

# The Case for a Positive Public Duty on Age Equality

Centre for Public Services

Centre for Public Services  
1 Sidney Street  
Sheffield S1 4RG

☎ 00 44 (0)114 272 6683

📠 00 44 (0)114 272 7066

✉ [mail@centre-public.org.uk](mailto:mail@centre-public.org.uk)

🌐 [www.centre-public.org.uk](http://www.centre-public.org.uk)

---

**CENTRE** *for* **PUBLIC SERVICES**

Research • Strategy • Planning • Evaluation

## Contents

1. Introduction .....	3
1.1 Rationale and Background .....	3
1.2 Methodology .....	3
2. The Context .....	4
2.1 The Social, Economic and Demographic Context .....	4
2.2 Existing Equality Duties .....	6
2.3 The Equalities Environment .....	12
3. The Impact of Existing Public Duties .....	17
3.1 The UK: The Duty on Race Equality .....	17
3.2 Scotland .....	18
3.3 Northern Ireland .....	25
3.4 Wales .....	31
3.5 Greater London Authority .....	36
3.6 Ireland .....	40
3.7 Equalities in commissioning and procurement .....	40
3.8 Summary of Evidence .....	41
4. Evaluating Pathways to Age Equality .....	42
4.1 To legislate or not? .....	42
4.2 The scope of legislation .....	42
4.3 Single Strands or a Single Act .....	44
4.4 Who Should be Covered? .....	46
4.5 Defining the Duties .....	48
4.6 The Importance of Consultation .....	51
4.7 Enforcement and the Role of the CEHR .....	52
5. Conclusion – Securing Age Equality Through a Public Duty Approach .....	56
5.1 The Case for a Positive Public Duty on Age .....	57
5.2 A Single Act and Single Duty or A Duty for Age Equality? .....	65
5.3 Key Principles to Guide the Establishment of Public Duties .....	66
5.4 Key components of equalities duties and legislation .....	66
5.5 Other related measures to be implemented with the legislation .....	69
5.6 Enforcement .....	71
6. Appendix: List of interviewees .....	73
7. References .....	75
Legislation .....	81

## Index of Boxes

Box 1: The Seven Stage Procedure for Equality Impact Assessment .....	8
Box 2: Scottish Parliament Mainstreaming Equality Guidelines .....	21
Box 3: Terms of Reference for WAG Cabinet Sub-Committee on Older People .....	34
Box 4 Inspection versus Regional Scrutiny .....	51
Box 5: Barriers to Consultation: Excerpt from Scottish Executive Guidance .....	52
Box 6: Selected Evidence and Recommendations from the Independent Inquiry into Inequalities in Health (Acheson Report) .....	60

## 1. Introduction

### 1.1 Rationale and Background

The Government has announced its intention to create a new Single Equalities body: the Commission for Equality and Human Rights (CEHR) by 2006 and to introduce two new Public Duties on Disability and Gender Equality. These will be in addition to the existing Duty on Race Equality introduced in the 2000 amendment to the Race Relations Act and the Duties in operation in the Devolved governments as part of the Wales, Scotland and Northern Ireland Acts. By 2006 the Government also has to transpose the EU Equal Treatment Directive which, among other things, obliges the introduction of legislation to prevent age discrimination. The transposition of this Directive, in the context of the expansion of existing public duties and the creation of a Single Equalities Commission marks a major opportunity for the Government to either:

- Harmonise legislative provision for all the equalities strands in a single equalities act.
- Introduce a complementary Public Duty on Age equality to mark its commitment to dealing with the serious issues of intergenerational equality and community cohesion and age discrimination.

In the White Paper on the establishment of a CEHR, the Government noted that there is a continuing debate about the application of Public Duties to equality strands other than Race, Disability and Gender:

“We recognise the continuing debates about public sector duties. We expect the CEHR, through its experience of monitoring and evaluating the race (and, in time, disability and gender) duties, to be able to contribute to the wider discussions about the role of public duties as mechanisms through which more equal outcomes can be secured.” (DTI et al, 2004: 73).

This report examines the operation and impact of existing public duties in Scotland, Wales and Northern Ireland and the UK Duty on Race, specifically in light of the desirability or otherwise of a Public Duty for Age Equality either as part of a Single Equalities Act or a separate piece of legislation. It also seeks to develop an understanding of the lessons for drawing up such a Duty in light of the experience of existing Duties.

### 1.2 Methodology

This report presents the findings from a short piece of research which consisted of:

- A limited review of literature on the implementation, operation and impact of existing public duties.
- A limited review of literature related to age equality.
- Semi-structured interviews with a range of individuals with experience of Public Duties or involved in the academic and policy debate surrounding them and the issue of age equality. A full list of interviewees is contained in Appendix One.

## 2. The Context

### 2.1 The Social, Economic and Demographic Context

#### An ageing population

The population of the UK is ageing. As a result of sustained low fertility and declining mortality, the age structure of the population has become older over recent decades and the trend is set to continue in years to come.

In 1971 25% of the population were under 16. By 2002 this had fallen to 20% and by 2031 is projected to fall further to around 17%. Conversely the proportion of people aged over 65 has risen from 13% in 1971 to 16% in 2002 and is projected to increase to around 23% by 2031. The combined effect of this is that the median age of the population has already risen from 34.1 years in 1971 to 38.2 years in 2002 and will continue to rise to more than 43 years by 2031 (ONS, 2004).

Regional differences are also important, for example, London has a smaller proportion of older people than other regions – 16% are aged 60 and over compared to 23% of the UK population (2001 Census). London has a large annual net outflow of people at and above the retirement age. A greater proportion of pensioners in inner London (36%) live in poverty compared to 21 percent in outer London and 25% in England. Inner London also has a higher proportion of pensioners living alone (43%) compared to 33% in England.

Public policy planning in a wide range of areas, including economic and labour market policies, the planning, financing delivery and governance of public services and policies to promote well being and social justice all need to be altered to accommodate the demands posed by the changing age structure of the population.

#### The economy and labour market

It is widely recognised, both within the UK and across the European Union, that the economy needs to be restructured to cope with the changing population:

- Low employment rates among older employees are a waste of resources and human and economic potential.
- The changing age profile of the population will mean that an ever smaller number of workers will be supporting a larger number of retired people. The result is that drastic action will need to be taken to avoid serious long term consequences for public finances and pensions.

The point was starkly made in the report of the 2003 European Employment Taskforce:

“Europe needs more people in work, working more productively” (European Employment Taskforce, 2003: 6).

While the employment rate among older people has been growing in recent years, the employment rate among those aged between 50 and the ‘normal’ retirement age of 60 for women and 65 for men is significantly lower than for

other age groups (see **Error! Reference source not found.**). The table also reveals implicit age discrimination, or institutionalised less favourable treatment, in how official data is collected and presented. That women and men's retirement ages are assumed to be different and that the presentation of the employment rate by age changes after age 50 are both indicators of institutionalised and gendered perceptions of older people in the economy.

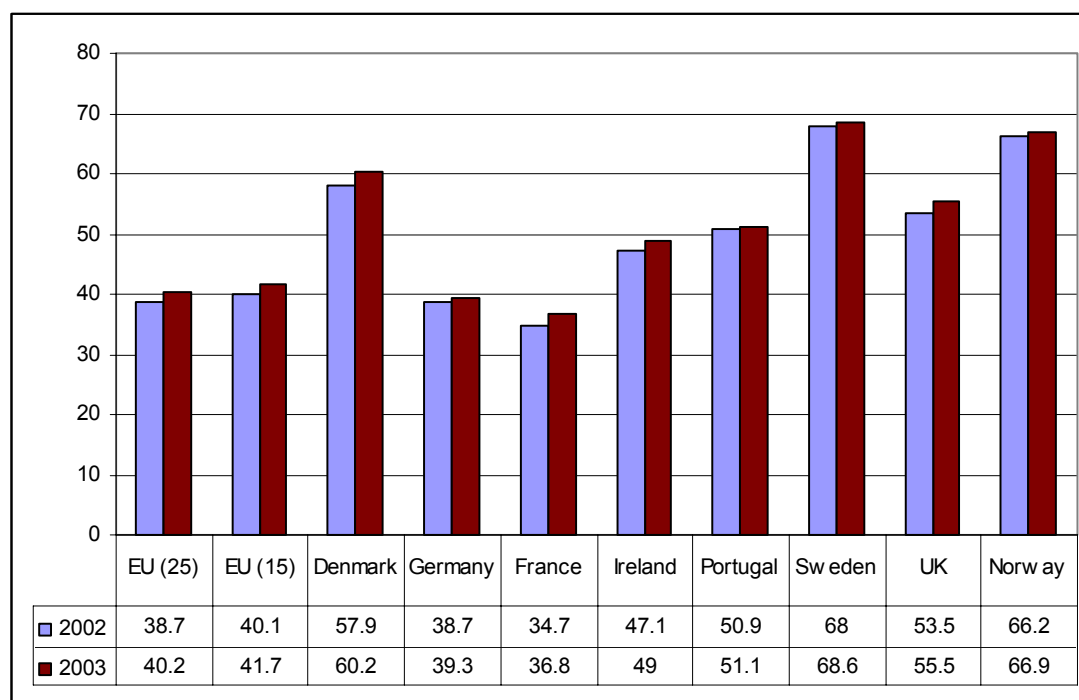
**Table 1: Employment Rate, by Age, Great Britain (2002)**

Age Group	Employment Rate
16+	59.3
16-59/64	74.2
16-19	50.7
20-24	69.7
25-34	79.3
35-49	81.7
50+	35.9
50-59/64	68.4
59/64 +	8.4

NOMIS, *LFS Annual Data 2002*, (2004).

Comparison with the rest of Europe shows that the UK compares well with many other European countries in terms of labour market participation of older people but still significantly lags behind some of the Northern European and Scandinavian states where equality policies are often much more socially entrenched.

**Figure 1: Employment Rate age 55-64, Selected EU Countries (2002-3)**



There are significant economic and financial benefits to be gained by ending discrimination against older people in employment. If the employment rate for those aged between 50 and the current 'normal' retirement age were raised to the average employment rate, there would have been at least an additional

five hundred thousand jobs in 2002, household expenditure would have risen by at least £9bn and GDP would have risen by almost £20bn in 2002.<sup>1</sup>

Of course, for some early retirement is an attractive choice. However, it is a fallacy that such choices account for differential employment rates for older age groups. As Fredman notes, “as many as two thirds of early retirees would have preferred to stay in work, many for financial reasons” (Fredman, 2001: 6).

Such choices are only freely available to a small proportion of highly paid individuals. Where choice does play a part, it is often not freely taken. For instance, the choice to remain unemployed or to claim various sickness or incapacity related welfare benefits is often made because the low paid work on offer to many older people is so unattractive. The much vaunted redistribution of the tax credit system to low paid workers is less beneficial to older people without dependent children than it is for younger families and, as such, the operation of ‘poverty traps’ is still a factor for many older people.

Finally, for the majority, there simply is no choice: non participation in the labour market is the result of deeply embedded discrimination contained in popular notions of older people as unable to cope in the modern work place. Interestingly a number of interviewees commented that the age at which people become the object of this sort of discrimination differs according to industrial sectors. Several interviewees gave the example of the IT industry where instances of age discrimination have been reported against people in their thirties.

## 2.2 Existing Equality Duties

### Scotland

While the Scottish Parliament has no statutory powers to promote equality, Schedule 5 of the Scotland Act (1998) enables the Scottish Parliament to undertake the following matters:

the encouragement (other by prohibition or regulation) of equal opportunities and in particular of the observance of the equal opportunity requirements.

Imposing duties on -

- a) any office holder in the Scottish Administration, or any Scottish public authority, to make arrangements with a view to ensuring that their functions are carried out with due regard to the need to meet the equal opportunities requirements, or
- b) any cross-border public authority to make arrangements with a view to securing that its Scottish functions are carried out with due regard to the need to meet the equal opportunity requirements.

The Act also defines Equality of Opportunity as meaning:

---

<sup>1</sup> These are conservative estimates because they do not fully take into account the effects of the additional demand created by the additional employment. In reality the effect would be much larger still. ONS (2004a): 334-5.

“the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.”

This formulation is interesting because it includes a broad but specified definition of discrimination and includes ‘social origin’ which at least suggests a conception of equality as being more than about identity, encompassing also considerations of socio-economic inequality. Of course socio-economic inequality is often combined with the inequality and discrimination faced by other equalities groups.

### **Northern Ireland**

Section 75 of the Northern Ireland Act (1998) places two Duties upon specified public authorities in Northern Ireland and including Government departments. The first obliges public authorities to “have due regard to the need to promote equality of opportunity” between nine separate equalities groups:

- (1) Persons of different religious belief, (2) political opinion, (3) racial group, (4) age, (5) marital status or (6) sexual orientation.
- (7) Men and women generally.
- (8) Persons with a disability and persons without.
- (9) Persons with dependants and persons without.

The Act also obliges public authorities to

“have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.”

Separate Schedules of the Act impose several specific Duties upon public bodies and government departments. They must first prepare Equality Schemes setting out how they will fulfil their Duties and second undertake Equality Impact Assessments. In this regard, Section 75 builds on the Policy Appraisal and Fair Treatment (PAFT) Guidelines established in 1993 which had limited effect primarily because they were voluntary guidelines and applied only to government departments. Equality Impact Assessments subject new and existing policies to a systematic process of appraisal to establish their likely impact on the nine different equalities groups. Where adverse impact is identified the public bodies and Government departments must also state how they will amend the legislation/policy to ameliorate these effects or introduce other measures to offset them. The Equality Commission for Northern Ireland has established a seven stage procedure for the conduct of assessments (Box 1).

Public authorities must also monitor “any adverse impact of policies adopted by the authority on the promotion of equality of opportunity”. While there is no formal obligation to treat each equality group equally within the process, any differential impact must be taken into account.



**Box 1: The Seven Stage Procedure for Equality Impact Assessment**

- Consideration of available data and research.
- The assessment of impacts.
- Consideration of measures which might mitigate any adverse impact and alternative policies which might better achieve the promotion of equality of opportunity.
- Formal consultation.
- A decision by a public authority.
- The publication of the results of the equality impact assessment.
- The monitoring of adverse impact in the future and publication of the results of such monitoring.

Equality Commission for Northern Ireland (2001), *Practical Guidance on Equality Impact Assessment: Section 75 of the Northern Ireland Act: Annex 1.*

**Wales**

Sub-section 1 of Section 120 of the Wales Act (1998) requires the National Assembly for Wales (NAW) to:

“make appropriate arrangements with a view to securing that its functions are exercised with due regard to the principle that there should be equality of opportunity for all people.”

Further subsections mandate the NAW to prepare an annual report containing

- (a) a statement of the arrangements made in pursuance of subsection (1) which had effect during that financial year, and (b) an assessment of how effective those arrangements were in promoting equality of opportunity.

There are two key limitations on the scope of this Duty. First, it extends only to devolved policy areas such as education, health, economic development and local government. Second, the legal provisions placed by Section 120 on the NAW lack more specific Duties such as Duties to monitor specific methods of implementation and there are few legally sanctioned enforcement mechanisms open to the NAW.

**Greater London**

The Greater London Authority Act 1999 enables the GLA to “do anything which it considers will further any one or more of its principal purposes” which are set as promoting economic development, wealth creation, social development and the improvement of the environment. Though this ‘enabling’ legislation is limited in important ways, Section 33 of the GLA Act says that:

The Authority shall make appropriate arrangements with a view to securing that

- (a) in the exercise of the power conferred on the Authority ...[and] (b) in the formulation of the policies and proposals to be included in any of the strategies mentioned in section 41(1)<sup>2</sup>below, and (c) in the implementation of any of those strategies, there is due regard to the principle that there should be equality of opportunity for all people.

Like the Wales Act, the GLA Act also mandates the GLA to publish an annual report on the arrangements made in pursuit of the Duty and an assessment of the effectiveness of these measures.

<sup>2</sup> These strategies and plans cover transport, economic development, spatial development and planning, Biodiversity, waste management, air quality, ambient noise and culture.



## **UK Legislation**

### ***The Race Duty***

The Race Relations (Amendment) Act (2000) emerged partly as a result of the MacPherson report into police failures in the investigation of the murder of Stephen Lawrence. The Act sets both General and Specific legal obligations on listed public bodies throughout the United Kingdom. The provisions of the Duties extend beyond the employment responsibilities of public bodies to cover their service delivery issues also.

The two general duties under Section 71 of the Act oblige public bodies to

“eliminate unlawful racial discrimination”

and

“promote equality of opportunity and good relations between persons of different racial groups.”

The Duties are intended to mainstream racial equality within public sector decision making, thereby moving the legislative framework beyond a negative prevention of discrimination toward an approach to ensure that decision making and service delivery are aimed at promoting greater equality. It is therefore a positive rather than a negative duty. The General Duty is enforceable via Judicial Review.

The Specific Duties are designed to assist public bodies in achieving their General Duties and in places apply differently to different organisations, as they are listed in the schedule.

First, nearly all authorities are obliged to ensure equal opportunities in their employment practices. This requires them to monitor the composition of their workforces, applicants for jobs, promotion and training by ethnic group. Larger authorities are also obliged to monitor grievances, disciplinary action, performance appraisals, dismissals and training by ethnic group with the results published annually.

Second, certain authorities are required to prepare and publish Race Equality Schemes setting out which of their functions are relevant to the Duty and their plans for assessing and consulting on the impact of any new policies for the promotion of race equality. They must also ensure access to information and services for ethnic minority communities and must train their staff on the implications of the Duties.

Enforcement of these specific Duties is largely undertaken by the Commission for Racial Equality (CRE). These include the power to issue a ‘Notice of Non Compliance’ to bodies which it believes has failed to comply with the obligations under the Duties. Additionally the CRE has issued Statutory Codes of Practice and non-statutory Good Practice Guides to assist public bodies to fulfil the requirements of the Act.

### ***The Draft Disability Duty***

The Draft Disability Discrimination Bill proposes to add a public duty to the existing Disability Discrimination Act (1995) (DDA). This proposed Duty would compel public authorities to “have due regard” to:

“the need to eliminate discrimination...harassment... and ... where opportunities for disabled persons are not as good as those for other persons, to promote equality of opportunity between disabled persons and other persons by improving opportunities for disabled persons.”

The Bill envisages the DRC having the power to draw up supplementary statutory guidance and to issue non-compliance notices and where no satisfactory response is received enforcement would be sought by a County Court (in England and Wales) or Sheriff Court (in Scotland). The Draft Bill also empowers the Secretary of State to draft additional and specific duties.

