



Setting out the case for a public sector positive duty

A briefing paper by:

Equality & Rights Alliance

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Equality & Rights Alliance (ERA) welcomes the commitment in 'The Programme for Government 2011' to *'require all public bodies to take due note of equality and human rights in carrying out their functions'*.¹ We believe that the most effective means of realising this commitment is through the introduction of a positive duty for public sector organisations.

In this paper, ERA identifies what a positive duty is and sets out the case for a positive duty as an important aspect of public sector reform. We outline the benefits of a positive duty as a tool for enhancing equality and fulfilling human rights and as a means of ensuring that the scarce resources of public sector organisations including government departments are used to best effect.

What is a public sector positive duty?

A positive duty is a requirement for public sector organisations² to have due regard to eliminating discrimination and promoting equality for groups covered by equality legislation, and to protect and fulfil human rights. This requirement would cover the functions of public sector organisations as employers, service providers and contractors of goods and services.

A positive duty seeks to ensure that the promotion of equality and human rights becomes a core part of the way in which the organisation operates and conducts its business by:

- Supporting an informed and evidence-based approach to the work of public sector organisations,
- Requiring public sector organisations to not only take steps to avoid discriminating against employees and service users, but to actively promote equality for, and respect and protect the human rights of, service users and employees,
- Seeking to ensure that public sector organisations meet the needs of all service users and employees,
- Aiming to make tangible differences in the lives of people experiencing inequality, exclusion and human rights abuses.

Positive duties are not about creating more red tape and bureaucracy. They are not an add-on or a further burden but an integral part of the way in which business is conducted.

Why the need for a public sector positive duty?

¹ 'Programme for Government 2011' pg 24

² Public sector refers to: all public sector services, government departments and state funded bodies.

Advance equality and human rights

The provision of quality, inclusive, accessible and accountable public services reduces inequalities and advances the fulfillment of human rights across society. This is particularly the case in regard to the provision of key services which have the potential to enhance the life chances of people in areas such as health and social care, housing and accommodation, and education.

Positive duties form a valuable part of a strategic framework for action on equality and human rights. They work alongside legislation to prohibit discrimination and protect human rights. They work alongside positive action or specific measures that target resources on groups experiencing inequality and/or human rights abuses. They are effective in preventing discrimination, advancing equality and fulfilling human rights. Positive duties enhance the drive to becoming a more equal and just society. Research indicates that in more equal societies there are lower levels of violence, homicide, imprisonment and mental illness, higher levels of educational attainment, longer life expectancy, and greater social mobility and social cohesion.³

Enhancing the quality of policy making and policy implementation

The decisions made by public authorities regarding budget allocation and service planning, design, delivery and review can be critical in enhancing the impact of public policies on the life chances of service users, particularly the most vulnerable and marginalised in society.

A lack of understanding of, and limited attention to, equality and human rights concerns on the part of policy makers and service providers can result in significant barriers of access, participation and outcome for some members of the target populations. Positive duties enhance the capacity of policy making and policy implementation to better meet the needs of all members of intended target populations, thereby using scarce resources to best effect.

Positive duties also play a preventative role in eliminating discrimination and reducing inequality and human rights abuses. By requiring equality and human rights considerations to be applied at the early stages of the planning process, potentially discriminatory policies and services can be adjusted and revised to prevent the occurrence of discrimination and ensure compliance with equality legislation and human rights norms.⁴

³ Wilkinson, R and Pickett, K (2009) 'The Spirit Level: why equality is better for everyone', Penguin UK.

⁴ In this regard it should be noted that the Equality Authority has consistently highlighted, through its legal work, high levels of discrimination by public sector bodies in employment and service provision.

A more effective approach to discrimination and human rights concerns

Public sector duties would reinforce the current legislative model through a proactive approach requiring action to *prevent* the occurrence of discrimination and to *promote* equality and human rights.

The current legislative model to prohibit discrimination and protect human rights is reactive, in that it requires the occurrence of discrimination or human rights violations before a case can be taken. In addition the current model is individualistic, in that it relies on the willingness and capacity of individuals to take cases. This approach is inadequate to address discrimination and human rights abuses on a more effective, sustained and systemic level.

