

15 January 2010

Graeme Bryce
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Dear Mr Bryce,

I welcome the opportunity to respond to the SG consultation on Public Sector Equality Duty Specific Duties.

I would like to respond to two parts of the consultation. Question 27 and question 38.

The primary responsibility for ensuring the implementation of the equality duties, as noted in the paper, lies with the EHRC. I am responding on these two points only because I feel the SPSO's experience in responding to complaints from the public and involvement in the scrutiny improvement agenda mean we can provide some useful feedback on these particular issues.

Question 27: Do you think public authorities should have a specific duty when setting their equality objectives, to take reasonable steps to involve and consult employees, service users and other relevant groups – or where appropriate their representatives – who have an interest in how the authority carries out its functions?

Our experience comes from considering the complaints we sometimes receive from service users following consultation processes, most often, but not exclusively, involving local authorities. The input of users, particularly when service changes are contemplated, can provide a unique perspective and be invaluable. However, we are aware consultation processes have led to difficulties for public bodies when it comes to managing expectations. The public often assume consultation means that the majority view expressed by them in the consultation will prevail in any decision. Users may also be involved with more than one body and different styles and methods of consultation can be confusing. If there is a duty to consult, we would recommend either guidance or good practice information is issued to support this and to ensure that the best value can be achieved from this process.

Question 38: What role should bodies with a scrutiny and improvement function in Scotland play in monitoring and improving the extent to which Scottish public authorities advance and promote equality, foster good relations between different communities and groups, and take steps to prevent unlawful discrimination?

Although we do not consider ourselves to be either a scrutiny or regulatory body, we do have a function in helping improve the provision of public services by sharing the understanding of good and bad administration that we see in the complaints brought to us. In bringing complaints to the Ombudsman, members of the public provide valuable information about the

impact in practice of actions taken by public authorities on the users of public services. In terms of the duties of the bodies, complaints can bring to light the unintended consequences of some policies or failings in the implementation at the point of service delivery. As noted in the consultation document, it is the role of the EHRC to ensure enforcement where there has been a breach and I would not seek to make declarations of the legality or otherwise of an action of a public authority in terms of the proposed legislation. However, good administration requires public authorities to show they have taken into account relevant legislation and guidance and I can and do criticise organisations who fail to do so. I also seek, through my published reports and the work of my outreach team, to ensure that best practice and lessons learned are shared across the public sector. This would also apply to any duties placed on those bodies by the Equality bill or any related legislation and guidance.

As noted in the consultation paper, the introduction of specific duties should be seen in the light of the significant developments which will occur in the areas of scrutiny and improvement over the next few years. This period will see the implementation of a number of initiatives which flow originally from the Crerar review. This will include a role for this office in developing standardised systems for complaint handling and supporting complaints handlers. As part of this, public authorities will be actively encouraged to ensure they themselves use the lessons learned from complaints to improve their own practice and this will allow users a way to affect the implementation of these duties at the point of delivery.

I enclose a completed Respondent Information Form containing the above responses and would be happy to provide further information if that would be helpful.

Yours sincerely,

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Director of Policy and Development

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