This formulation is similar to other existing Positive Public Duties, for instance in that public bodies are compelled to “have due regard”. However, it is different in other respects because the public bodies encompassed by the duty are not to be listed and because the situations in which equality of opportunity is to be promoted is crucially limited to only those situations in which existing opportunities are not as favourable to disabled persons as they are to others. This ignores the reality that it is often necessary to address inequality in the whole, rather than in circumscribed situations, as both the Disability Rights Commission (DRC) and the Joint parliamentary Committee established to consider the Bill have noted (Joint Committee on the Draft Disability Discrimination Bill, 2004: Chapter 15).

The Joint Committee also made a number of other relevant recommendations. First, it recommended that the public bodies to be bound by the legislation should be explicitly listed in a schedule, amendable via regulation. Second, it recommended that the provisions of the legislation extend beyond public bodies to those organisations carrying out public functions and specifically to those organisations (statutory, private and voluntary) that deliver services and functions as part of a contract with public bodies. Further, the Committee recommended that the legislation include an additional positive Duty in line with the provisions of the RRAA (2000) to “promote good relations” between disabled persons and other people. Enforcement issues were also tackled and the Committee recommended that the DRC should have the power to issue a compliance notice for failure on the part of relevant public bodies to comply with their obligations under the general duty.

### ***Proposed Gender Duty***

The government has now issued notice that it intends to fulfil its long-term promise to establish a public Duty on Gender equality (DTI et al, 2004). No draft is yet available but various formulations are being considered by interested groups in the light of the experience of the existing Race Duty, the draft Duty on Disability and those in operation in Wales, Scotland and Northern Ireland. Discussions with key stakeholders have informed the analysis in this report.

### ***The EU Equality Directive***

The 2000 European Council Directive *Establishing a general framework for equal treatment in employment and occupation*, obliges member states to extend legal protection from discrimination in the labour market “based on religion or belief, disability, age or sexual orientation” (European Council

Directive 2000/78/EC). The directive establishes the rationale for prohibiting such discrimination as the fulfilment of various aspects of EU strategies such as the European Employment Strategy and the macro-economic strategy. The aim therefore is “the attainment of a high level of employment and social protection raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons”.

However, the Directive also allows some limited exceptions and exemptions from these provisions and while they were to be enforced by 2003, an additional 3 years were allowed for the enforcement of legislation on age and disability.

The UK government has taken full advantage of the exemptions allowed in ‘transposing’ the Directive into UK law, both in terms of the provisions of the intended legislation and the timescale for its implementation, in relation to age. In Age Matters, its consultation on implementing the Directive, the Government set out its proposals on outlawing Age Discrimination. The consultation made proposals for exemptions to the legislation on the following grounds (DTI, 2003):

- **Retirement Age:** the Government proposed a default retirement age of 70 after which employers would be able to require employees to retire. The government also proposed to allow employers to require employees to retire earlier in certain situations.
- **Recruitment and selection:** the Government proposed to allow discrimination on the grounds of age in recruitment where the costs of recruitment and training mean that there is a “need for a reasonable period of employment before retirement”. The Government also proposed to allow discrimination where large numbers of staff were due to retire at a specific time, meaning that employment planning would be hindered by recruiting older staff. Discrimination in recruitment was also to be allowed where it could be justified on the grounds of health and safety.
- **Pay and non-pay benefits:** the Government proposed to allow employers to continue the practices of allowing differential pay based on length of service and experience in conditions where this can be justified.
- **Unfair Dismissal:** Dismissal for reasons of reaching an employer’s retirement age will be allowed, subject to the justification of the retirement age.

Despite these proposals there are currently no proposals to extend the type of Positive Public Duty to age that is currently in place for Race, being drawn up for Disability and promised for Gender. Therefore, protection with respect to age will extend to employment only, and even then with significant exceptions and limitations.

In conclusion, it is clear that the partial and fragmented scope of legislation has several disadvantages in promoting equality of opportunity:

- The lack of a public duty on age means that this equality strand only has limited protection from discrimination in employment which will not come into effect until 2006.

- There is currently no positive public duty, and none is planned, to promote good relations on age and between age and the other equality strands.
- Fragmented equalities legislation both within and between the UK and devolved governments creates, in effect, a hierarchy between equality groups where those with the comprehensive and the strongest enforcement powers have a political priority over the equality groups with less comprehensive duties and enforcement powers.
- There are wide variations in the scope and quality of screening and equality impact assessments and the extent to which there is public consultation and transparency.
- A lack of legislative clarity could also result in public authorities prioritising duties to eliminate discrimination over those to promote good relations when in fact they are inter-linked.

## 2.3 The Equalities Environment

### CEHR

The White Paper envisioned the following functions for the CEHR:

- Encouraging awareness and good practice on equality and diversity.
- Promoting awareness and understanding of human rights.
- Promoting equality of opportunity between people in the different groups protected by discrimination law.
- Working towards the elimination of unlawful discrimination and harassment.
- Promoting good relations among different communities, and between these communities and wider society.
- Keeping relevant legislation under review.
- Acting as a centre of expertise on equality and human rights.

To enable it to work towards these aims, the White Paper envisages the CEHR to have the following powers:

- **General inquiries** – “into issues of public interest relevant to the groups protected by discrimination legislation and to human rights...The CEHR’s power to conduct general inquiries will extend to the discrimination, equal opportunities, good relations and human rights parts of its remit” (38-9).
- **Codes of Practice and Guidance:** the CEHR will have the power to issue its own Codes of Practice and Guidance to update those already issued by the existing Commissions and new ones to complement new legislation and to develop good practice.
- **Third party interventions** – in court cases to provide the courts with expertise and knowledge, though courts will be under no obligation to take this advice into account.

- **Supporting cases** – in support of its work the CEHR will be able to support individuals taking legal action under anti-discrimination legislation through case work support.
- **Conciliation** – “The CEHR will be empowered to arrange for the provision of conciliation services in disputes related to discrimination in the provision of goods, facilities, services and education,<sup>15</sup> and the exercise of public functions” (43).
- **Named Investigations** – in line with the powers of the existing commissions it is proposed that the CEHR will have the power to undertake investigations into named individuals. However, this power can only be used where there is reason to suspect serious cases of discrimination.
- **Non-discrimination notices** – it is envisaged that the CEHR will be able to issue notices to those that it concludes are guilty of acts of discrimination. Those affected may have to draw up action plans to show how they have addressed issues of discrimination and if during a five year period, the CEHR believes that discrimination is continuing, it will have the power to apply to a Court for its notice to be enforced.
- **Enforcing Public Duties** - through the powers to issue notices of non-compliance and the ability to seek Judicial Review.

Importantly however, the Government does not propose to give the CEHR powers to take class actions or test cases.

### **Changes in the structure and function of public authorities**

The government's modernisation policies are increasing the rate at which services and functions are being transferred to the quasi-public/private sector. Understanding these trends and developments should provide an important part of the context in determining the scope of a public duty. The growth rate of new companies, organisations and partnerships has implications for the system of designating public bodies. Statutory duties need to apply to all those companies, organisations delivering key public services. It also provides further justification for a statutory duty to apply to the public, private and voluntary/community sector so as to avoid gaps in applicability, a lack of clarity over the statutory responsibilities of new organisations and the diversion of resources in constantly seeking designation orders.

There has been a considerable growth in the last decade of new quasi-public/private companies and organisations to which services have been transferred or which have been given responsibility and powers for regeneration and growth area development. They include:

- 34 Arms Length Management Organisations to takeover the management of council housing plus a further 16 in progress;
- 180 large scale transfers of council housing stock to housing associations;
- 4 Urban Development Corporations
- 20 Urban Regeneration Companies

- 49 New Deal for Communities
- 15 Strategic Service-Provider Partnerships
- 12 City Academies with 200 expected by 2010
- Foundation Schools planned
- 12 Local Education Partnerships
- 32 Foundation Hospitals
- 45 Leisure Trusts

Some established quasi-public/private organisations are diversifying to takeover more public services and functions traditionally delivered by local government. For example, many large housing associations have developed strategies to take a more significant role in regeneration which will reduce the role of local government.

Local Strategic Partnerships (LSPs) are now established in most towns and cities. The extent to which community organisations, tenants associations and other community-based organisations are involved varies widely. Many LSPs can be described as representing a 'coalition' of business and community interests at the town or city level but it is questionable how many extend to grass roots organisations. The Prime Minister's Strategy Unit is reported to be recommending a stronger role for LSPs where local authorities are "failing in terms of improving conditions in deprived areas" – housing associations or mini Urban Development Corporations (UDCs) are evidently also being considered in such circumstances (Regeneration and Renewal, 2004). A spokesperson for the Urban Forum which monitors LSPs cautiously welcomed the idea of LSPs taking on service delivery – "It's been implied for a long time that LSPs would be the main decision-making vehicles locally in the long term" (ibid).

The government's five year strategy for education is heavily focused on extending 'choice' and includes the creation of Foundation Partnerships which will enable groups of independent specialist schools "to take on wider responsibilities on a competitive basis" with funding devolved from the local authority (DfES, 2004). The 'responsibilities' could include school improvement, management of local strategies such as the 14-19 curriculum and teacher training, provision for excluded pupils and assessment and provision for special educational needs.

The planned expansion of 200 new City Academies combined with Foundation Partnerships of schools and Building Schools for the Future (BSF) will create hundreds of new competing organisations and simultaneously require the restructuring of Local Education Authorities. Earlier this year the government launched Building Schools for the Future to increase investment in secondary schools. Twelve pathfinders will be followed by a roll out to other local authorities. A new national organisation, Partnership for Schools, (a DfES quango) will work with local authorities and the private sector to review, design and implement secondary education provision. A private sector dominated Local Education Partnership (LEP) will be responsible for delivery (a similar model to NHS LIFT) which will be 80% owned by the private sector



with the LEA and PfS each having a 10% stake (DfES, 2004). The LEP will not only deliver facilities management services but may also provide other services such as educational support and school transport. Local authorities have the option of including just the new and refurbished schools in the LEP or all secondary schools and can also include primary schools.

The public services 'choice' agenda will also encourage schools and hospitals to separate themselves from direct public control so that they can change corporate policies, procedures and priorities in order to gain competitive advantage over other schools and hospitals. This is likely to further erode democratic accountability and mean lower priority for the equalities agenda.

The government is also extending marketisation to the prison and probation services with the creation of the National Offender Management System (NOMS). This will inevitably create more quasi-private/public companies and organisations as commissioning and procurement are embedded in these services. It is also likely to have a knock-on impact in the rest of the criminal justice system.

'New localism' is dominating the search for political manifestos for the next general election. Whilst there are different forms of new localism the debate is similarly devoid of any detailed discussion of democratic structures, accountability, transparency, scrutiny and the impact on equalities. The government is committed to increasing diversity of public service provision by encouraging voluntary and community organisations to bid for public service contracts. It has created the Futurebuilders programme to finance capacity building for social enterprises. This could be another means for the creation of more quasi-public/private organisations and companies.

The extent to which quasi-private/public companies and organisations provide access and representation for equalities groups (race, gender, age, disability, sexual orientation etc) is highly questionable. Many companies and organisations will in principle adopt the corporate policies of the host local authority or public body but the extent to which implementation of these policies is fully monitored and assessed is not known.

These developments have three important consequences for a public duty.

Firstly, it leads to the fragmentation and fracturing of public authorities into separate quasi-public/private companies, trusts and other arms length organisations. Each organisation or company must develop Equality Schemes, consultation procedures and management systems for the implementation and monitoring of statutory duties.

Secondly, best practice and innovative initiatives by public authorities such as the NHS and LEAs will be applicable to fewer staff as more services and functions are commissioned and outsourced. Larger public authorities are in effect being deconstructed so that they become merely commissioners of services.

Thirdly, the commissioning and procurement process (covering outsourcing and quasi-public/private organisations and companies providing transferred services) will increasingly dominate the management of public authorities.



This could have profound implications for equalities groups. It also suggests that a public duty on public authorities alone will have limited impact.

### **Rooting out age discrimination in health and social care**

The NHS launched the National Framework (NSF) for Older People in 2001 as a ten-year programme to 'root out' age discrimination and to ensure the provision of person-centred care, integrated and coordinated services, address those conditions which are particularly significant for older people (strokes, falls and mental health), promote health and active living among older people and ensure more effective management of medicines to improve health.

Rooting out age discrimination is one of eight NSF Standards. Two years into the project a progress report stated "It is now accepted that we should not discriminate against any individual simply on the basis of age" (DoH, 2003).

In a cogent analysis of the implications of the ageing process, Evans refers to the poorer quality of health care provided for older people and to 'differently endowed acute general medical and geriatric services to be found in parts of the UK' (Evans, 2003). He also refers to new developments in government policy in the NSF "to limit the access of older people – on the basis of their age – from acute hospitals and sideline them to cheaper 'intermediate care' facilities. There is also irrational practice and policy for admission policies to coronary or intensive care units, and in the deployment of therapeutic preventative interventions. At local levels there are no adequate safeguards in the National Health Service to identify and eradicate ageist practice as distinct from explicit ageist policy" (ibid).

Assessing the NSF in the context of three principles of equity cited by Evans - equity in health care requires equal care for equal need, need is defined in terms of the capacity to benefit and benefit is to be assessed by the recipient rather than the purveyor of health care – implies the NHS has a long way to go in eliminating age discrimination. Significantly, of the eight NSF Standards only age discrimination did not have any examples of best practice (web site accessed 16 July 2004).

Why older people are treated differently has been examined by the Kings Fund which concludes (Robinson, 2003):

- Low value placed on older people's lives.
- Lower social and economic merits of care (the concept of 'fair innings' and being less likely to benefit from particular types of care).
- Social distance (theory that health professionals modify the information, advice and interventions according to social distance between them and patients leading to older people and the poor possibly being treated less favourably).
- Perception of dependence (dominant economic values leading to views of older people being passive, dependent and a 'burden' on society).
- Cultural differences (older people being less demanding than younger people in their relationship with health professionals).

The NSF is a positive and welcome initiative but it is voluntary. There is evidence that the programme has led to changes (DoH, 2002; Levenson, 2003; Roberts et al, 2002). However, monitoring of NSF implementation is weak and there are no enforcement measures. Robinson refers to DoH NSF monitoring mechanisms as being “rather weak and undemanding” with “much reliance is placed on ‘champions’ who have no authority but are nevertheless expected to look after the interests of older people.” The DoH expects audits of age related policies and to prepare action plans with milestones, but it is unclear what happens if authorities fail to achieve their targets.

### **3. The Impact of Existing Public Duties**

#### **3.1 The UK: The Duty on Race Equality**

The literature on the UK-wide equalities framework is largely restricted to Race as the one strand which receives relatively comprehensive legislative protection. Schneider Ross has recently completed an evaluation of the performance of public authorities to the RRAA (2000) public duty. The evaluation is based on a questionnaire-based survey of 3,338 public authorities, including 1,105 schools, and a shorter questionnaire for 102 parish councils. The overall response rate was 47% but this dropped to 20% for schools. A random sample of 143 race equality schemes was assessed using the Code of Practice and CRE guidance. Just over a third of survey respondents were judged to be “responding well to the spirit and letter of the law”. Thirty-nine percent of the sample of race equality schemes was ‘fully’ or ‘mainly’ developed. The evaluation identified two other groups of authorities, those with “good foundations in place, but still have some way to go” and another group where the response was weak and, in some cases, non-compliant (Schneider Ross/CRA, 2003).

These findings have been largely confirmed by a similar recent study into public bodies’ implementation of their duties under the RRAA (2000). The study analysed the Race Equalities Schemes for a selection of 100 public bodies, across ten different sectors. Schemes were assessed and scored against three separate criteria:

- Compliance with the minimum legal requirements (Maximum score 20 points).
- Quality of compliance (Maximum score 60 points).
- Bonus points for clarity, brevity, innovation (Maximum score 20 points).

Alarmingly, the study found that 96% of the RESs analysed failed to comply with the minimum requirements of the legislation, primarily by failing to identify which functions, policies and proposed policies have been assessed by the relevant authority as relevant to the Duty. The study also found that RESs were completely unavailable in 14% of authorities approached and a further 8% were still marked as draft (Kenyon and Hill, 2004).

While this evidence could be interpreted as a failure of the Duty to compel public bodies to action, it needs to be qualified in important ways. First, the Schneider Ross survey relied on self-completion and a number of authorities

that failed to respond may have done so for reasons other than non-compliance, such as bureaucratic overload. Second, the time available to public bodies for completion of the first round of RESs was not generous and the CRE Guidance was only available immediately before the deadline for their submission.

Moreover, identification of some of the technical failings of RESs needs to bear in mind that this is still baseline analysis rather than analysis of progress. The latter would have to concede that the 40,000 plus Race Equality Schemes in place are the result of the Duty. Moreover, as a number of interviewees highlighted, there are identifiable stages in the process of embedding and implementing the obligations of the Duty. The first is one of awareness raising of the new obligations faced by public bodies, followed by a process of capacity building to be able to fulfil those obligations effectively rather than rhetorically. This second phase is probably that in which most public bodies now find themselves. The third phase which will also apply to many public bodies is one of fundamental culture change spreading out from those parts of organisations charged with producing RESs or checking for compliance. The real benefit of a public duty is that it should become part of the working mantra of every employee. Clearly this is a process that will take many years to fully embed. Finally, there is a phase where the results of changed practices in terms of employment, policy making and service delivery will become evident in social outcomes. As one interviewee noted “we may still be ten or twenty years from being able to measure benefits such as health, life expectancy or other social outcomes”.

The general feeling among interviewees therefore was that the Race Duty had been a success in terms of raising awareness of the issues and had acted as a powerful lever within organisations for the focusing of attention on issues of race equality. Moreover, optimism was expressed about the gradual emergence of more sophisticated understandings of discrimination in popular culture.

Interestingly, a key variable in securing progress at an organisational level was identified as commitment at the top of the organisation. Following from this, it was identified by interviewees and in published research as important for the team producing RESs and in charge of other compliance issues to be in senior positions in the organisational hierarchy or have good access to CEO level. The overall framework of political commitment was also identified as advantageous, though interviewees felt that the detailed nature of the specific Duties in the RRAA helped to ensure that progress was not so dependent on political commitment as some of the Duties in the devolved territories.