Better value for money

Public sector positive duties ensure value for money in public spending in a number of areas. Attention to equality and human rights outcomes for employees has been shown to:

- Increase productivity and innovation,
- Reduce staff turnover and absenteeism,
- Enhance organisational commitment (which in turn has a positive impact on the delivery of services),
- Bring a greater breadth of experience, knowledge and perspective to the design and delivery of services.⁵

As positive duties require equality and human rights issues to be considered at the design and planning stage of policies and in the delivery of programmes, this can help to avoid ill-informed and costly mistakes. For example, engaging with people with disabilities at the planning stage of a service can help to avoid costly changes to make services accessible at a later stage of the process. Positive duties can also help to reduce costly discrimination cases being taken against public sector organisations.

International obligations

The Belfast Good Friday Agreement requires an equivalence of rights in Northern Ireland and Ireland. Section 75 of the Northern Ireland Act 1998 saw the introduction of a positive duty on designated public sector organisations to have

⁵ For example, research by the National Centre for Partnership & Performance for the Equality Authority reviewed over 130 Irish companies and found a direct correlation between the introduction of high performance work systems which included a focus on equality and diversity, and increased levels of productivity and innovation, together with reduction in staff turn-over rates. Flood, P, Mkanwa, T, and O'Regan, T (2008) 'New Models of High Performance Work Systems: the business case for strategic HRM, Partnership and diversity and equality systems', The National Centre for Partnership Performance, Dublin and the Equality Authority, Dublin. See also: 'Talent not Tokenism- the business benefits of workplace diversity' (2008), CBI, TUC and the Equality and Human Rights Commission UK; Monks, K (2007) 'The Business Impact of Equality and Diversity-The International Evidence', The National Centre for Partnership and Performance and the Equality Authority, Dublin

due regard to equality in carrying out their functions. The absence of a similar positive duty in Ireland places us in breach of this international treaty.⁶

What are the benefits of a public sector positive duty?

The Service user

Positive duties ensure that those responsible for policy making and implementation take account of diversity and actively consider how to advance equality and fulfil human rights. The result is enhanced access to the range of services delivered by the public sector for all members of their intended target groups.

Progress reporting on the implementation of the Section 75 positive duty in Northern Ireland identifies a range of tangible positive outcomes for target populations including:

- Improved access to health, education and other services and increased access to employment in the public sector for people with a range of physical, sensory and learning disabilities,
- Improved access to a range of public services for people from minority ethnic groups,
- Increased representation of women in a number of District Councils;
- Increased childcare provision in target rural areas,
- Mainstreaming of a number of Traveller health projects,
- Improved access to employment for older people across a range of public services,
- Improved facilities in a number of public services for women attending with children,
- Extension of paternity leave entitlements to lesbian and gay employees in a number of health and social service trusts,
- Increased participation of minority ethnic communities in marketing for tourism.⁷

Positive duties require those responsible for policy to engage with service users. This enhances their understanding of the barriers some service users experience in accessing and participating in public services and the action required to remove those barriers.

⁶ For a comprehensive analysis of the lack of equivalence in a North /South context, see: O’Cinneide, Colm (2005): ‘Equivalence in Promoting Equality: the implications of the Multi- party Agreement for the further development of equality measures for Ireland and Northern Ireland’, Equality Authority and the Equality Commission Northern Ireland.

⁷ Equality Commission of Northern Ireland: Reports on the Implementation of the Section 75 Equality and Good Relations Duties by Public Authorities based on Public Authority Annual Progress Reports, 2003 to 2006.

The employee

Positive duties encourage public bodies to introduce workplace policies to promote equality and advance human rights for their employees. Research has shown that the introduction of such policies results in: reduced levels of stress, absenteeism and grievances; increased levels of job satisfaction and organisational commitment; and better morale among employees⁸.

The organisation

Positive duties encourage greater transparency and accountability in policy making and implementation. This enhances governance in the public sector and increases public confidence in public services.

Positive duties enhance the equality and human rights competence of public sector organisations to deliver their internal and external functions. The process of evidence-based and participative planning to deliver on achievable, measurable and strategic equality and human rights outcomes for service users and staff, allows the organisation to enhance its impact and to demonstrate how and where it is achieving this impact.

