a focus on equal treatment and equal opportunities.

- **Economic context**

The earlier equality duties were introduced at a time of public sector expansion, but the PSED has been introduced at a time of austerity when all public bodies have faced and will continue to face reductions in spending.

- **Legal context**

Although the number of Judicial Reviews (JRs) brought under the PSED is low, it is still a significant proportion of the overall number of JRs and there have been several high profile cases. In all the cases, the PSED is just one of a number of grounds, which suggests that these JRs would have arisen even in the absence of a PSED. Central and local government are particularly sensitised to the risk of legal challenge and the impact on a public body facing a legal challenge can be significant.

The review has found that, even where decisions are overturned due to non-compliance with the PSED, it is not uncommon for the initial decision in question to remain unchanged following further work by the authority to demonstrate they had discharged the duty effectively. It is not clear how this benefits anyone.

- **Guidance**

The right guidance has not always been available at the right time to enable public bodies to implement the PSED effectively. The Equality and Human Rights Commission (EHRC) has produced a range of guidance, including technical guidance that was published during the course of this review, which may mean some respondents engaging with the review were not yet aware of it. However, this is intended for courts and tribunals when interpreting the law, and lawyers, advisers, trade union representatives, human resources departments and others who need to apply the law. Public bodies reported a need for clear, more tailored guidance on how to comply with the PSED that is specific to their sector, function and circumstances. The Steering Group suggested that more could be done around sign-posting, practical examples (including examples where a public body has considered equality but still prioritised other considerations such as budgets, the needs of other groups etc.), inclusion of case law (e.g. meaning of 'due regard', the Brown principles and how to balance effectively different protected characteristics), suggested alternatives to EIAs, and light-touch ways of reviewing and monitoring the on-going impact of policies.

One of the leading cases, *Brown -v- Secretary of State for Work and Pensions* (2008) set out some general principles. Mrs Brown was disabled and lived with her husband in Sussex. She could not stand or walk for long periods without acute pain. In late 2007, she discovered that the government was proposing to shut down a number of post offices in Sussex, including the branch in her village. Because of her disability, this would make it very difficult for her to access another post office further away.

In a legal challenge to the decision, Mrs Brown claimed that the government had failed to comply with its duties under the Disability Discrimination Act 2005, in particular its duty to pay due regard to the equality duties as it had not carried out a disability equality impact assessment of the closure proposal. She was unsuccessful.

Recommendations

Based on the conclusions drawn by the Steering Group and suggestions for improvements raised by participants in the review, the Steering Group developed the following recommendations:

For the Equality and Human Rights Commission (EHRC):

- Guidance must be clearer on the minimum requirements placed on public bodies. Building on its technical guidance, the EHRC should produce shorter, more bespoke guidance clearly setting out what is necessary for compliance.
- Sector regulators have an important role in supporting implementation. Regulators, inspectorates and relevant ombudsmen services should integrate the PSED in their core functions and collaborate closely with the EHRC with respect to compliance action. In some cases there may be a case for co-production of tailored sector-specific guidance where required, although it is recognised that some functions are so broad as to make such guidance virtually impractical.
- Public bodies should not collect diversity data unless it is necessary for them to do so. The EHRC and Information Commissioner should work together to provide greater clarity on the role of data and its collection, the use to which data is put, and what is necessary for compliance with the PSED. In respect of both data collection and procurement, public bodies should take a genuinely proportionate approach.

For public bodies:

- Public bodies must ensure they adopt a proportionate approach to compliance and not seek to “gold plate”. Public bodies should seek to benchmark their processes for compliance with the PSED with their peers, with a view to reducing unnecessary paperwork.
- Public bodies must reduce the burdens placed on small employers. Public bodies should remove Pre-Qualification Questionnaires (PQQs) for contracts below £100k and utilise the government’s core PQQ, which does not include equality requirements, for contracts over this amount.
- Public bodies should not impose onerous or disproportionate requirements on contractors delivering services (particularly those with fewer than 50 employees) to provide equality data on workforce and service users.

For contractors:

- Public bodies should be challenged where their procurement processes creates barriers for small businesses and charities. Private and voluntary sector employers in England should refer any potentially inappropriate equality requirements that have been applied to a particular procurement exercise to the Cabinet Office Mystery Shopper scheme.

For Government:

- Public bodies must be proportionate in publishing information. Although consensus was not reached in the Steering Group on the effectiveness of the specific duties, the Chair's view is that these do not serve their intended purpose and that the Government should consider their removal or modification.
- Enforcement of the PSED needs to be proportionate and appropriate. In light of the findings around Judicial Review, the Government should consider whether there are quicker and more cost-effective ways of reconciling disputes relating to the PSED.
- It is too early to make a final judgement about the impact of the PSED. Government should consider conducting a formal evaluation of the Duty in three years' time. This would enable the PSED to embed more thoroughly and should consider whether the Duty is an effective means of achieving the goal of sensitising public bodies to equality issues and what alternatives there might be. This work could also be informed by the EHRC's medium-term work on how the PSED and the more prescriptive specific duties operate in Scotland and Wales.

Conclusion

The review has not considered repeal of the PSED. The Government agreed with the reviews conclusion that a full evaluation should be undertaken in 2016 when the Duty will have been in force for five years. The review has however identified a number of issues associated with the implementation of the PSED and makes recommendations for the Equality and Human Rights Commission, for contractors, for public bodies and for Government. The Government has pledged to see these recommendations implemented fully by all relevant parties, in particular to reduce procurement gold-plating by the public sector.

In relation to the specific duties which apply in England, the Government notes that there was not consensus from the Steering Group but nonetheless accept the Chair's recommendation to consider the operation and effectiveness of these duties. Public authorities must be transparent about their objectives and performance on equality and it is vital that the specific duties support this aim. The Government will keep these duties under review and work closely with the EHRC as it conducts its more detailed assessment of the specific duties.

The Government accepted the recommendation to consider what complementary or alternative means, other than judicial reviews, there may be to enforce the PSED. Recognising that many of the concerns of this recommendation in the wider work, led by the Justice Secretary, to ensure that disputes are resolved in the most proportionate way possible and in the most appropriate setting.

The Minister for Women and Equalities (Rt Hon Maria Miller MP) has pledged to work closely with all her Ministerial colleagues to reduce the impact of red tape on the public sector, and to ensure that their Departments, and the sectors for which they are responsible, respond urgently and positively to the review's findings and recommendations.