## 3.2 Scotland

### Mainstreaming

In 1999, upon assuming its full powers, the Scottish Executive made a statement on equalities. The statement announced the intention of the Executive to “ensure that equality of opportunity is at the heart of policy making” through developing greater awareness within the Executive and

Parliament, working with external equality networks, consultation and leading the way as an exemplary employer. A monitoring programme was also promised to maintain momentum and to measure progress. (Scottish Executive, 1999). The result of the consultation announced as part of that statement was the 2000 *Equality Strategy: Working Together for Equality* (Scottish Executive, 2000). The strategy notes the Executive's "strong commitment" to equality in the run up to and establishment of devolution and sets out the Executive's broad approach to promoting equality in the different strands, based on the principles of mainstreaming, consultation and partnership. Mainstreaming is defined as meaning that:

"...equality issues should not be addressed as an afterthought or catered for only by specific programmes or initiatives. It means that equality considerations should be taken into account from the outset in all of the work of the Executive."

and

"Mainstreaming Equality is the systematic integration of an equality perspective into the everyday work of government, involving policy makers across all government departments, as well as equality specialists and external partners" (Scottish Executive, 2000).

The strategy recognises explicitly that the scope of discrimination extends beyond the labour market to encompass the design and implementation of public policy, access to goods and services, inequality in material and other resources, unequal democratic and institutional representation and abuse and violence (Scottish Executive, 2000). The Strategy also notes the patchwork of legal provisions which are unequal spatially between the different parts of the UK and in also in terms of the different strands.

The 2003 Review of the strategy highlights further progress. In addition to a range of measures specifically related to equality strands other than age, the Executive has given the Minister for Social Justice explicit responsibility for promoting Equalities across the work of the Executive, created the Equality Unit to promote mainstreaming, promoted the mainstreaming of equalities in the budgeting process and implementation of structural funds programmes and strengthened the role of the Equal Opportunities and Diversity Unit in regard to the employment responsibilities of the Executive and Parliament. It has also established an Older People's Consultative Forum, made up of stakeholder and Older People's advocate groups, MSPs and officials in the Scottish Executive Secretariat. Finally the executive has also established a dedicated equalities research team to consider equalities issues. Finally, the ability of the Executive and Parliament to place legal obligations (Duties) on public bodies in Scotland has been used to promote equalities generally in a number of ways (Scottish Executive, 2003). The majority of the work cited in the Review is, however, overwhelmingly focused on the three existing institutionalised strands and to a lesser extent on sexual orientation. Age appears to lag in terms of prominence.

Mainstreaming work has also included the establishment of a separate mainstreaming website with information on the different equalities groups and the Minister responsible for equalities reports that "the principle of mainstreaming has been accepted" across the Executive and local

government (Evidence to the Scottish Parliament EO Committee, 2004b). Mainstreaming has become the centre piece of the Scottish Executive and Parliament's approach. For instance, guidelines (see Box 2) and implementation notes (Scottish Parliament EO Committee, 2003) have been developed for the mainstreaming of equalities in the work of Parliamentary Committees, whose aim is to build equalities considerations into the process of legislative scrutiny without necessarily devoting additional time and resources to the process (Bennett et al, 2001) and a great deal of research (Scottish Executive, 2003a) and other documents, including toolkits and sector specific guidance on mainstreaming, equality group issues and consultation is included on the Mainstreaming Equalities Website.

**Box 2: Scottish Parliament Mainstreaming Equality Guidelines****Equality Guideline 1****Primary Legislation – Stage 1***Bill Sponsor*

- has the Bill sponsor assessed the implications of the Bill for all equal opportunities categories as identified in the remit of the Equal Opportunities Committee, including the impact on all key stakeholders;
- have any differential impacts on particular categories been quantified, discussed and justified;
- what consultation has been carried out with the stakeholders;
- how clearly have the intended effects of the Bill been set out in accompanying documentation;
- what additional information on the Bill is made available e.g. previous consultation exercises, draft guidance, equality impact assessments, disaggregated data etc;

*Committee activity*

- to what extent equal opportunities issues have been addressed in selecting witnesses and advisers and analysing evidence;
- have the equal opportunities criteria been adequately considered at all stages of the legislative process.

**Primary Legislation – Stage 2**

At Stage 2 there are no formal requirements. However, equal opportunities implications may arise at this stage. The following recognises that there are amendments which are largely technical in nature, or drafted primarily to stimulate debate. Broadly, in discussion of amendments, committees would be encouraged to address:

- if amendments address concerns raised earlier at Stage 1, and how;
- if amendments introduce new policy issues; and,
- if a new policy issue, has an analysis (similar to Stage 1, i.e. impact analysis) been done.

**Equality Guideline 2 – information base**

Equal opportunities criteria should be considered at all stages of the legislative process. In order to carry out mainstreaming activities effectively and ensure that equal opportunities considerations are included in all of their work, committees need to have access to high quality information including:

- disaggregated statistics and other relevant information on equal opportunities
- categories as identified in the Scotland Act;
- develop EOC database of EO contacts and consultees, accessible to all committees;
- SPICe briefings on Bills should include reference to equal opportunities issues;
- briefing papers on changes to equality legislation;
- briefing notes from relevant external groups;
- legal advice.

**Monitoring** - Ensure that information resources are regularly updated and relevant training is carried out.

**Equality Guideline 3 - Consultation**

Committees regularly consult with a variety of individuals and organisations in the course of their work. Equal Opportunities criteria should underpin the processes and mechanisms which facilitate these consultations/inquiries. Specifically, Committees should aim to include equal opportunities criteria in:

- deciding what to consult upon
- deciding who to consult with
- deciding the format of each consultation/inquiry

Committees should include equal opportunity considerations as part of their overall criteria for choosing an inquiry topic. For example, in deciding topics of consultations and inquiries Committees may wish to identify, by impact analysis, how the proposed topic impacts upon “equal opportunities” as defined in the remit of the Equal Opportunities Committee.

Committees should include equal opportunity considerations as part of their overall criteria for selecting witnesses. For example, Committees should aim to ensure as wide a representation as possible of stakeholders. Committees should include equal opportunity considerations in deciding the format of a consultation/inquiry. For example, equal opportunities criteria should



be adopted in advertising a consultation/inquiry while sufficient time should be allowed for responses in order to allow less well resourced groups to participate. Committees should include equal opportunity considerations in deciding who to appoint as Committee advisers.

#### Monitoring

Monitor and evaluate levels of participation, particularly in order to identify groups who are under-represented. Ensure that witness databases are regularly updated to include widespread representation of minority groups.

Scottish Parliament EO Committee, *Mainstreaming Equality in the Work of Parliamentary Committees*, Annex A, (2003)

The Standing Orders of the Scottish Parliament determine that all legislation proposed by the Executive must be accompanied by a statement of its impact on equal opportunities (Scottish Executive, 2003). The Parliament has also established an Equal Opportunities Committee as one of its mandatory Standing Committees, though that Committee's definition of Equal Opportunities is at odds with that in the Scotland Act, not referring to Age as an identifiable strand in its own right.

As part of its initiatives to mainstream equalities work, the EO Committee has begun discussions around the idea of undertaking an Equality Audit of the budget process (Scottish Executive, 2003; Scottish Parliament EO Committee, 2004).

The Scottish Parliament Corporate Body has carried out an Equalities Audit of its staff and has given consideration to access to the new Holyrood Parliament building. Further work has placed equality obligations on contractors for the provisions of goods and services in the procurement process, though the focus of this work has been on access to the good or service rather than to the conditions of production of that good or service (Scottish Parliament EO Committee, 2004a).

### Using the Duty

Under the terms of the Duty in the Scotland Act, the Scottish Parliament is able to place secondary Duties on public bodies in Scotland to ensure that "their functions are carried out with due regard to the need to meet the equal opportunities requirements". This power has been used on several occasions:

- **Standards in Scotland's Schools Etc Act (2000)** – Section 5 of this Act mandates education authorities to produce an annual improvement plan. Part of this requirement is the inclusion of the "ways in which they will, in providing school education, encourage equal opportunities and in particular the observance of the equal opportunity requirements"<sup>3</sup> (Standards in Scotland's Schools etc Act (2000)).
- **Housing Scotland Act (2001)** – Section 106 of the Act requires that Scottish Ministers and local authorities must exercise their functions under the Act in accordance with the equal opportunities duties contained in the

<sup>3</sup> The phrase "equal opportunity requirements" is used in Scottish legislation to refer to the requirements of UK legislation. Equal opportunities outside of this phrase tends to refer to the Scotland Act definition.



Scotland Act and the 'equal opportunities requirements' of Westminster legislation. These functions cover substantial areas of housing policy including the preparation of Housing Improvement Plans (which extend beyond local authority housing) and homelessness strategies, the details of tenancy agreements, Right to Buy arrangements, tenant participation and the regulation of Registered Social Landlords (RSLs) (Housing (Scotland) Act (2001)).

RSLs are also bound directly by the Act with respect to the Equal Opportunities provisions in Section 106, in a way that extends beyond the provisions of the Act itself. RSLs are mandated by 106 (2) to "act in a manner which encourages equal opportunities". This is innovative in the sense that it applies beyond the public sector to what are quasi-public/private organisations, setting a valuable precedent for the operation of the Scotland Act Duty.

Interviewees thought that progress under this Act had been positive with broad equalities considerations written in to tenancy agreements and forming a part of homelessness strategies and housing management.

- **The Local Government Act (2003)** – There are several parts of this Act that relate to equal opportunities. Section 1 of the Act requires local authorities to have a duty of Best Value. In this section, Best Value is defined in terms of efficiency, effectiveness, economy and equal opportunity requirements. While in this section of the Act it is clear that the regulatory nature of the Best Value regime means that the definition here related to Westminster legislation, Section 59 of the Act broadens this to include the Scotland Act definition and states that these requirements extend to all the functions contained in the Act, including the operation of Best Value<sup>4</sup>, the drawing up of community strategies and the exercise of the power of community well being (Local Government in Scotland Act (2003)).

In addition to the Act itself, the Scottish Executive has issued Statutory Best Value Guidance. This Guidance, includes Equal Opportunities (again including both explicit reference to existing Westminster legislation and the broader Scotland Act definition) and places specific obligations on authorities to ensure that the encouragement of equal opportunities is reflected in the authorities' overall objectives and highlighted in plans "at corporate and service level". Further, authorities are directed to note that there are inequalities of resources in society and that these should be reflected in planning, designing and improving services. Officers and elected members are to be committed to mainstreaming 'equalities' in the Best Value process when undertaking reviews (and assessing the impact of policies on equality of opportunity), equalities requirements are taken

---

<sup>4</sup> This is a grey area because the Scotland Act clearly limits the capacity of the Scottish Parliament in using its powers to place equal opportunities requirements on public bodies by ruling out prohibition and regulation. Since the Best Value regime is in part regulatory Section 59 would appear to be in contravention of these limitations. However, Section 59 is clear that the broader (Scotland Act) definition of equal opportunities is an additional requirement to those placed in Section 1 of the Act which is confined to Westminster legislation.

into account in the procurement strategy. Equalities performance measures are to be identified and reported to the public. Additionally, equal pay audits and measures to address discriminatory practises are to be undertaken. Finally, an enabling clause is added to ensure that “authorities take such other action that is necessary to meet their obligations under existing equal opportunities legislation” (Scottish Executive, 2004: 22-3).

- **Antisocial Behaviour etc (Scotland) Bill (2004)** – Section 107 of this Bill (which is awaiting Royal Assent) places “Any person discharging a function by virtue of this Act” to do so in a manner “that encourages equal opportunities and in particular the observance of the equal opportunity requirements” (Antisocial Behaviour Scotland Bill (2004)).
- **National Health Service Reform (Scotland) Act 2004** – This Act amends the 1978 Act and obliges “Health Boards, Special Health Boards and the Agency” to “discharge their functions in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements”.

Other legislative developments have extended rights to same sex couples, repealed legislation preventing the discussion of sexual orientation in schools, placed duties on local authorities in relation to Direct payments to eligible disabled people, increased the rights of victims of domestic abuse and rape. Additionally, a statutory committee has been established to advise on the transport needs of disabled people (Scottish Executive, 2003: 8).

Given the extent of the usage of the power to place Duties on other public bodies and the lack of time elapsed for these Duties to have had demonstrable social effect, it is perhaps surprising that as part of evidence gathering for the report of the Strategic Group on Women in Scotland, Esther Breitenbach (2003) produced a critical briefing note on Statutory Duties to Promote Equal Opportunities and Evidence of their Impact. This briefing note contained no primary evidence or analysis and consisted largely of a secondary review of some of the literature on statutory duties including work reviewed separately here by the Audit Commission, O’Cinneide, Escott and Whitfield and Chaney and Fevre. Despite the conclusions of many of these that statutory Duties are an effective method of overcoming institutional inertia Breitenbach dismisses these as:

“not backed up with any detailed evidence, and it is acknowledged that statutory duties are not the only factor producing change, and may be insufficient in themselves.”

Breitenbach then goes on to acknowledge that given the newness of the legislation in question “it is too soon yet for there to be any evidence that policies resulting from the imposition of a statutory duty have had any impact in reducing inequalities”. The paper further notes the bureaucratic nature of monitoring and impact assessment and tends toward a negative assessment of statutory duties, claiming that many initiatives would be underway regardless of the existence of such legislation. However, this flies in the face of the evidence that the report cites in relation to the Race Relations Amendment Act for it is optimistic indeed to suppose that without the RRAA

there would be over 40,000 institutions in the UK with a formal and written Race Equality Strategy and that even if this were to be the case they would be very much more patchy and incoherent than they are as a result of guidance and even limited inspection by the CRE.

Where it was felt by interviewees that progress has been made on equalities issues generally in Scotland since devolution, the Duty itself was just one of the explanatory variables identified. The others were remarkably similar to those identified in Wales, including the small size of the country, a relatively (to Westminster) tightly knit policy community where advocacy groups and stakeholders have readier access to senior politicians and civil servants. The devolution context and the particular political culture in Scotland were also mentioned. However, it is important to note that many interviewees highlighted that the inclusion of the Duty in the Scotland Act was the result of pressure within the Scottish Constitutional Convention and lobbying pressure from Scottish groups as the Bill progressed at Westminster. As such it is impossible to effectively divorce the Duty from the context of devolution or the political commitment to equalities in Scotland (see for instance, Scottish Office, 1998: Annex H).

### 3.3 Northern Ireland

The Public Sector Statutory Duty came into effect on 1 January 2000 and requires public bodies to have an Equality Scheme, approved by the Equality Commission. The Commission was formed by the merger of the Fair Employment Commission, the Equal Opportunities Commission for Northern Ireland, the Commission for Racial Equality for Northern Ireland and the Northern Ireland Disability Council. An Equality Scheme must cover all nine equality strands and must include, as a minimum (Collins, 2003; Equality Commission, 2002):

- A general introductory statement specifying the purpose of the Scheme and the public authority's commitment to the statutory duties. It should include a commitment to conducting an annual review of progress in implementing the Equality Scheme, complying with the statutory duties and liaising with the Equality Commission to ensure progress is maintained.
- Arrangements for assessing its compliance with the Section 75 duties and for consulting in a timely, open and inclusive manner on matters to which a duty under that Section is likely to be relevant.
- Arrangements for assessing and consulting on the impact of policies adopted or proposed to be adopted on the promotion of equality of opportunity. All existing and proposed policies must be reviewed and screened to determine if there is any evidence of higher or lower participation or uptake by different groups, assess if there is evidence that different groups have different needs, experiences, issues and priorities in relation to the particular policy, identify if there is an opportunity to better promote equality of opportunity or better community relations by altering the policy or working with others, and assess whether consultations with relevant groups, organisations or individuals have indicated that particular

policies create problems which are specific to them. It must specify the authority's procedure for identifying those of its policies which will be subject to a full equality impact assessment and how these will be prioritised;

- Arrangements for monitoring any adverse impact of policies adopted by the authority on the promotion of equality of opportunity;
- Arrangements for publishing the results of equality impact assessments and of monitoring of any adverse impact of policies adopted by the authority on the promotion of equality of opportunity. This must include a commitment to including in the published results of an equality impact assessment:
  - a statement of the aims of the policy to which the assessment relates;
  - details of any consideration given by the authority to measures which might mitigate any adverse impact of that policy on the promotion of equality of opportunity;
  - details of any consideration given by the authority to alternative policies which might better achieve the promotion of equality of opportunity.
- A commitment that in making any decision with respect to a policy adopted or proposed to be adopted by it, that the public authority shall take into account any equality impact assessment and consultation carried out in relation to the policy;
- The provision of an effective communication and training programme on the content of the Equality Scheme for staff and a detailed planned programme for the delivery of training;
- Arrangements for ensuring, and assessing, public access to information and to services provided by the authority;
- The timetable for measures proposed in the Scheme;
- Details of how the Scheme will be published;
- Arrangements for dealing with complaints arising from a failure to comply with the Scheme;
- A commitment to conducting a review of the Scheme within five years of its submission to the Equality Commission and to forwarding a report of this review to the Equality Commission (Schedule 9).

Performance is assessed on the information contained in individual annual progress reports submitted by public authorities, in other words self-assessment. An independent review of the impact of Section 75 public duty is currently being carried out although there appears to be some disagreement between the researcher, voluntary and community organisations and the Equality Commission over the study's methodology.

The Equality Commission divides its performance assessment into different categories of public authority - government departments, education, further and higher education, health, local government, other Northern Ireland and Cross Border Public Authorities, and UK wide public authorities. It provides authorities with a progress reporting template which includes strategic

implementation of the Section 75 equality duties, screening and Equality Impact Assessment, training and communication, data collection and analysis, information provision and access to services, complaints, consultation and impacts and outcomes.

The Equality Commission's first assessment of the implementation of statutory duties - 1 January 2000 to 31 March 2002 – reported that “many of the early draft equality schemes were deficient, to varying degrees, in screening methodology, consultation and monitoring arrangements, and provided only limited evidence of top level commitment” (ECNI, 2003).

In addition, the government was slow to widen the list of designated public bodies to be subjected to the Public Sector Equality Duty, for example UK government departments and Northern Ireland's Universities and Colleges of Further Education were omitted from the draft order in June 2000 (ECNI, 2000). However, 177 public authorities had been designated by March 2003 (including those initially omitted) and 154 equality schemes approved (ECNI, 2004). The Equality Commission has plans for a further 80 public bodies to be designated in a process which requires the Northern Ireland Office to lay a designation order before Parliament.

The quality of screening and Equality Impact Assessments varies widely - they were described as “very disappointing” in Northern Ireland government departments in 2002-03 (ECNI, 2004). The Commission was “extremely disappointed at the screening out of policies by departments without consultation” (ECNI, 2004). The education sector had not completed an equality impact assessment although the further education colleges and universities had established consortia to jointly develop their equality schemes. By contrast, the Department of Health Social Services and Public Safety, the four Health and Social Service Boards, HSS Trusts and agencies have developed a Regional Equality Impact Assessment Programme which completed eight EQIAs with another 13 in progress during 2002-03. A collaborative approach had also been developed by some of the 45 authorities in the other Northern Ireland and Cross Border Public Authorities sector, an approach endorsed by the Commission which noted good progress by the authorities involved. It also enabled smaller authorities to draw on the resources of Departmental authorities and eased the burden on the voluntary and community sector. However, the promotion of good relations was a weak area for this group of authorities.