A review of the impact of positive duties in Scotland found a number of positive outcomes in the operation of public authorities including:

- Greater accountability by public authorities for meeting the requirements of equality legislation,
- Greater awareness and understanding of equality issues and capacity building across the public sector, and
- Improvements in research, policy design and consultation.⁹

Organisational performance is further enhanced as a result of the improved job satisfaction and performance of employees. Research has shown, for example, that achieving diversity at senior management level and implementing positive action measures for employees improves organisational performance.¹⁰

⁸ See for example: O'Connell, P and Russell, H (2005) 'Equality at Work? Workplace Equality Policies, Flexible Working Arrangements and the Quality of Work' Economic and Social Research Institute for the Equality Authority; Monks, K (2007) 'The Business Impact of Equality and Diversity-The International Evidence', The National Centre for Partnership and Performance and the Equality Authority, Dublin; Metcalf, H. and Forth, J. (2000) The Business Benefits of Race Equality at Work, Research Report 177. London: DfEE; Riley, R , Metcalf, H and Forth, J (2009) 'The Business Case for Equal Opportunities', NIESR Discussion Paper No. 335; 'The Costs and Benefits of Diversity: a study on methods and indicators to measure the cost effectiveness of diversity policies in enterprises', Centre for Strategy and Evaluation Services, European Commission, 2003; Flood, P, Mkanwa, T, and O'Regan, T (2008) 'New Models of High Performance Work Systems: the business case for strategic HRM, Partnership and diversity and equality systems', The National Centre for Partnership Performance, Dublin and the Equality Authority, Dublin.

⁹ See for example, Fitzgerald, Rona and Associate (2009) 'Equal opportunities and the Scottish Parliament: a progress review', Equality and Human Rights Commission research report 32. This review of the impact of positive duties in Scotland found a number of positive outcomes in the operation of public authorities including: changes in research, policy design and consultation; greater awareness and understanding of equality issues and capacity building across the public sector; and greater accountability by public authorities for meeting the requirements of equality legislation.

¹⁰ Kathy Monks (2007) op cit; Patrick Flood et al (2008) op cit

Improved organisational performance is particularly important at a time of economic recession. Public services can demonstrate that they are targeting services where they are most needed and are making best use of scarce resources.

Key elements of a positive duty

The key elements to successfully implement a positive duty are:

Impact assessment

Impact assessment is a tool to assist public sector bodies to enhance the potential of their proposed policies and actions to deliver on equality and human rights outcomes. Implementing an impact assessment involves an examination of the proposed policy or action to determine the likely or actual impacts (positive and negative) of the policy or action on people who experience inequality, discrimination or who have human rights concerns. This assessment allows policy makers to adjust the proposed policy or action, where necessary, to remove potentially adverse and/or discriminatory impacts. Impact assessment also maximises opportunities to enhance elements of the policy or programme to improve equality and human rights outcomes for all the target population.

Participation

The participation of people from the target population who experience inequality or who have human rights concerns is an important element in the implementation of a positive duty. This participation informs impact assessments and, at a later stage, informs any reviews of policies and programmes. Effective participation strategies ensure that this participation leads to clearly identifiable equality and human rights outcomes rather than being consultation for consultation sake. Effective participation strategies employ a variety of methods to engage the most isolated, vulnerable and socially excluded groups.

Data Gathering

Reliable data on the situation experience and identity of people within the target populations are important to enhance equality and human rights outcomes from public policies and programmes. Data systems developed by public sector bodies need to be capable of capturing sufficient quantitative and qualitative information to enable evidence-based decision making as part of any impact assessment. Data systems also need to be capable of capturing the situation, identity and experiences of people who are discriminated against on the basis of the multiple identities they hold. For example, data disaggregated by gender

alone will be insufficient to capture the particular experiences and needs of women who, in addition to being discriminated against on the basis of their gender, may also be vulnerable to multiple discrimination on the basis of the other identities they hold.

Reliable quantitative and qualitative data on groups experiencing inequality and with human rights concerns are also valuable for public sector organisations to understand where they need to make changes, where they are performing well and where and how they are having an impact.¹¹

Equality and human rights competence

Equality and human rights competence needs to be established within public sector organisations to ensure that equality and human rights considerations are central to the practice of public sector organisations. Equality and human rights competence involves organisations: developing a policy setting out the equality and human rights standards they wish to achieve; training staff to achieve these standards and; implementing a plan to put these standards into practice. It involves gathering data for evidence-based decision-making, involving organisations representing people experiencing inequality and/or human rights abuses in their decision making and conducting equality and human rights impact assessment of plans, policies, programmes and budgets.

¹¹ For a useful overview of this issue: Barry, U (2002) 'Building the Picture: the role of data in achieving equality', the Equality Authority, Dublin.