The Commission reported “significant progress” in local government with 93 EQIAs planned in 2003-04, an average of nearly four each in the 26 councils. In the 2000-2002 period only 14 local authorities had submitted screening reports to the Commission.

Currently twenty five UK public authorities are designated for the purposes of Section 75. They include some of the main departments plus various Boards and Authorities. Progress towards screening and EQIAs was slow in the first reporting period but by March two authorities had undertaken four EQIAs with a further 24 planned nine authorities in 2003-04.

Extensive training and awareness on the Section 75 duties was reported by all public authorities. There also examples of joint provision of training such as



the comprehensive programme provided by the Association of Northern Ireland Colleges (ANIC) for the college-based Equality Working Groups. The five universities also had a equality training programme although the Commission noted that little Section 75 training had actually been carried out by March 2003.

### **Promoting good relations**

Progress in promoting good relations was extremely mixed. The Commission reported that education authorities appeared not to have developed a strategic framework for promoting good relations although they had developed a number of initiatives. Further education colleges, via ANIC, had developed a three-year programme, AGREE (Actioning Good Relations, Equity and Equality), to mainstream the principles of equity, diversity and interdependence within the colleges (Equality Commission, 2004). The course was accredited by the NI Open College Network and started in May 2003 and will train staff to become trainers in areas of race, religion and political opinion. In contrast the universities had “done little to progress the good relations duty” (ibid). About two thirds local authorities were implementing the good relations duty. The good relations duty covers only three equality strands in Northern Ireland – race, religion and political belief – and there is evidence that this is frequently considered to be secondary to the 9 strand-Duty to promote equality.

### **Impacts and outcomes**

All government departments reported positive impacts in policy planning, implementation and assessment and in service delivery. This included increased awareness of equality considerations in the design, delivery and monitoring of policies and services, increased engagement of equalities groups and changes and adjustments to policies and services.

There have also been many changes to recruitment, selection and promotion procedures, grant and licence conditions and funding policies. In addition there have been more substantial policy changes including:

- An additional £1.6m allocated to Sure Start to increase access for Travellers and other excluded groups and address other the findings of an EQIA.
- A series of pilot projects to improve access for equality groups launched by education authorities.
- An EQIA led to Craigavon and Banbridge HHS Trust to return the previously outsourced catering and domestic services to in-house provision.

### **Data collection and analysis**

The availability of data and information on the nine equality groups varies widely and this has been a major factor in the ability of authorities to prepare comprehensive EQIA. A cross departmental equality and social need research and information strategy has been developed (OFMDFM, 2003) and an Equality and Social Need Steering Group (ESNSG) has been formed together

with a Equality and Social Need Research and Information Group (ESNRIG) to provide research and statistical support. The Department of Health Social Services and Public Safety has produced data and information guides for each of the nine strands. The Northern Ireland Statistical and Research Agency has set up an equalities section on its web site. The provision of Section 75 information management and monitoring guidance in conjunction with NISRA and ESNRIG is one of the Commission's key projects.

### **Consultation overload**

The Equality Commission, public authorities and the voluntary and community sector in Northern Ireland frequently refer to 'consultation overload'. No additional resources have been made available to public authorities or to voluntary and community organisations to be involved in the various consultation requirements of Section 75 duties. Age Concern Northern Ireland acknowledged that the numerous consultations on draft and final Equality Schemes, Screening and EQIA produced by an ever increasing number of designated public authorities meant that they found it increasingly difficult to get an overall picture of the effect of the legislation. They also acknowledged that in the absence of additional resources, Age Concern had not set up an administrative system to record in detail the requests and responses made in Section 75 consultations. In spring 2003 Age Concern Northern Ireland carried out a survey of public authorities to improve their analysis of the effects of the legislation. A questionnaire was sent to 187 public authorities with 86 (46%) responding.

The main findings were:

- 21 authorities stated that the Age Sector had not or infrequently responded to requests for consultation.
- The main forms of consultation with the older community were asking for written responses (76 authorities), face to face meetings (45) and meetings with larger groups of older people (17). Public meetings in Section 75 consultations have generally been poorly attended but the more in-depth forms of consultation require greater resource commitment from community organisations.
- 34 public authorities stated that Section 75 duties had had a 'significant' impact on the culture of the organisation and the way it interacts with the older community. Twenty authorities reported a moderate change and 17 'only a little'. Age Concern was surprised to find the latter group included eight public authorities from local government, health and further education with direct services/responsibilities that include older people.
- Impacts of the legislation included a wide range of changes to entitlements, grant criteria and the needs of the elderly being more fully addressed in health and social care.

The views of the voluntary and community sector were also reported from an Equality Commission roundtable event in November 2003 to consider progress on the implementation of the statutory duties (ECNI, 2004). The meeting expressed the view that Section 75 had to be promoted more widely to the public because knowledge of the duties was confined to public



authorities and the voluntary and community sector. There was also concern that some politicians had a narrow (flags and marches) conception of the legislation. The involvement of consultants in EQIA and consultation was heavily criticised. An over-reliance on paper consultation documents and limiting communications to umbrella groups were also identified as problems. A review of the legislation to increase the Commission's powers to enforce compliance were also recommended.

### **Monitoring systems**

Evidence from progress reports in 2002-03 indicated that there was limited evidence that government departments were monitoring the impact of policies that had been equality impact assessed. The Commission had produced draft guidance on monitoring for consultation in 2002 which explained why monitoring is important, how to monitor, setting targets and so on (Equality Commission, 2002). The 2002-03 progress reports had indicated that public authorities needed additional guidance on how to meet the monitoring requirements of Section 75.

### **Guidance and implementation support from the Equality Commission**

The Commission has produced a number of templates and guidance for public authorities including producing equality schemes, screening, good relations, monitoring, consultation, progress reports and issued revised EQIA guidance last year. This has established better clarity, ensures public authorities produce comparable information and reporting, prevents each authority using resources to 'reinvent the wheel' and prevents an authority using uncertainty or lack of clarity about requirements as a delaying tactic.

There is clear evidence that Section 75 is achieving cultural change in public authorities in Northern Ireland although the degree of change varies widely both between sectors and types of authorities. The screening process has required authorities to assess and write up policies and has improved the policy development process although there was evidence of authorities screening out policies without consultation. The quality of EQIA remain variable. The Commission questioning why many health EQIA had not identified any adverse impact, in other words they had not screened policies adequately in terms of identifying policies with an equality impact. The provision of adequate and up to date data and information remains a major issue. The comprehensive scope of the duty identifying the 9 strands has the advantage of legally identifying all nine equalities groups and providing a framework to examine multiple identity impacts since a majority of people are in two or more strands rather than a single one.

A holistic approach is strongly advocated by the Promoting Social Inclusion Working Group on Older People, part of the New Targeting Social Need policy (OFMDFM, 2004). It is concerned about the multiple exclusions experienced by many older people and structures a series of proposals under five strategic objectives which include addressing economic and financial inclusion, health and social services, increased safety and better coordinated services and to promote equality of opportunity and full participation of older people in civic life. The equality proposals include:

- ensuring that the proposed Single Equality Bill protects older people in the provision of goods, facilities and services;
- make greater effort to understand the problems of older people facing multiple forms of exclusion (as the population gets older in Northern Ireland there is a higher proportion of women, Protestants, single persons, persons without a dependent and persons with disabilities);
- implementation of Section 75 duties, in particular Equality Impact Assessments which they consider to be vital instruments for taking account of the needs of older people;
- supporting community relations among older people;
- promote volunteering and community participation among older people;
- develop the capacity of older people in the delivery of locally based regeneration programmes;
- challenge stereotypes and develop positive images of older people.

### 3.4 Wales

#### Mainstreaming and General Impact

Better Wales, the first Strategic Plan of the new devolved Assembly included Equal Opportunities as one of its “three major themes”, alongside ‘tackling social disadvantage’ and ‘sustainable development’ marking an immediate commitment to mainstreaming equalities.

Chaney and Fevre’s 2002 report for the Institute of Welsh Affairs (Chaney and Fevre, 2002) assessed progress to date in implementing the legal duty placed upon the National Assembly for Wales by Section 120 of the Wales Act (1998). The report described glowing progress by the Welsh Assembly government in promoting an Equalities culture and in mainstreaming equalities concerns throughout executive and Assembly business. In particular it highlighted progress:

- In equal pay within the Assembly Civil Service
- In recruitment to the Civil Service
- In training programmes to the Civil Service.
- Public Appointments.
- By promoting the use of impact assessments in policy development.
- Financial support to other public sector bodies to be dependant on the adoption of EO policies.
- EO policy requirements for relationships with the voluntary sector.
- Measures to include EO in BVPIs so that Local government contracts with the private sector can reflect EO concerns.
- Measures to drive the inclusion and greater focus on EO in local government performance plans and service reviews.

- Embedding EO issues in the National Curriculum for Wales.
- Measures to promote EO in Assembly and ASPBs procurement.

Despite these wide ranging developments however, the short time elapsed since the implementation of the Wales Act meant that it was impossible to produce outcome based evidence of progress. Moreover, while attributing these initiatives to the Statutory Duty in Wales they also cite the commitment of Assembly members, particularly Cabinet members, as a further reason for success. Chaney and Fevre also noted several limitations in progress such as the general lack of awareness of the provisions of the Wales Act, outside the professionals and equality group stakeholders at the Assembly. Others have noted additional weaknesses in the Welsh Duty, specifically its lack of clear additional requirements and processes for handling complaints. Taken together these elements have been criticised as making it difficult to know whether the Duty has been breached in any specific instance.

Notwithstanding these limitations, the Welsh Assembly Equal Opportunities Committee endorsed the Chaney and Fevre report and has itself produced a range of documents which are relevant for a discussion on the impact of the Welsh Duty.

Each year the Committee produces an Annual report which includes an audit of all equalities work undertaken within the Assembly and WAG departments. The most recent Annual report describes a great many initiatives to mainstream equalities within the operation of the WAG and NAW themselves but the main focus of this discussion is on the gender and disability strands. Little specific consideration is given to Age equality. There are though several initiatives linked to age equality mentioned in the reviews of work undertaken by WAG departments. First, the Training Skills and Careers Policy Division of the Department for Training and Education has removed age barriers to its youth programmes (National Assembly for Wales EO Committee, 2004b: 50). Second, the Transport Directorate of the Environment and Planning Group have equalised the age at which men and women gain access to concessionary fares on public transport. Further, consideration has been given to elderly and mobility impaired pedestrians in drawing up future actions in the Road Safety Strategy (National Assembly for Wales EO Committee, 2004b: 51).

### **The Political Commitment to and Progress on Policies for Older People**

The Welsh Assembly Government has produced a number of reports and adopted a number of policies and innovations which demonstrate a political commitment to promoting Older People's interests, and which might be defined as promoting Age Equality. In Spring 2001 the WAG established an Advisory Group to report on the options open to the WAG to develop an Older People's Strategy. The terms of reference for the group were wide and extended far beyond the narrow labour market concerns of EU Directives and implementation proposals. The Group published its report in May 2002 which highlighted a wide range of recommendations which focused on mainstreaming the older people's interests throughout the policy making process at national and local level, increasing older people's participation in all aspects of society (particularly in volunteering and education, ie broader than

just the labour market), ensure consultation with and engagement of older people at all stages of the policy making process, to challenge ageism and discrimination, improving service provision to older people, to combat poverty and poor housing for older people and collectively to reduce dependency and extend enjoyable life span. The report also included a recommendation to “promote the development and improved awareness of the benefits of links across all generations” (Advisory Group on a Strategy for Older People in Wales, 2002: 8-9).

The recommendations of the Advisory Group were broadly accepted by the WAG. While there were differences over some of the more detailed recommendations, the principle of developing a Strategy for Older People based upon mainstreaming, older people’s interests beyond the labour market and including tackling ageism, access to goods and services and tackling socio-economic inequality was accepted (WAG, 2002). The WAG has subsequently published its Strategy for Older People in Wales which accepts these principles and sets out a ten year action plan (WAG, 2003). However, it is unclear to what extent the development of this strategy was influenced by the formal legal provisions of the Wales Act and to what extent it was promoted instead by a broad political commitment. Certainly, there is no mention in the Strategy of the provisions of the Wales Act. Though some mechanisms for ensuring compliance are included in the strategy, such as the requirement that local Health, Social Care and Well Being Strategies encompass and implement the national Older People’s Strategy and the development of a performance management framework, the Action plan falls short of advocating a legal mechanism or implementing policy tools which might form specific duties in a legal framework. For instance, there is no indication of exactly how older people’s interests are to be mainstreamed or mention of policy tools such as impact assessment.

On the other hand, several concrete initiatives have emerged from the strategy which may promote the adoption of more formal and institutionalised mechanisms for the advancement of age equality in the future. The WAG has appointed a Deputy Minister with responsibility for Older People (John Griffiths AM), a Cabinet Sub-Committee on the needs of older people has been established, a National Partnership Forum for Older People has been announced and is due to meet for the first time in the summer of 2004 (WAG, 2003a) and a consultation paper has been published announcing the intention of the WAG to create a Commissioner for Older People in Wales (WAG, 2004). The terms of reference for the Cabinet Sub-committee are set out in Box 1.

**Box 3: Terms of Reference for WAG Cabinet Sub-Committee on Older People**

- To tackle discrimination against older people wherever it occurs, promote positive images of ageing and give older people a stronger voice in society
- To promote and develop older peoples' capacity to continue to work and learn for as long as they want, and to make an active contribution once they retire
- To promote and improve the health and well-being of older people through integrated planning and service delivery frameworks and more responsive diagnostic and support services
- To promote the provision of high quality services and support which enable older people to live as independently as possible in a suitable and safe environment and ensure services are organised around and responsive to their needs
- To oversee the implementation of the Strategy for Older People in Wales and ensure a co-ordinated and holistic approach is taken to the implications of an ageing population and the needs of older people

<http://www.wales.gov.uk/organiccabinet/SubCmteeMeetings/op/tor.htm>

The Consultation paper on a Commissioner for Older People sets out wide ranging potential powers which broadly reflect the powers of the Children's Commissioners for Wales and Northern Ireland and fall under five categories: Influencing policy and service delivery, Championing and empowerment, Being a source of information, advocacy and support, Safeguarding, enforcing and enhancing rights, Investigating complaints (WAG, 2004: 12-14). Many of these powers mirror some of those available to the established UK equalities commissions such as powers to investigate, assist in legal proceedings (including the provision of financial support) and to bring legal proceedings in its own right. The Commissioner will also have a remit to campaign to strengthen the law so that it works better to protect older people and it is envisaged that this will include non devolved areas and direct campaigning with the UK government. The rationale provided for establishing the Commissioner offers some insight into the WAG's collective view of the legal framework for equalities at a UK level. In assessing the need for a Commissioner in the light of proposals to establish a CEHR the consultation paper argues that the powers of the CEHR in relation to the 'new' equalities strands (including age) will be too limited in scope, concerned solely with discrimination in employment as opposed to the full remit of older people's lives including access to goods and services.

**Identifying the Strengths and Weaknesses of the Welsh Duty**

During 2003 the Committee launched a consultation on "Mainstreaming Equality". The consultation set out a definition of equality and asked for comments. The definition was:

"'Mainstreaming' equality is about the integration of equality of opportunity principles, strategies and practices into the every day work of the Assembly and other public bodies. It means that equality issues should be considered from the outset as an integral part of the policymaking and service delivery process and the achievement of equality should inform all aspects of the work of all the individuals within an organisation as they go about their business."  
(National Assembly for Wales EO Committee, 2003).

The Committee received 24 responses to the consultation (see National Assembly for Wales EO Committee, 2003a). In the main these supported the definition, though several asked for further clarification or for more specificity regarding its application in a sectoral context. There appeared to be little



appetite for moving away from the broad focus of Section 120 to identify specific equality strands. Only one response did do this, suggesting an alternative definition based on nine equality strands, including Age.<sup>5</sup> Age Concern also made direct reference to Age but not in relation to adding it to the definition.

In response to a question on how effectively the Welsh Assembly Government and the National Assembly for Wales are presently taking equality issues into account, many responses drew a distinction between the impact of the Statutory Duty and the adoption of Equality as a cross-cutting theme in terms of the inclusion of Equality in the development of strategies and their impact. Many comments were very positive about the Statutory Duty citing it as an example of European best practice. However, many also mentioned the lack of outcome based data for impact assessment. One comment noted the importance of progress in strands where there is no specific UK legislation such as Age and Sexual orientation.

Highlighting weaknesses in the existing Duty, responses to how the NAW and WAG could be more effective, respondents noted the importance of the use of tools which might form underlying Specific Duties such as policy appraisal or impact assessment. Other comments referred to the importance of designated individuals within organisations with responsibility for ensuring that mainstreaming takes place, greater clarity of organisational roles, more use of Audits, analysis and consultation. More specifically, reference was made to the importance of baseline research, production of quantitative data and linking strategy to performance management.

In its draft Report on Mainstreaming Equality in the Work of the Assembly, the Committee has reflected these themes, amending the definition of equality to add a reference to “evaluation”. Interestingly though, the Report notes a difficulty in the discussions because of differing notions and conceptions of what equality means. In response, the Report suggests the following radical definition which moves away from equality of opportunity to equality of outcome:

“Equality in the context of this report, is about treating people equally in status, rights and opportunities through a set of policies and actions with the aim of securing equality of outcome for all” (National Assembly for Wales EO Committee, 2004a: 5).

This focus on equality of outcome also mirrored many of the issues raised in interviews. The Report also endorsed the view, widely expressed in the interviews, that while the Statutory Duty has been a success in promoting equalities up the political agenda, there have also been some weakness in implementation. The Report cites the failure to sign-off the Race Equality Scheme in sufficient time (14) and also concludes that the equality work of the Assembly is lacking strategic direction, particularly in the form of a formal Equality Strategy and it therefore recommends that the Assembly Government draw up such a strategy. The report also takes up the issue of policy tools,

---

<sup>5</sup> These were: Age, disability, ethnic origin, nationality, gender, marital status, sexuality, culture and religion.



making recommendations on issues such as the production of equalities data regarding staff, training, the role of central equality units, designated officers with responsibility for equalities, consultation, equality needs assessment, equality(gender)-budgeting, quantitative performance measurement, use of appraisal/impact assessment tools and monitoring and external auditing. While it is not suggested that these are incorporated in legislation, their recommendation begs this further question. No mention is made of specific equality strands or Age in particular.

The results of the interviews indicated a difference of opinion over the success of the specific way in which the Welsh Duty is drawn up. Some interviewees commented that the broad nature of the Duty had proved to be 'enabling'. For instance, it was suggested that the lack of specific named strands in the legislation had enabled the Assembly and its Committees to focus on important equality groups outside of the usual strands such as Gypsy Travellers, asylum seekers and ex-offenders. For instance the Equal Opportunities Committee has recently undertaken a review of services to Gypsy Traveller people (National Assembly for Wales EO Committee, 2003b). While the Duty was praised as having been partly responsible for mainstreaming equalities concerns within the WAG and Assembly, most people thought that the combination of pre-existing political commitments alongside the Duty itself was important. However, this was also the cause of some concerns about the success of the Duty, as some interviewees felt that the reliance on political commitment made the Duty vulnerable to shifts in political focus and had led to a slowing of progress during the second term of the WAG and NAW. This notion has been somewhat underlined by the outcomes of a joint seminar held to assess the progress of the Duties in Wales and Northern Ireland (EOC, 2004: 7).

This position was somewhat further reinforced by the identification of other variables for explaining why equalities had been near the top of the political agenda. These were identified as the level of equalities awareness and expertise among Assembly members, a vibrant equalities community within Welsh Civil Society and the small size of Wales and the fresh approach brought by the initial devolution.

### **3.5 Greater London Authority**

The Mayor of London is concerned about the government's approach to equalities which he believes could lead to a hierarchy of priorities between equalities groups. He is also concerned that there has been a lack of analysis of the existing arrangements. He believes a Single Equalities Act is essential to minimise competitiveness between equality groups (source).

The GLA is distinct in that it provides few public services but the GLA Group, which is made up of the GLA, the Metropolitan Police Authority/Metropolitan Police Service, London Development Agency, Transport for London and the London Fire and Emergency Planning Authority, employs over 50,000 full time equivalent staff and has an annual budget of nearly £7.5bn (2003/04).

The GLA has a number of key documents which provide a framework for the promotion of equal opportunities, challenging discrimination and celebrating diversity in London. They include:

- The Mayor's vision and objectives
- The GLA Equal Opportunities and Diversity Policy Statement
- The GLA Equality Strategy 2002-04
- Directorate Key Equality Actions for 2003-04
- Methods for monitoring and measuring performance (The GLA Act, The Race Equality Scheme, Best Value Performance Indicators and non-statutory standards such as the Equality Standard for Local Government and the CRE Standard) and related policies and procedures.

These are brought together in the Equalities Framework 2002-04 which provides guidance for GLA staff and members, the GLA group and partners (GLA, 2003).

The GLA carried out a Best Value review of equalities across the GLA Group in 2002 which identified "significant achievements and good practice on equalities issues" (GLA, 2002). *Equalities for All* identified the need to share and increase the consistency of good practice within each organisation and across the GLA Group. The review also found a lack of clarity on the process for conducting equality impact assessments and recommended that this be reviewed and additional training and support material be provided for staff (this was completed in late 2003/04). A Strategic Service Improvement Plan provided an umbrella for each organisation in the GLA group to develop its own equalities operational plan. The GLA Group Equalities Network was established in July 2003 to share experience, information, good practice and develop joint projects across the GLA Group.

An Audit Commission inspection rated the service to be 'good' with promising prospects for improvement. They found "that a commitment to driving up and sustaining high standards on equalities is shared throughout the GLA Group, and recognised by external stakeholders" (Audit Commission, 2003). The "over-arching aim for the group to become exemplary organisations has become less clear, however, and this will not now be achieved by the March 2005 target (ibid). As a relatively new public authority the GLA should be commended for undertaking a review of equalities across the entire group (five independent organisations) when so few long established local authorities have yet to review their equality provision. A search of the Audit Commission's web site revealed inspection reports on equalities from only three other local authorities in England and Wales (accessed 16 July 2004).

The GLA Act requires the Mayor to publish an Equalities Annual report which must contain the following:

- A statement of the arrangements made in formulating policies and proposals which give due regard to the principle that there should be equality of opportunity for all;
- A statement of the arrangements made in the implementation of the mayoral strategies and the exercise of the Mayor's general power or duty to ensure that there is due regard for the principle of equality of opportunity for all;

- An assessment of how effective the arrangements were in the formulation of the policies and proposals to be included in any of the strategies;
- An assessment of how effective the arrangements were in the implementation of the strategies and in promoting equality of opportunity in the use of the Mayor's general power or duty (GLA, 2004).

Progress in the equalities responsibilities in 2003/04 included:

- Mainstreaming race equality at all levels of the organisation through the Race Equality Scheme Integration Programme which included raising awareness of the requirements of the Race Relations (Amendment) Act 2000 and the GLA's Race Equality Scheme, integrating the Race Action Plan and providing staff training on the requirements of the legislation. The programme was regarded as 'highly successful' - all staff have been trained on the specific arrangements, particularly equality impact assessment methodology, targets have been refined and the Race Equality Scheme revised following consultation.
- The final London Plan was published in February 2004. It was subject to a Equality Impact Assessment (together with a Sustainability Appraisal and a Health Impact Assessment) all three being cross cutting themes which the Plan must take into account under the Greater London Authority Act 1999.
- Opening of the Older People's Resource Centre with meeting room space, desk space and administrative resources for older people's groups and staffed by two GLA officers. The primary aims is to lead the process of developing an older people's strategy for London in consultation with older people's organisations.
- A second Older People's Assembly was held in November 2003, organised by the London Older people's Strategies Group, a coalition representing over 100 older people's groups in London and the GLA's principal forum for consulting older people in London.
- The GLA met Level 3 of the Equality Standard for Local Government and has a March 2005 target date to reach Level 5. Operational Equality Action Plans (OEAPs for 2003-04, introduced the previous year, contained 633 actions (of which 231 were generic actions and 21 referred to age). By the end of the year 495 (78%) of the actions had been completed, 14 % ahead of target. Achievements included:

"The Public Consultation and Communications department in the Mayor's Office has carried out a programme of research on the impact of mayoral policies and service delivery on women in London.

The Secretariat has developed and is now managing the Assembly's scrutiny programme to be relevant to the equalities agenda including Access to Primary Care, Targeting Regeneration Resources and Asylum Seekers in London.

Finance and Performance has been responsible for the successful delivery of events which promote race equality and equal opportunities in Trafalgar Square, including Summer in the Square, Diwali, rallies and demonstrations.

Work with Government Office for London has ensured that boroughs' crime and community safety plans meet the Mayor's race equality objectives, and that they have been successfully extended this to address women's safety." (Mayor of London, 2004)

Many other initiatives were completed including revision of the Equality Impact Assessment Guidance together with staff briefing sessions, a Consultation Strategy and various stakeholder events including the Capital Age Festival. Equality Impact Assessments must be carried out for all policies and projects incurring over £100,000 expenditure and is also being encouraged for smaller projects to ensure that all work is rooted in the equalities agenda. However, there has no systematic analysis of the changes made following EQIAs and devising a monitoring system to 'capture' these changes is considered the next step in a longer-term approach. The two-stage EQIA incorporates a screening process which is designed to identify both positive and negative impacts. The Best Value Review recommended that the GLA develop a London Equalities Standard to reflect the demographics of London. A scoping report on a potential London Standard and recommended changes in the Local Government Standard will be published shortly.

Section 404 of the GLA Act requires the GLA to promote equality of opportunity for all persons. During 2003-04 the GLA launched the Gender, Disability and Faith Equality Schemes. The GLA aims to become an exemplary employer and has set employment targets:

- 52% of the workforce should be women;
- at least 25% of the workforce should be black and minority ethnic people, and 12% of this total should be Asian people;
- at least 10% of the workforce should be disabled people.

The GLA has met its overall target for women (56%) black and ethnic minority people (26%) but the Asian workforce is at 8%. Disabled people account for 5% of the workforce based on the Disability Discrimination Act 1995 (medical model) and the GLA's social definition of disability

An Age Equality Scheme is being developed for a December 2004 launch which will address age equalities in employment and service delivery. The London Childcare Strategy was launched in November 2003 followed shortly afterwards by *The Childcare Trap* which recommended a major expansion high quality affordable childcare in London. The Children and Young People's Strategy was launched in January 2004 to address the needs of people under the age of 18. Priorities include more spaces to play, with safer, well-maintained parks; better and affordable sports and leisure facilities, and neighbourhoods designed around the needs of children. A Children and Young People's Unit has been set up to ensure implementation across the GLA group.

The Mayor's Equalities Policy Commission was set up in 2000 as a 'task and finish' group as part of the Mayor's consultation and policy development process to draw on expert opinion in preparation of a GLA equalities statement and to recommend equalities performance indicators. A new

Equalities Commission, also representing all the equalities strands, is planned which will have a scrutiny role in assessing the work of the GLA Group.

### **3.6 Ireland**

The single Equality Authority in Ireland has been praised by the members and witnesses to the Scottish Parliament's EO Committee, especially because of the impact of broader based legislative frameworks that successfully harmonise provisions for nine equality groups (Scottish Parliament EO Committee, 2004c).

### **3.7 Equalities in commissioning and procurement**

The government's Best Value regime has broadened the procurement process to include assessing needs and options appraisal. Its policy of increasing the diversity of providers has effectively extended competitive tendering to a wider range of services than under the Compulsory Competitive Tendering legislation. Other policy changes such as the extension of the Private Finance Initiative across the public sector, the introduction of commissioning of social care to outsourcing of much of the home care service and the government's commitment to further marketisation of public services, have further embedded the procurement process in the organisation and management of public bodies.

A number of interviewees confirmed our analysis that the application of statutory duties to contractors and third parties was a key issue which had received scant attention. The continued growth of outsourcing and the planned transfer of more public services, particularly schools and hospitals, to quasi-public/private companies and trusts has major implications for the implementation of equalities duties and for mainstreaming. This section examines current initiatives and key issues.

#### **London**

The Greater London Authority has focused on the inclusion of fair employment clauses in contracts. It obtained an opinion from James Goudie QC in which he contends that it is lawful under EU and UK procurement regulations for the GLA and other Best Value authorities in general to include a fair employment clause in contracts (GLA, 2003). It had included such a clause in City Hall and Trafalgar Square contracts. The GLA is currently examining how it can strengthen equalities contract clauses. The current GLA procurement Strategy states that "it will endeavour to appoint contractors who are committed to promoting equality of opportunity in their own employment practices and service delivery methods and who can demonstrate the ability to assist the GLA to achieve its statutory responsibilities in this important area. Monitoring will take place on the diversity of businesses securing GLA contracts and fair employment provisions will be required in all GLA contracts" (GLA, 2004).

#### **Wales**

The Welsh National Assembly has created a Procurement Initiative Team and a Welsh Local Government Procurement Support Unit following a Better Value Wales review of procurement, which highlighted the need for significant



improvement. Welsh public sector procurement is valued at £3bn per annum, representing 40% of the Assembly's budget and 11% of Wales' GDP (Welsh National Assembly, 2003).

The Assembly is not an enforcement agency and cannot enforce contractors' statutory obligations as employers, so a Voluntary Code of Practice was devised and suppliers and contractors were invited to sign up to it. The brief Code refers to the Assembly's commitment to "promoting social inclusion and equality of opportunity" (Welsh National Assembly, 2004). The Assembly has also established four business principles – fairness, honesty, efficiency and professionalism – and states that "if you share our vision, values and principles, can meet our business needs, provide genuinely innovative solutions and demonstrate best value for money in a competitive environment you will 'win our business'" (Welsh National Assembly, 2004).

If contractors do not comply with the Code, they will not be invited to tender. Procurement performance is measured against six targets, which include value for money and sustainable development but not equality of opportunity.

The Welsh strategy is very much in the 'persuasive' category and falls short of having equalities duties and fair wages as contract conditions and evaluated in the award of contracts.

### **Northern Ireland**

There has been a degree of confusion in some public authorities in Northern Ireland over responsibility for the Section 75 duties in procurement situations. For example, whether the Education and Library Boards or the Department of Education are the procuring authority in PFI projects. The Equality Commission has stated that the Section 75 duty remains 'owned' by public authorities and there can be no abdication of responsibility through procurement. Several Health and Social Services Trusts have had discussions about outsourcing scenarios with the Equality Commission and appropriate contract clauses are currently being prepared. Age Concern Northern Ireland stated that ensuring the continuity of the Section 75 duties in outsourcing had been a major issue which increasingly relevant to all public authorities.

### **3.8 Summary of Evidence**

The above evidence suggests that either equality public duties must be clearly applicable not just to public bodies but also to companies and organisations providing public services on behalf of a public authority via an contract or agreement, or a public duty encompasses the public, private and voluntary sectors. The application of equality public duties in cases of offshoring where a private contractor transfers service provision overseas requires further investigation. Interviewees supported the conclusion that apparently little or no thought has been given to this dimension of outsourcing.



## 4. Evaluating Pathways to Age Equality

### 4.1 To legislate or not?

The Government proposes to transpose the European Directive on Age Discrimination through regulatory provision in 2006. Drawing on its expertise with the Race Duty the Commission for Racial Equality (CRE) has said that it thinks this is an inappropriate way to proceed. Instead the CRE argues that:

“legislation on new strands should be subject to proper parliamentary scrutiny and public debate, particularly amongst the business community and groups who are likely to be affected by the new laws.” (Commission for Race Equality, 2002: 12).

This is an important given that many interviewees noted the difficulty of promoting a GB wide Duty on age given the lack of many of the conditions that had made the Scottish and Welsh Duties successful. In particular, a key dynamic was identified as being ownership from within Wales and Scotland rather than it being imposed from outside. All interviewees noted the importance of embedding the legal requirements in popular culture. As such the opportunity for political debate may spread greater awareness of the legislation and to build ownership and support for it.

Others have also supported this position:

“the legislation should extend beyond employment to cover all public functions and the provision of goods and services ... it is not appropriate to use secondary legislation ... there should be primary legislation, giving a proper opportunity for full debate. Regulations are inevitably limited to the requirements of the directive and no more” (Fredman, 2001: 24).

### 4.2 The scope of legislation

#### Employment or Access to Goods and Services

In line with comments made about the appropriateness of maintaining the existing unequal and differentiated legislative position with regard to the multiple strands, many organisations and interests have suggested that it is anomalous not to extend legal protection beyond employment, especially for age. This was a common theme in the discussions with interviewees. The CRE reports that the transposition of the Employment Directive should not preclude the extension of legal protection to the new equalities strands with respect to goods, facilities, services and education (CRE, 2002: 12) and the Equal Opportunities Commission in Scotland and the Scottish Representative on the CEHR Task Force has underlined this position. Indeed in evidence, supported by several other witnesses, to the Scottish Parliament he reported that:

That is one factor which will make addressing all the different equality issues quite difficult., as some of the legislation applies across employment and goods and services for some groups, whereas for other legislation applies only to employment for other groups. A number of people have recognised that that will be a challenge” (John Wilkes, EOC Scotland and CEHR Task Force, Evidence to the Scottish Parliament EO Committee, 2004c).

Drawing on consultation with over 300 groups across Wales, Age Concern Cymru, draw the same conclusions (Age Concern Cymru, 2003).

Fredman goes further to argue that legislation which extends only to employment is flawed not only in a broader sense but in relation to formal equality in the labour market also:

“To restrict legislation to employment also puts a burden on employers which they cannot necessarily discharge. The ability of employers to bring about any change by removing stereotypical assumptions is necessarily limited. In order to be properly effective, and to avoid distortions, government and other public bodies need to be actively harnessed to the cause ... Thus age discrimination legislation should follow the example of the Race Relations Amendment Act 2000, which broke new ground by applying to all public services” (Fredman, 2001: 25).

Such a conclusion leads Fredman to support the introduction of a Public Duty on age equality on the grounds that this is an effective way of moving beyond measures to protect individuals from discrimination to provide a means of restructuring institutions and public policy to promote genuine equality (Fredman, 2001: 30).

Public Duties such as those included in the Race Relations Amendment Act (2000) place obligations on public bodies to incorporate equalities considerations into various aspects of their work and are one way that legislation can be broadened to go beyond combating discrimination in the labour market. In his work on comparative equality regimes, Colm O’Cinneide has concluded that

“In many ways, single equality commissions come into their own when enforcing positive duties, or when conducting equality audits. Being able as a single body to adopt a cross-strand approach that can also deal with overlapping forms of discrimination means that maximum returns can be obtained.” (O’Cinneide, 2002: 36).

### **Fighting Discrimination or Planning for Equality**

Many interviewees and significant parts of the literature place emphasis on extending legislative provision for strands such as age to cover access to goods and services. However, the public duty approach is in many ways subtly more comprehensive than this and involves moving away from a focus on fighting discrimination whether in employment or access to goods and services to the mainstreaming equalities in public policy (Fredman, 2001: 30-33). The difference may appear to be semantic but the implications are large indeed. For while equitable access to services can be achieved without challenging dominant social paradigms, planning for equality fundamentally interrogates the purpose of public policy, ultimately asking the question “who benefits”, not just from access to individual services but from prior decisions over what services are provided, the allocation of finite public funding and crucially the way in which services are designed and delivered. More fundamentally still, it also raises important questions of resource distribution and *redistribution*. Therefore, a planning approach to equality rather than an access approach is much more aimed at the underlying causes of inequality

rather than merely attempting to temporarily limit or regulate inequality in specific institutional and social contexts.

Support for this sort of model, though often not differentiated explicitly from the extension of legal protection to access to goods and services, was widespread among interviewees and research by academics like O’Cinneide have supported the central arguments that need to be marshalled in favour of it.

### **4.3 Single Strands or a Single Act**

#### **Support for a Single Act or Legislative Harmonisation**

With only one exception, interviewees were overwhelmingly in favour of legislative harmonisation generally and more specifically a Single Equalities Act. These views are also supported by a wide number of other organisations and stakeholders, many of which have expressed dissatisfaction with the present proposals to maintain the separate and unequal legal provisions for the different equality strands, particularly the differences between the provisions of the RRA (2000) and proposals for the first wave strands of Gender and Disability and the ‘newer’ strands of Sexual Orientation, Religious Belief and Age (Equality and Diversity Forum, 2004).

The Scottish representative on the CEHR Taskforce, whose work predated the drawing up of the White Paper, reported that discussions within the Task Force on the desirability of harmonising upwards the existing legislative frameworks:

“There are a number of key concerns that were raised almost unanimously in the Task Force which are not adequately reflected in the text of the report [of the Task Force’s Discussions (WEU, 2004)]. One of these was general support in the Task Force on the need to harmonise the different legislation across all equality strands. The Government position was stated early on that this was not a proposal that would be considered.” (Scottish Representative to the CEHRTF, 2004).

The Scottish Parliament has also reported concern among some groups regarding the existing legislative hierarchy of equalities strands (Kidner, 2004: 4, 9). The National Assembly for Wales Equal Opportunities Committee has regularly called for the UK government to implement a Single Equalities Act (National Assembly for Wales EO Committee, 2004; 2004a: 18) and interviewees in Wales reported widespread political support for such an approach. This is also a position broadly supported by the Welsh Assembly Government (WAG, 2004) and Cabinet (National Assembly for Wales, 2004b: 44) and Age Concern Cymru.

Support for a single act or legislative harmonisation has also come from the academic community. Colm O’Cinneide’s work on comparing international experiences with single equality commissions has concluded that

“Comprehensive single equalities legislation would be invaluable in minimising hierarchical differences between the grounds, as shown by the experiences of Canada, Australia and the Republic of Ireland. All have comprehensive legislation extending to goods and services. Consequently, legal differences between the strands are reduced to a minimum, resulting in greater equality of

treatment for appreciation of the underlying principle of equality and of anti-discrimination, law...The effectiveness of the great strength of single commissions, the ability to offer a cross-strand, one-stop shop, will be hampered by the inevitable confusion between the requirements imposed in respect of each strand, and the loss of transparency of legal rights.” (O’Cinneide, 2002: 22).

The Scottish Representative on the CEHR Taskforce also reports disadvantages which might arise from a failure to harmonise existing legislative provision between the strands, though the report fails to identify them, noting instead “various views as to how not having harmonisation will effect the viability and functioning of a new body”. One such view is provided by UNISON Scotland:

“If a hierarchy develops in a supposedly mainstreamed system there will be a very clear focus on ensuring the top three are dealt with and lip service will be paid to the rest. The Executive needs to ensure that as a bare minimum, their ‘Equality proofing’ will require mainstreaming to be defined as having **equal regard** to all forms of discrimination.” (UNISON Scotland, 2002).

### Safeguarding Age

Some comments and proposals were received from interviewees with regard to safeguarding the Age strand both within the CEHR and in the event of single equalities legislation. There was general support for the importance of inclusion and consultation of older people as a Statutory mechanism in the development of policies and within the organisational structure of the CEHR, lending support to conclusions reached by Clare Collins in an Age Concern research paper on these issues (Collins, 2004). Some people felt that the most appropriate mechanism would be through representation of each of the strands on the Board of the CEHR. Others thought that the provision of a consultative forum made up of both Advocacy groups and older people themselves. Interestingly this mirrors developments in Wales and Scotland. In Scotland there are two relevant forums.

The first is the Older People’s Consultative Forum which was established to facilitate partnership working between the Executive and older people’s organisations and meets four times a year. The emphasis is on majority representation of older people’s own organisations with membership drawn from a wide range of groups. All the organisations represented, with the exception of one, are national ones which together represent the views of many older people in Scotland. It is not an elected body but intended to bring in as much of the diversity of Scotland’s older people as possible.

The main aim of the Consultative Forum is to provide the Executive with a sounding board for policy across all areas. It is not a substitute for consultation, but aims to provide a complementary approach by securing input from older people at an early stage in policy development. It can also have a role in monitoring as many of those attending receive feedback from their members about the impact of policies on the ground, e.g introduction of free local off-peak bus travel. It complements and improves the Executive’s other

methods of consulting and working with older people – it does not replace them.

The second forum is the Equalities Coordinating Group (ECG) which is the main vehicle for cross strand working among equalities advocacy groups including the DRC, CRE, EOC, Age Concern, Equality Network, COSLA, Youthlink Scotland and the Scottish Executive Equality Unit (who attend as observers). Interviewees reported that the ECG has been influential in promoting the use of the Parliament's powers to include Duties in new legislation.

In Wales the three established strands also have consultative forums but there is no such forum for age.

Other proposals for safeguarding age were raised as separate budgets ring-fenced to each of the strands and formal processes such as Impact Assessment to be applied to the internal work of the CEHR itself such as budgeting, policy and strategy setting. Finally one interviewee cited the mechanism used in the Scottish Parliament Equal Opportunities Committee which assigns individual members the task of being reporters on particular strands and taking on the responsibility for liaising with advocacy groups on that issue. The suggestion was that cross strand working parties within departments and public bodies and within the CEHR itself could take on that structure.

## 4.4 Who Should be Covered?

### Specifying which public bodies are covered

There were differences among interviewees regarding the issue of naming specific bodies to be bound by a future Public Duty on Age equality. There was a clear and shared desire for the applicability of such a Duty to be universal in scope. This led some to argue in favour of simply determining that such a Duty should apply broadly to all public bodies. Indeed, there was a strong commitment to a broader remit still with many interviewees preferring that such a Duty would apply to all organisations carrying out 'public functions', a phrase designed to extend the scope of the duty to contractors and other third parties delivering functions and services on behalf of public bodies. Clearly, however, this discussion raises important legal distinctions between definitions of what constitute public bodies and public functions. For instance, the question immediately rises as to whether a housing association or a university constitutes a public body and what part of either organisation's functions are delivered privately and what part in the exercise of public functions. In both cases the question is very much confused by the partial marketisation of their service provision with the payment of 'fees' for services and goods rendered on the part of their tenants/students. Such issues have caused widespread debate over the applicability of international treaties such as the General Agreement on Trade in Services (GATS) to these types of bodies. There is real potential that the extension of a public duty to these organisations under the simple banner of them being a public body or delivering public functions without very clear and tested legal definitions of these would result in unenforceable legislation.



It is just such considerations that motivated a second group among the interviewees to argue in favour of a list based system such as is contained in the RRAA (2000) (Fredman, 2001: 31). However, building on the shared commitment to universal coverage interviewees preferring this formulation argued strongly in favour of a comprehensive and flexible list able to be amended by regulation to cope with the rapidly changing institutional structure of the public sector. Some interviewees also noted the importance of building transitional mechanisms into the Duty to ensure that organisations that take over responsibilities from public bodies should be bound by the Duty as it applied to the previous body until such time as a decision can be taken as to whether to add the new body to the list of bodies covered.

### **Extending the Duty to the private sector**

In addition to universal coverage of public bodies, there was strong support among interviewees for extending the scope of a public body. As the discussion above highlights, this was partially the result of responses to the increasing delivery of public services by the private sector and community groups. This is particularly the case for key services for older people. For instance, a growing majority of social care is delivered through the private and voluntary sectors. In the early 1990s nearly all residential social care was provided directly in Local Authority owned and operated care homes. By 2003, this figure had fallen to 12% (DoH, 2003). The result is that there is an increasing recognition of an urgent need to ensure that equalities duties extend beyond public bodies to their contractors (Fredman, 2001; DETR, 2001; Whitfield and Escott, 2002).

However, Fredman supports the notion of applying a Duty to the private sector beyond the delivery of public services particularly with regard to employment. Interviewees highlighted the potential of applying a Duty to defined functions, regardless of whether it is provided by the public or private sector and whether or not it could be defined as a market service. Examples of such functions could be the provision of education, housing, social care or other services. The legal provisions of the Duty would simply apply to the function rather than to mechanisms for delivering it, potentially overcoming debates over public status or barriers to trade and market access.

The Audit Commission has also argued in the past that engaging key private and voluntary sector organisations in leadership in terms of the local equalities agenda is crucial to embedding the 'equalities agenda' in 'hearts and minds'. Just as the development of community strategies needs to be taken forward with the support of influential local individuals and organisations so too:

“Responsibility for addressing equality and diversity and for producing Race Equality Schemes does not just lie with local councils. It is also an issue for all their local partners from the public, private and voluntary sectors” (Audit Commission, 2002: 10).



## 4.5 Defining the Duties

### General Duties

Fredman expresses clear support for general duties to be placed on public bodies to promote equality (Fredman, 2001: 31). Interviewees also expressed support for general duties and some discussed the various merits of different expressions of this. Many felt that the formulation of public duties in the mould of having “due regard” was too weak and that a stronger wording should be used. More particularly there was support for the use of General Duties as a means of defining equalities in the context of social and community cohesion rather than individual acts of discrimination. Indeed this is the focus of the General Duty in the RRAA (2000) with regard to “promoting good relations”. However, several interviewees highlighted difficulties in enforcing such a Duty, especially where the mechanism for doing so is via Judicial Review (see below). There are also issues in relation to which groups the promotion of good relations would extend to.

Partially out of the desire to address these questions while maintaining the focus on the broader context of social cohesion, some interviewees remarked on the shifting equalities debate, noting the increasingly shared perception of outcome based definitions as opposed to process based definitions, at least with regard to General Duties. This shift was also noted in the CEHR White Paper (DTI et al, 2004: 12). For instance, there was some discussion of the desirability of drawing up equalities Duties in the future along the lines of:

“Set clear and challenging targets with regard to equality of outcome between persons of different (Age/Gender/sexual orientation/other) and take reasonable action in order to achieve those targets”.

Some interviewees pointed out the obvious flaws in such a formulation in that it requires independent (and ultimately legal) judgement of what is a challenging and appropriate target to set in the first place, the link between such targets and equality of outcome, the extent to which the achievement of those targets is within the powers of the bodies mandated by the Duty and over what constitutes reasonable action in pursuit of them. Moreover, it also raises the questions of sanctions for failure to achieve targets.

In substance these problems mirror the issues raised with various types of performance management systems, especially where they are applied via ‘soft law’ governance systems, for instance as in various aspects of macro-economic policy and economic development. Key examples are the Stability and Growth Pact among the member states of the Euro-area and the operation of performance management with regard to Regional Development Agencies in the UK.

In the first example there is debate as to whether procedures designed to punish member states with ‘excessive deficits’ under the provisions of the Pact (which has legal status) are enforceable. Specifically parts of this debate revolve around the degree of control that a government has over its economy at any single point in time. In the second example Regional Development Agencies are set targets with regard to a range of social outcomes such as unemployment, qualification rates or the amount of previously developed land

is reclaimed. While not legally enforceable in this instance, these targets do notionally have rewards and sanctions attached to them. However, it is far from clear that RDAs have any formal powers in relation to many of these areas and it is questionable as to whether they should be made responsible for their achievement rather than simply having an obligation to contribute to them.

Nevertheless some interviewees noted that it was the specific duties that contained enforceable obligations and supported the use of an aspirational General Duty as a declaration of purpose and political commitment. However, the way in which a General Duty is defined clearly has implications for the types and focus of the Specific Duties that underlie it.

### **Specific Duties**

Support for several types of formulation of Specific Duties can be found in the literature and were replicated in interview discussions. For instance, several interviewees followed Fredman in advocating the preparation of Age Equality Strategies to mirror the Race Equality Strategies which are mandated by the RRAA (2000).

Fredman also argues that the inclusion of representatives of equalities groups (ie older people) in the formal decision making process is an important aspect (Fredman, 2001: 31). This is a theme taken up also by Clare Collins a pamphlet published by Age Concern England about public involvement in the CEHR. Again, this was a position supported by several interviewees though few people gave opinions about the detailed options for consultation and involvement that Collins assesses (Collins, 2004).

Interviewees were asked to assess various types of Specific Duties including:

- Assess the impact of proposed policies.
- Consultation on equality implications.
- Monitoring of the impact of policies.
- Staff profiling and monitoring, including recruitment, promotions, access to training and pay audits.
- Staff training.
- Publishing the results of monitoring, assessment and consultation.
- Publishing Equality Schemes in line with those required under the RRAA (2000).
- Impact Assessment.

In the whole, interviewees reported support for all these mechanisms and in most cases there was little opinion expressed about the merits of each of these. The exceptions to this were Consultation, Impact Assessment and the publication of Equality Schemes, partially as the result of Interviewees being asked to comment on the differences between the application of the Specific Duties in operation under the different legal frameworks.

Consultation was seen by interviewees as extremely important both with regard to individual public bodies and the work of a single commission. As noted above, the use of various consultative forums was identified as one way of safeguarding the integrity of the age strand. The CRE also highlighted building local consultative forums as one method of building capacity and advocacy at a local level and in the process replicating some of the ownership dynamics present in Wales, Scotland and Northern Ireland at a local level. However, on the negative side many of the groups contacted reported consultation fatigue and that they had insufficient capacity and resources to fulfil even the existing demand for consultation.

The publication of Equality Schemes was generally supported with discussion tending to focus on how compliance and enforcement issues could be dealt with, especially in the wake of research on the first round of Race Equality Schemes, with some concerns being expressed about:

- Strategy/Initiative overload for public authorities who now routinely prepare a vast array of strategies and plans.
- That the capacity of public bodies to set out a range of quality actions in these Schemes is questionable. Some discussion emerged around the desirability of Guidance setting the parameters for such Schemes (as is the case in the RESs) and mandating the inclusion of action plans rather than strategies.
- That enforcement action runs the risk of “taking action against a piece of paper”.
- That such schemes need to be able to be scrutinised independently. There were some concerns for instance that the CRE could not possibly scrutinise the 40,000 + Race Equality Schemes in GB and concerns were expressed that the equalities content of Education, housing and community plans prepared in Scotland had not been independently scrutinised.

Some concerns were expressed about the Equality Impact Assessment increasing bureaucratic workload and the lack of independent verification being raised as specific issues. Despite this, a joint equalities seminar held by EOC Cymru, interviewees and other literature (eg Age Concern Scotland, 2002) expressed support for the Impact Assessment model and other interviewees highlighted a number of benefits. For instance, some interviewees felt that Impact Assessments are useful in that they effect policy development in itself rather than being ‘after the fact’. This has several attached benefits. Policy makers are forced to consider the equalities impact of their work. Furthermore, it was felt by some that this sort of specific duty is crucially important in maintaining institutional focus on equalities in the event that political commitment wanes or where other priorities attract greater political attention.

Interviewees discussed solutions to the problem of the effectiveness and scrutiny of Equality Schemes. In the first instance, a number of interviews highlighted that Race Equality Schemes would improve through a gradual process of policy learning over time, especially as Guidance is improved with

the benefit of hindsight regarding past weaknesses in the plans. Second, the CRE has developed Memoranda of Understanding with inspection agencies such as the Audit Commission, the Benefits Fraud Inspection team and the now defunct Social Services Inspectorate. Other methods of scrutiny were identified in the context of emerging regional agenda. The various benefits and weaknesses of these two models are discussed in Box 4.

<b>Box 4 Inspection versus Regional Scrutiny</b>	
<b>Inspection</b>	<b>Scrutiny</b>
<p><b>Strengths:</b></p> <ul style="list-style-type: none"> <li>○ Linked to sanctions and overall corporate performance management and therefore helps to mainstream.</li> <li>○ Existing systemic capacity to take on this responsibility.</li> <li>○ Accepted as part of credible and legitimate arrangements.</li> <li>○ Minimises additional bureaucracy.</li> </ul> <p><b>Weaknesses:</b></p> <ul style="list-style-type: none"> <li>○ Inspectors are often other managers of other similar public bodies which may prove a barrier to culture change.</li> <li>○ Heavily reliant on capacity, skills and commitment of individual inspectors.</li> <li>○ Inspection agencies heavily part of the modernisation agenda, which itself may need to be scrutinised for equalities (including Age equality) impact.</li> </ul>	<p><b>Strengths:</b></p> <ul style="list-style-type: none"> <li>○ Helps to build the type of local ownership that has proven to be a driver of progress in devolved territories.</li> <li>○ Principle of devolution and delegation and decisions and actions being taken closer to those affected is upheld. Fits with the modernisation agenda.</li> <li>○ It is already proposed that the CEHR works on a regionalised basis and this has been the approach of the CRE.</li> </ul> <p><b>Weaknesses:</b></p> <ul style="list-style-type: none"> <li>○ May tend to fragmentation of the system.</li> <li>○ Reliant on skills, capacity and commitment of regional Assemblies.</li> <li>○ Regional Assemblies may have different status (after referendums) in different regions, creating an uneven structure.</li> </ul>

## 4.6 The Importance of Consultation

The importance of consultation which is often a missing element of Public Duties, was underlined by interviewees and evidence from Northern Ireland, Scotland and Wales. The Equality Commission's response to the Review of Public Administration in Northern Ireland which had omitted any reference to consultation under the Section 75 duties was trenchant:

"...consultation is an integral part of public-policy making. Consultation must be both meaningful and inclusive, in that all persons likely to be affected by a policy should have the opportunity to engage with the public authority. Targeting consultation at those most affected by particular policies is most beneficial, in terms of identifying any adverse impact of policies at the earliest possible stage. ...Meaningful consultation on issues such as screening of policies and the conduct of subsequent Equality Impact Assessments (EQIA) is a fundamental method by which public bodies may ascertain the diversity of views and experiences amongst a wide range of stakeholders" (Equality Commission, 2004).

Age Concern Scotland have underlined this message, highlighting also the important issues around the capacity of groups to engage in consultation. Like equality in a broader sense, there is little point in opening formal consultative channels if those whose views, perceptions, experience and participation are unable, for whatever reason, to take part.

“Removing structural barriers to people in participating and contributing is only one part. There must be greater emphasis upon developing the process which includes representative organisations and groups, and which makes a concerted effort to directly involve ordinary people. This will be a key test for mainstreaming equalities” (Age Concern Scotland, 2002).

Consultation is itself then an aspect of delivering on the equalities agenda. It is about outcomes as well as process. It assists in redressing the social bias that is contained in the ability of those in positions of power and structural dominance being able to mobilise significant resources, financial, institutional, social and other, to influence decision making, budgeting and other important aspects of public policy.

This has been recognised by the Scottish Executive who have prepared Guidance to overcome five specific types of barrier (Box 5).

#### Box 5: Barriers to Consultation: Excerpt from Scottish Executive Guidance

1. **Methods used** (e.g. relying on methods which use IT, or which focus only on written materials)
2. **Physical barriers** (e.g. inaccessibility of venues or the lack of facilities at events)
3. **Attitudinal barriers** (the ways in which staff approach or respond to groups and individuals and the assumptions they make)
4. **Financial barriers** (many equalities groups lack resources and this often affects whether they can respond to consultations)
5. **Cultural barriers** (e.g. using inappropriate facilities or language)

Reid-Howie Associates, Good Practice Guidance on Consultation with Equalities Groups, (2002).

Consultation therefore is about mainstreaming equalities in the democratic process. Evidence shows that in and of itself a sense of inclusion and participation in decision making can have important beneficial aspects on self worth, confidence and aspiration with knock on effects on health and well being. As such it is absolutely vital that consultation is genuine rather than an attempt to build ownership and strategically important alliances (whether at national, regional or local level) behind a predetermined policy or narrowly (and artificially) construed range of policy options.

The importance of consultation with all stakeholders was noted as important in the CEHR White Paper:

“We intend to place the CEHR under an obligation to produce and **consult on a strategic plan**. This will underpin the CEHR’s commitment to partnership working and will give all its stakeholders the opportunity to be involved in the development of its work plans, ensuring that the interests of all the equality strands and human rights are fully involved. The CEHR will clearly set out how, when and with whom, it intends to consult.” (DTI et al, 2004: 26)

## 4.7 Enforcement and the Role of the CEHR

### Some Enforcement Issues

Experience of the implementation by public authorities of the Section 75 duty in Northern Ireland and the Race Equality schemes in England and Wales is that authorities fall into three groups (interview with Equality Commission 2004 and CRE/Schneider-Ross 2003):



- authorities which respond well to the spirit and letter of the law and develop innovative approaches.
- authorities which make a concerted effort and have good foundations in place but need further work to have all the required policies, systems and procedures in place.
- A few authorities which are weak and often fail to comply with the legislation.

The Equality Commission in Northern Ireland has a policy of 'naming and shaming' and named nine public authorities in the 2002/03 Annual Report which had not submitted a Progress Report by 31 October 2003. They included three local authorities and two further education colleges. The Equality Commission can request that a public authority to produce a revised equality scheme. It may also refer a scheme to the Secretary of State and must also inform the Northern Ireland Assembly of the referral and send the Assembly a copy of the scheme. The Secretary of State can approve the scheme, request that the public authority produce a revised scheme or may produce a scheme for the public authority. To date no schemes have been referred.

The Equality Commission must investigate complaints of failure by a public authority to comply with an approved equality scheme (or give reasons for not investigating). It must send a report of the investigation to the public authority, the Secretary of State and the complainant (if any). If the public authority fails to take the recommended action within a reasonable period the Commission can refer the matter to the Secretary of State who may give directions to the public authority. Government departments are treated differently. The Equality Commission can approve an equality scheme or request a revised scheme. If the government department does not submit a revised scheme within six months it must send the Commission a written statement of the reasons for not doing so. The Commission can carry out an investigation into the failure to comply and submit the report to the Assembly and to Parliament.

The CRE launched enforcement action against 14 police forces and 8 police authorities in June 2004 following a formal investigation into the Police Service of England Wales which found that more than 90% of police race equality schemes examined by the CRE failed to meet minimum legal requirements (CRE, 2004a and 2004b). The CRE has the power to conduct formal investigations to help meet its duties (Sections 48 – 52, Race Relations Act 1976). A formal investigation can be carried out into a named organisation or into a sector as a whole and the CRE has the power to make recommendations to require organisations to change their policies or procedures by issuing a non-discrimination notice or to make recommendations to the Secretary of State for changes in the legislation. The police forces and authorities were given 21 days to reply to the CRE indicating how they intended to comply with the legislation and 90 days from the date of the letter to produce lawful race equality schemes. If they fail to comply the CRE intend to apply to the High Court for an enforcement notice (CRE, 2004b).



The Judicial Review process has limitations because the court has to decide whether a public authority has acted 'reasonably'. Legal advisers note that there would have to be a clear case of non-compliance in order to obtain a clear judgement. If a public authority prepared an equality scheme which was approved by the Commission but then held only a few meetings with a minimum level of engagement to implement the scheme which, to all intent and purposes was not being implemented, it might be difficult to prove the authority was acting 'unreasonably', particularly if its defence cited a lack of resources and other priorities. Equality organisations are reluctant to take legal action for fear that a judgement may contain statements which have the effect of questioning or weakening the effectiveness of the legislation, let alone losing a case for compliance.

### **Devolution and the CEHR**

In forming the CEHR, there are important devolution issues to be considered. One crucial issue is that in Scotland, Wales and Northern Ireland, Age is already part of the approach to mainstreaming equalities considerations. This process extends beyond age discrimination in employment, and to a lesser or greater extent, includes issues of access to and planning of public services. The remit of the CEHR with regard to devolved territories will therefore need to reflect this existing reality (Forum on Discrimination, 2004).

### **The Importance of a Sliding Scale of Enforcement Powers**

Reflecting on the fact that Judicial review is a high risk strategy with potential for failure, several interviewees highlighted the desirability of existing Equality Commissions and the future CEHR having a sliding scale of enforcement powers linked to the existing Race Duty and future Duties on Gender and Disability (and others). While these would in part mirror the powers of investigation and issuance of notices of compliance held by the CRE it was also felt that these powers should be augmented. Proposals included tightening the application of Compliance Notices to strengthened specific Duties such as obligations to set out action plans in Equality Schemes to powers to make public recommendations to the Secretary of State.

An alternative proposal is to establish an Equality Ombudsman Service along similar lines as the system in Sweden. Colm O'Conneide believes that a specialist system is required (the Parliamentary and NHS ombudsman services are considered to not have the required level of specialist knowledge of equalities and understanding of good practice). The Equalities Ombudsman would have the power to determine whether a public authority was compliant or not. It could also operate closely with the inspectorate bodies.

Whilst scrutiny could be devolved to regional government/assemblies it is important that enforcement proceeds within a national framework for the reasons noted above. The identification of potential non-compliance and the launch of investigations of complaints could arise from regional scrutiny but further action should be a national CEHR responsibility.

Several interviewees also noted the desirability of a CEHR being able to independently take legal action in respect of discriminatory practices without having to do this by channelling support to an individual litigant. This would

overcome the real problems faced by vulnerable people when discriminated against.

### **Issues of local capacity**

Many interviewees raised issues of capacity building at a local level to enable voluntary and community groups to raise awareness of rights and obligations and rights of redress and to support individuals and groups in taking such action and in informing the CEHR of discriminatory practices and other important issues. Such capacity building, which partially mirrors the aims of the Race Equality Councils supported by the CRE, would also be useful in focusing local organisational agendas, particularly around the drawing up and implementation of Equality Schemes and Action Plans. Moreover, it would help to overcome issues of barriers to participation in consultation and consultation-fatigue.

## 5. Conclusion – Securing Age Equality Through a Public Duty Approach

### 5.1 Contextualising the Impact of Existing Public Duties

The discussion above demonstrates some of the impact of existing Public Duties. Limitations of time and resources prevent a fuller account. However, the following qualifications should be noted which have implications for future research.

Over the last ten years, new governance models, competitive funding regimes and the increased scrutiny enabled by the widespread use of the internet have placed increased emphasis in public management on the production of Strategies, Action Plans and performance measurement appraisals. The increased prominence of these documents has led to increased investment in their production and presentation and a whole industry of consultants and experts has arisen to assist public bodies.

There is, however, a paradox involved in this process. As the number of documents proliferates it is increasingly difficult to determine real, innovative and progressive action from rhetoric. It is difficult to separate the 'walk' from the 'talk'. Research reports, scrutiny and evaluations all muddy the picture still further, lending credibility to the contents of strategies and action plans, often drawing their material and evidence almost solely from the sources. There is a distinct danger that policy, evaluation and commentary merge together in a self referential cycle where the actuality of policy and implementation on the ground becomes lost. In the context of this report, it becomes difficult to see what is real progress on equalities on the ground.

This project relies heavily on these types of documents and commentary from the equalities community which is effectively part of the wider public policy community. The extent to which it was possible to analyse which policies and initiatives were actually having real equality benefits on the ground was constrained severely by resources and the time available. However, it is possible to make the following comments:

- Despite the increased policy rhetoric on equalities, it is difficult to see, outside of the criminal justice system, a single policy or policy approach which has been seriously impacted on by the equalities agenda.
- The Modernisation Agenda for public service reform has claimed the language of equalities, but it is difficult to see where the substantive impact has been. There are still major trends in policy, some of which are central elements of the Modernisation Agenda, which have harmful and regressive equalities implications, including for age equality. These include a refocusing of emphasis on narrowly construed competitive procurement (recreating many aspects of the old CCT regime), systemic and organisational fragmentation, the loss of capacity and in particular a marked failure to fully understand the economic, employment and well being impacts of the public sector itself.

Nevertheless, there is some evidence that this agenda has been modified slightly in the newly devolved Governments. The emphasis on marketisation and fragmentation is less acute and the identification of local social need is more central to the policy making process with a greater openness in access to decision making. There is no indication that this is the result of the Duties on equalities that are part of the founding articles of these devolved administrations. Rather, the opposite is the case. The Duties themselves resulted from the greater political commitment to such issues in the first place, partially explicable by the long sense of exclusion from Westminster itself.

In this context the debate around the role of public duties becomes more, not less important. Their imposition and specific formulation is one tool to ensure that strategies, plans, rhetoric and promises are translated into action. As such a major conclusion of this project is that Public Duties should be stronger not weaker more, not less comprehensive, extensive and enforceable.

## **5.2 The Case for a Positive Public Duty on Age**

### **Refuting the case against a Positive Public Duty on Age Equality**

The case against a Positive Public Duty on Age equality resides in three main issues:

- Increased and unnecessary bureaucracy.
- Increased costs for business creating a disincentive to employment and investment.
- The imposition of 'top-down' legal obligations may have negative effects in terms of community cohesion.

Against these are a range of powerful and coherent arguments. Increased bureaucracy is a simplistic rebuttal but simply begs the further question of how seriously progress on equalities should be taken. The charge of increased costs for business creating disincentives for employment and investment is raised in every instance of labour market regulation from the Factory Acts of the 1870s to the recent minimum wage legislation. Despite the frequent predictions of the cataclysmic effect on the economy, we are yet to witness it. These are arguments marshalled by sectional and vested interests to protect their own position. There is a strong business case for equality and diversity. On the other hand, there is no future in regressing backwards to unregulated and poor quality employment and service delivery. Finally and similarly, concerns over the negative impact that a 'top down' approach may have is also fallacious and ignores the reality that without legislation there is little compunction to act. Legislation is necessary precisely because without it there has been too little progress on equalities. In any case, the discussion that follows advocates the drawing up of a Positive Public Duty which will seek to enable local capacity building to promote 'bottom up' drivers for change to complement the enabling legal framework.

### **The Economic and Labour Market Efficiency Case**

There is a clear economic and labour market case to expand the legal protection offered in relation to age equality. As the government has accepted

the existing situation results in a massive waste of human resources. If the employment rate for those between aged between 50 and 64 for men and 59 for women were raised to the average for all 16-59/64 year olds, there would have been at least an additional half a million jobs in 2002, resulting in an additional £20bn on GDP and £9bn in household expenditure. Over recent years the employment rate has risen markedly and in some parts of the country difficulties are being reported in filling vacancies. In this context it is more important than ever that previously untapped potential and resources are fully harnessed. The equalities agenda, particularly with regard to age but also with regard to the other grounds, is one way of boosting the supply of available labour by drawing in groups that have previously been excluded or have become 'discouraged' by individual instances of and structural or institutional discrimination. The untapped potential, particularly of older people, with experience and skills forms a strong business case for equality in regard to age. While the current proposals on age discrimination regulations superficially address these issues, more substantive consideration reveals them to be found severely wanting.

As Fredman (2001: 24-5) notes, limiting anti-discrimination protection to employment is a simplistic and flawed approach to dealing with these matters. Inequalities in health, skills, mobility and well being (including individual self confidence and aspirations) as well as access to public and market based services (for instance healthcare, transport, education, care and respite services for dependants) are crucial to facilitating the availability of an individual for employment. These factors are also crucially important for shaping the quality of labour that an individual is able to sustain.

The implications of this are two-fold. First, legal protection which extends in scope only so far as employment is incapable of effectively tackling employment and economic related outcomes. Second, the necessary scope for such legal protection needs to extend not only beyond employment to cover equitable access to goods and services, but into the public policy planning process. Equality needs to be understood not just in terms of access and opportunity but in terms of social outcomes.

### **The Business Case**

The argument above lays out one element of the business case for equality and diversity. Tapping the under used resource of skills and experience from older workers is a rapid, efficient and effective way of tackling skills shortages. There are other elements to this argument. A more representative workforce may assist in accessing or servicing particular markets and an age-diverse workforce may help to bring a balance of skills, experience and other attributes such as peer support and development, loyalty, reliability and the interaction of perspectives and opinions can help to generate innovation and enable new solutions. This is the business case for equality and diversity in the workplace.

However, a Positive Duty placed on the public sector would provide benefits to business in tapping this potential by drawing excluded, hard to reach and discouraged groups back into the labour market through service delivery (such as for instance Active Labour Markets – New Deal for Older People)

and through their own employment practices which, owing to the sheer scale and impact of public employment, plays an important leadership role in local labour markets. The development of standard policies and templates for workforce audits, equality impact assessments and other policy tools can also help to save lead investment costs for businesses wanting to access these parts of labour markets or to gain access to more sophisticated consumer markets.

### **The Public Service Efficiency Case**

As the Audit Commission has noted:

“Equality is not a minority issue: it is important for everyone and directly affects the majority of the population. Women represent more than 51 per cent of the population, disabled people around 14 per cent, and black and minority ethnic communities over 7 per cent. In addition to the clear moral case for equal opportunities, there is therefore also a strong business case for sound practice on equality and diversity.” (Audit Commission, 2002: 13).

This is not just an issue for equality strands generally or for the example of gender highlighted in the quotation. Clearly, the ageing population means that delivering services to address age equality concerns will be a vital mainstream, rather than minority, challenge for government and service delivery in the near future (Audit Commission, 2004).

“The shift in proportion, composition and attitudes of the older age group has profound implications for public services.” (Audit Commission, 2004: 2).

In a simplistic sense then it will be impossible for efficiently run public services to ignore important equalities strands such as age. However, this challenge immediately raises further and more substantive efficiency questions such as: how can services be reconfigured, in a cost effective way, to meet to meet the demands of an expanding portion of the population with increasing needs for public policy intervention? The question can be answered by taking a whole-systems perspective on costs, efficiency and service delivery.

In the past, narrow cost calculations in relation to individual services have often led to short-sighted rationing and service cuts. The result has often been that more efficient early interventions have been removed leading to increased demand for more costly responsive services and crisis interventions at a later date. Costs have simply been displaced to other parts of the system and in some cases from the state to vulnerable individuals and families. Despite the rhetoric of Best Value and an increasing awareness of the issues, this narrow cost-cutting approach has not been fully removed.

The increasing prominence of proposals for public service reform based on ‘individual centred’ services offers one avenue down which to explore a more whole-systems approach to efficient service delivery. However, in pursuing such a model, it would clearly be important to avoid fragmentation and the loss of capacity. For instance, it is important to take heed of the costly lessons learned in social care where an aggressive approach to implementing commissioning models of planning and delivery have often created perverse incentives and fragmentation in the system, with low paid workers often



carrying the costs of reform. implications (Centre for Public Services, 2003; Escott and Whitfield, 1995).

This argument is well accepted in relation to healthcare. A great deal of evidence is available to show that a wide range of inequalities result in increased demand for health care services. These include socio-economic inequality and multiple deprivation<sup>6</sup> (DoH and HM Treasury, 2002), discrimination based upon ethnicity, gender, disability, age or other grounds and the sense of social exclusion that results from an inability to participate in socially normal practices (including employment, leisure and social interaction).

It is also increasingly accepted that these same dynamics result in inter-generational inequality: the disadvantaged child becomes a disadvantaged adult who brings up disadvantaged children and becomes a disadvantaged older person (Centre for Public Services, 2004: 37-43; DfES, 2003). At each stage in the life cycle, disadvantage and inequality) necessitate more costly interventions at a later date than if inequality was simply tackled at source. There is a need, therefore to move from an approach based on outlawing discrimination to one based on promoting greater equality. As one of our

Frequently this has had negative equality

#### Box 6: Selected Evidence and Recommendations from the Independent Inquiry into Inequalities in Health (Acheson Report)

The government's own independent inquiry into health inequalities (the Acheson Inquiry found that material inequality and deprivation, poor quality housing and a lack of mobility, independence and social contact as well as poor quality services all create ill health among older people, thereby generating increased (and often repeated episodes of) demand for responsive and crisis services. Early intervention to tackle the root causes of health inequality for older people would reduce demand for these expensive services. More importantly it would also be more efficient in the sense that interventions achieved a more positive goal for older people.

- policies which will further reduce income inequalities, and improve the living standards of households in receipt of social security benefits (recommendation 3).
- uprating of benefits and pensions according to principles which protect and, where possible, improve the standard of living of those who depend on them and which narrow the gap between their standard of living and average living standards (recommendation 3.2).
- measures to increase the uptake of benefits among entitled groups (recommendation 3.3).
- policies to improve insulation and heating systems in new and existing buildings in order to further reduce the prevalence of fuel poverty (recommendation 12.1).
- amending housing and licensing conditions and housing regulations on space and amenity to reduce accidents in the home, including measures to promote the installation of smoke detectors in existing homes (recommendation 12.2).
- the development of policies to reduce the fear of crime and violence, and to create a safe environment for people to live in (recommendation 13).
- the further development of a high quality public transport system which is integrated with other forms of transport and is affordable to the user (recommendation 14).
- concessionary fares should be available to pensioners and disadvantaged groups throughout the country, and that local schemes should emulate high quality schemes, such as those of London and the West Midlands (recommendation 18).
- the further development of health and social services for older people, so that these services are accessible and distributed according to need.

Acheson, *Independent Inquiry into Inequalities in Health Report* (1998).

<sup>6</sup> Including income, housing, education, work, health and well being.

interviewees put it to move away from “fire-fighting” the consequences of inequality throughout the life cycle to fire prevention, tackling inequality at source.

The implications of this whole systems perspective are that age equality is much more about *equality* than *age*. Without negating the obvious reality that people’s needs change at different points in their life cycles public service efficiency is best served by ensuring that individuals and social groups are not disadvantaged relative to others at any point in their life, regardless of their age. This has been accepted by the Audit Commission in regard to older people:

“...older people are seen by many as dependent and frail, rather than as citizens with a contribution to make, the response of public services is often limited. Services for older people have been seen to be predominantly focused on a narrow range of intensive services that support the most vulnerable in times of crisis; older people are seen as an NHS and social care ‘problems’. In fact, at any one time, only about 15 per cent of older people are in immediate touch with care services: meanwhile the vast majority receive little attention. Resulting in older people and carers feeling excluded and ignored, rising pressure on acute services as we fail to prevent crises through early action, and tight ‘gatekeeping’ that shuts people out rather than including them.” (Audit Commission, 2004: 2).

What is needed is an approach that recognises and tackles the key barriers to equality of outcome rather than a narrow and formal equality of access to services. Access to care or other services can be completely equitable without addressing the challenges raised by the need for age equality.

“services and employment practices have an imbalance to redress. And this is not about treating everybody in the same way, but about acting address evident disadvantage and diverse needs – levelling the playing field” (Audit Commission, 2002a: 9).

A Positive Public Duty, whether part of a single equality act or separate legislation for each of the strands, is one mechanism for doing just this.

The goals set for public services, the way in which budgets are allocated, the choice of services to be provided and the means by which they are delivered all need to bear in mind the specific and multiple dynamics of inequality, discrimination and exclusion faced by older people. Unless this is the case service delivery will continue to ‘fire fight’ the symptoms of inequality rather than to treat its causes.

Focusing public policy and public service delivery on these issues is a difficult task. Competing priorities, capacity challenges, resource constraints and organisational fragmentation and inertia, in addition to a dominant culture of age discrimination are all potential barriers to reforming public services to achieve age equality. The perceived failure of various voluntary or soft-law approaches such as the Policy Appraisal for Equal Treatment Guidelines in the UK and Northern Ireland offer evidence that a Statutory approach is necessary (O’Cinneide, 2001: 2; Escott and Whitfield, 2002). This report has collected evidence that, despite some technical weaknesses, Positive Public Duties do help to promote a culture change and to focus organisational agendas on equalities issues. Moreover, where weaknesses in this approach

have been identified, it is clear that they are of a technical nature and can be 'written out' of the legislative framework as a result of a process of policy and organisational learning.

### **The Social, Community Cohesion and Legal Efficiency Case**

Interviewees made a strong case for a Positive Public Duty on age equality in the context of measures to increase community cohesion. Specifically this aspect was mentioned in light of the way in which several other Positive Public Duties are drafted with the inclusion of a high level commitment to 'promote good relations', as in the case of the RRAA (2000). It was felt by interviewees that this was an appropriate way of moving beyond a debate based on combating discrimination to one of properly understanding mutual rights and responsibilities that are part of citizenship. Crucially important is that issues of intergenerational equality and cohesion come to the fore.

Promoting Citizenship and community cohesion was cited in the White Paper as an explicit focus for the CEHR (DTI et al, 2004: 21) However, the CEHR will require a strong legislative framework if it is to be able to work effectively toward achieving this goal. Promoting good relations will be part of its armoury for enabling the public sector to promote community cohesion with regard to Race and Disability, and presumably Gender, but without a Public Duty on Age and the other 'new strands' the CEHR will find promoting community cohesion difficult with regard to issues of age and intergenerational cohesion, sexual orientation, religion or belief and other aspects of equality.

In the first instance a Positive Duty approach is beneficial because it moves away from an adversarial basis for the legislation. Progress on age equality is no longer confined to a legal battle between employer and litigant, in which pre-existing inequalities mean that the majority of those that are discriminated against can never hope to press their rights and valuable resources (often sourced from public finances) are wasted in legal fees and court costs.

Second, it allows a much more comprehensive definition of the action needed to secure equality. Equality itself becomes the objective of action rather than the avoidance of legal action, or in the event that such action is launched, a defence against wrongdoing according to the technical details of the law.

Third, by moving away from combating discrimination toward securing equality, the legal framework automatically becomes a great deal more flexible. This approach is particularly appropriate for age. While much anti-discrimination legislation has sought to protect or advance the interests of a highly differentiated minority (or in the case of gender a highly visible majority) which is defined by a lack of social, economic or political power, age equality raises substantively different issues. As Fredman argues, "age does not define a fixed delineated group" and there are grounds for distinguishing between the needs of different age groups without discrimination (be it negative or positive) being in play (Fredman, 2001: 15). A Positive Public Duty approach moves beyond combating discrimination. It can be based instead on securing outcomes, such as age equality, but can also be drafted in such a way as to avoid outlawing perfectly justifiable differences of treatment. The approach can also be much more inclusive and flexible.

Fourth, the inclusive nature of a Positive Public Duty is advantageous to the overall goal of age equality. In adversarial frameworks the results can be to hamper progress. For instance, the current legislative proposals contained in Age Matters may motivate employers to avoid employing older people in ways not covered by the legislation, rather than to risk legal action in the event of a disgruntled employee (whether the employee has grounds for complaint or otherwise). In a Positive Public Duty, this approach is removed. Organisational requirements are made more transparent and younger people who are discriminated against on age grounds can also benefit from legal protection.

As a result a Positive Public Duty approach fosters community cohesion rather than transferring social divisions into the legal system. Moreover, because a Positive Public Duty is less likely to lead to a large number of individual legal cases, it is more efficient with the legal system. The sliding scale of sanctions available to the CEHR and the potential for taking exemplar legal action from which all organisations can learn mean that the capacity of the legal system will be put under less additional pressure and less resources will be used in taking fragmented legal action by individuals.

### **The Cultural Case**

Age discrimination and ageism are social realities, heavily embedded in civil society and popular culture. In order to tackle them it is necessary to move beyond the narrow focus on outlawing discrimination in employment practices. It is necessary to persuade people that ageism is wrong. That means making a powerful statement about age discrimination and the importance of age equality. By refusing to offer age (and the other 'new' strands) legislative equality with the more established strands of Race, Disability and Gender the government is missing an important opportunity to do this and sending the wrong message. Tackling the culture of age discrimination also means enabling and obliging public bodies to correct stereo-types as well as taking concrete action to remedy material disadvantage.

A general Positive Public Duty on age equality would address both these issues. The RRAA (2000) contains a duty to Promote Good Relations which applies to a vast range of public bodies, including schools and Education Authorities. The educative function possessed by these bodies means that they are well placed, through advertising, community leadership and through the delivery of services (particularly education) to promote positive cultural ideals regarding equality generally, incorporating age equality. Interviewees also noted the potential role of these bodies in bringing generations together to undertake mutual learning, in the process making progress on community cohesion and issues related to Anti Social Behaviour.

### **The Rights and Equality Case**

The current proposals for age equality regulations to outlaw age discrimination in the workplace are based on the right to be a worker. In as much as they are based on the transposition of the EU Equal Treatment Directive, they arise from a recognition of the need for the European economy to generate more employment in order to maintain productivity competitiveness with external

competitors such as the United States<sup>7</sup> and the need to generate higher employment among older workers in order to protect the fiscal security of member states in the future. The basis for the proposed age discrimination regulations is not then primarily one of rights and equality at all. Rather it is based on the need for economic efficiency, productivity and competitiveness.<sup>8</sup> This may partially explain why the existing proposals do not extend more broadly to cover issues of goods and services or as argued for above a broader approach still, based on public policy planning for equality.

There are a variety of alternative philosophical bases for legislation which place a prior concern for the rights of individuals and groups themselves, beginning from the essential equality of all people, regardless of their age.<sup>9</sup> Such a philosophical basis would require a Positive Public Duty extending beyond employment and mandating public policy planning to address the multiple causes of inequality and discrimination.

Fredman (2001: 16-21) discusses a variety of principles which might underlie policy responses to promote equality. These approaches can be classified under three categories:

- *Equality of process* – Policies aimed at equal treatment of all and some policies which guarantee rewards on the basis of merit.
- *Equality of opportunity* – Some policies which guarantee rewards on the basis of merit, policies to allow individuals to make informed and free choices.
- *Equality of outcome* – Policies for the fair distribution (and redistribution) of resources, policies to guarantee equal participation in society, policies to secure the dignity of individuals as an ‘irreducible minimum’.

The first category of policies largely leave the substantive dynamics of inequality and discrimination untouched. The second category is broad ranging and policy responses exist on a spectrum. On the one hand they can be largely consistent with guaranteeing equality of process. Other policies in this category can seek a certain point or situation within which to equalise opportunity. The comprehensive education system or policies which prevent discrimination in the workplace are examples of this. However, these policies are likely to fail to achieve substantive changes in outcome unless the wider determinants of inequality are challenged. On the other end of this spectrum policies to promote equality of opportunity may span across multiple policy areas: education, health, income, health and access to services. The third category of policy responses expand upon this latter approach. They would seek to tailor public policy to equalise social outcomes by systematically addressing the causes of discrimination and inequality. The most important difference of this category of policy responses is the emphasis on

---

<sup>7</sup> EU EMP STRAT REF.

<sup>8</sup> In philosophical terms, as Fredman points out, this violates the Kantian moral imperative: “that each person should not be treated as a means to an end but always and at the same time as an end in themselves”.

<sup>9</sup> or indeed any other individual or personal characteristic.



redistribution. To equalise social outcomes would require a substantial redistribution of resources and opportunity.

### **5.3 A Single Act and Single Duty or A Duty for Age Equality?**

The Government appears unwilling to consider a Single Equalities Act with a Single Public Duty. In the absence of this clearly desirable development, an alternative is to promote separate Duties on the 'newer' strands, including age. The discussion below is equally relevant to a Single Act and Duty or a separate Age Duty.

#### **Single Equality Bill in Northern Ireland**

Consultation is currently in process (June – November 2004) on a Single Equality Bill to harmonise, update and extend anti-discrimination and equality legislation in Northern Ireland. "A single Equality Bill will bring together in a structured way all of the provisions contained in existing legislation and update and extend those provisions where appropriate" (OFMDFM, 2004). The Green Paper sets out a series of options to extend the grounds (equality strands) and the scope (employment, training, and provision of goods, facilities and services).

'Socio-economic status' is one of the additional grounds. The Green Paper refers to South African equality legislation (Promotion of Equality and Prevention of Unfair Discrimination Act 2000) which states that "the socio-economic status includes the social or economic condition or perceived condition of a person who is disadvantaged by poverty, low employment status or lack of or low-level educational qualifications" (ibid). The government is likely to argue that the New Targeting Social Need initiative in Northern Ireland and a combination of initiatives such a New Deal for Communities in Britain make the inclusion of a socio-economic equality strand unnecessary. However, Zappone concludes although "poverty-reduction is a significant distributional objective, it is insufficient for the change required to accommodate diversity and to reduce substantially the vast array of inequalities experienced. It is insufficient particularly if it is focused strictly on income poverty and is not allied to a reassessment of social conditions so that members of society have similar opportunities of well-being and self-determination" (Zappone, 2002).

It is highly questionable whether a variety of regeneration, community cohesion and social policies and funding regimes can provide comparable benefits to making social-economic status an equality strand. Momentum appears to be gathering around this type of strand. The Scottish Duty includes the definition of 'social origin' and recent Guidance on consultation includes 'people on low incomes' as a specific equalities strand (Reid Howie Associates, 2002).

The Green Paper also examines the options of extending the equality grounds to include pregnancy and maternity, past convictions, victims, language, gender identity and gender redistribution.



## 5.4 Key Principles to Guide the Establishment of Public Duties

Interviewees discussed the importance of a number of characteristics in drawing up Public Duties:

- **Declaration of importance** – It is important that a Duty sends an unambiguous declaration of the importance of promoting (age) equality.
- **Clarity of purpose** – it must be clear to those bodies and organisations bound by a Public Duty what the purpose of the Duty is and how they are supposed to achieve it. Duties must clearly link to policies, tools and public management approaches for the mainstreaming of equalities considerations.
- **Achievability** – Duties must be achievable.
- **Consultation** – Duties must be carried out in full consultation with equality groups.
- **Openness to Scrutiny** – Actions in support of the achievement of Duties must be open to public and independent scrutiny.
- **Enforceability** – A Duty must be clearly enforceable via a well understood system of sanctions.
- **Related to outcomes** – Duties must clearly link to social outcomes based on greater (age) equality.

## 5.5 Key components of equalities duties and legislation

### The Desirability of a Comprehensive Public Duty

A comprehensive Public Duty relating to equality generally and to the specific groups listed below is highly desirable. This would send the right message that equality is to be taken seriously as a principle in and of itself. The specific groups should encompass at least:

- Persons of different racial groups, age, religious belief, political opinion, marital status or sexual orientation.
- Men and women.
- Persons with a disability and persons without.
- Persons with dependents and persons without.
- Persons of different social status.

However, it is important that the identification of these specific strands does not exclude others. As such it would also be important to ensure that the principle of equality itself is to the fore, rather than the specific groups in order to avoid a hierarchy of equalities groups. Moreover, the list of those groups identified as being worthy of particular focus should be amendable via regulation to ensure that it is flexible to meet changing social need.

While such a comprehensive Duty is highly desirable, there are clear political barriers to overcome before it could be achieved. As such in the meantime, a separate Duty on Age equality is necessary.

## A General Duty on Age Equality

All public authorities should be required in carrying out their functions to promote good relations between persons in all the equality strands, or in the case of a separate Age Duty to people and groups of people of different ages.

The applicability of the Duty should be strengthened through an alternative to the familiar formulation of 'having due regard'. Organisations covered by the Duty should be obliged to 'take action' to promote good relations between all people including those of different ages.

Moreover, it should be clear that this Duty applies to the multiple functions that public bodies undertake, including:

- Democracy, decision making, accountability and local leadership.
- The promotion of well being, community cohesion and sustainable development.
- Employment.
- Service delivery and improvement.
- Commissioning, procurement and the management of services, investment and planning.

## Specific Duties

The literature on the impact of existing Public Duties and the interviews carried out in this project suggest that the following Specific Duties should be included:

- **Equality Scheme** – An Equality Scheme covering all the equality strands should be prepared on an annual basis setting out the arrangements and procedures for undertaking each of the other Specific Duties and where relevant, the results.
- **Consultation** – Each Specific Duty should be subject to consultation with the public including a wide range of community, voluntary and trade union organisations.
- **Screening of policies** - All existing and new policies should be screened to determine which policies are likely to have a significant impact on equality. This will identify which policies will be subject to a full equality impact assessment (EQIA) with a timetable for prioritisation.
- **Equality Impact Assessment** - EQIA is a method of assessing, using quantitative and qualitative data, whether existing and proposed policies have an adverse impact on equality of opportunity for one or more of the equality groups. An EQIA should be incorporated in an integrated impact assessment where this is practical.
- **Training** – Public authorities should be required to prepare a training and awareness programme consisting of:
  - staff awareness of the responsibilities under the public duty
  - training in screening, EQIA and integrated impact assessment

- training in consultation methods
- training and awareness for community and voluntary organisations
- **Workforce / Service Users Monitoring** – this should consist of keeping up to date records of workforce composition in relation to service users and the local labour market, pay audits and monitoring of training and promotion.
- **Performance Monitoring** – This should consist of two elements:
  - *Annual review of progress* - Public authorities should be required to publish an annual review of progress in implementing the public duties. This should be to a common framework, similar to that used by the Equality Commission in Northern Ireland. Regional government/assemblies should review the performance of the major public authorities in their region taking account of the range of services delivered and functions performed and their importance for equality groups and the region. (Deleted: regional economy).
  - *Monitoring policy/project implementation* - This should be designed to identify whether any new adverse impacts arise during implementation, to take mitigating action and to feed into the EQIA development process. It should be integrated into the authority's performance monitoring system.
- **Communications strategy:** Public authorities should be required to produce a strategy detailing how they intend to communicate the rights, opportunities and responsibilities and planned implementation of the public duty to their staff and trade unions (with equal obligations on third party providers), equalities groups and the voluntary and community sector generally, and to the general public.
- **Complaints:** The legislation should enable complaints to be made by individuals and community, civil society and trade union organisations on behalf of their members. Public authorities should be required to publish the number and type of complaints and a summary of the responses to and action taken in respect of complaints in the annual review of progress.

### Scope of the Duty

The scope of the Duty should be defined through a schedule of public bodies and other organisations. This should be amendable by order of the Secretary of State and transitional arrangements should be mandated in the case of public sector reform so that the existing equalities obligations of one public body are transferred to others at the time of the transfer of obligations until such time as the Schedule of public bodies can be amended.

Given the changing arrangements for the delivery of public services, it is also vital that the Duties are passed on to contractors and third parties involved in the delivery of public services. This could be achieved via two methods:

- Explicit recognition in the wording of the Duty that it applies to all the functions undertaken by and on behalf of the listed public bodies.
- The preparation of separate Duties for the insertion in separate legislation. These should extend the coverage of sympathetic Duties to all bodies

engaged in the delivery of specific services, regardless of who they are delivered by, the details of their financing and who they are being delivered to. Such services should include as a minimum: education, training, social care, health and nursing care. Such Duties should only apply to Bodies not already covered by the Public Duties described above.

In addition to these mechanisms for the extension of equalities concerns to the private sector a Single Equalities Act should include comprehensive equalities Duties on the employment of staff in the private sector, with a sliding scale of obligations based on the number of employees and size of turnover. It is also desirable for Government to prepare model procurement clauses for the mainstreaming of equalities concerns in contracts with the public sector.

## **5.6 Other related measures to be implemented with the legislation**

Legislation alone is inadequate. The public duty must be supported by a number of other measures.

### **Central Government, Performance Management and Project Implementation**

The use of centrally agreed performance targets is increasingly accepted as a means of mainstreaming strategic objectives and priorities throughout the policy development and implementation process. Central Government Departments should therefore agree Public Service Agreement Targets to mainstream equal opportunities objectives. These should be integrated with investment projects, so that equal opportunities are mainstreamed throughout capital projects and the service improvement process. Local partners in capital projects such as local authorities, health authorities, special delivery vehicles such as LIFT and BSF partnerships should have to demonstrate that they have taken account of equalities needs and that equalities considerations have shaped the development of proposals as a criterion for approval. A sliding scale of scoring criteria should be developed so that the desirability of consultation and local capacity building should also be incorporated to develop a competitive process of leveraging up local equalities planning. This process would need to be based on a multi-strand and broad definition of equality to avoid the privileging of certain equalities groups. A community cohesion approach to equality rather than an anti-discrimination approach would also be necessary and desirable.

### **Sector guidance**

Guidance should be prepared for particular sectors, such as health, education and housing, to address the specific equality issues of each sector, the approach to screening and equality impact assessment, different types and levels of data and information required and the most appropriate consultation methodology.

**Advice on methods of mitigating adverse impact**

Experience indicates that public authorities require detailed guidance on considering mitigating measures to reduce or eliminate adverse impact and/or developing alternative policies. Guidance should include advice on taking action to lessen the severity of adverse impact, developing policies which better promote equality of opportunity and mainstreaming equalities in options appraisal.

**Promote consortia across sectors and regions in screening and EQIA**

A number of consortia and joint initiatives have been developed between public authorities, for example in the health and further education sectors, with joint programmes for screening, EQIAs, training and consultation. The CEHR and other national and regional public sector bodies could take a more proactive role in establishing joint programmes.

**Promote in-house capacity building with selective use of consultants**

Building knowledge, experience and best practice within public authorities will be essential for the effective implementation of public duty responsibilities. Voluntary and community organisations in Northern Ireland reported that the use of consultants in EQIA and consultation processes had been a negative development because it restricted the growth of knowledge on equality issues amongst public authority staff and thus stunted mainstreaming. Some public authorities were able to blame consultants for consultation and feedback failures.

**Capacity building grants to community/voluntary organisations for involvement and consultation**

The government and public authorities must allocate funds to support capacity building in the community and voluntary sector, particularly representative equality groups, to enable them to participate in the implementation of the public duties. This should include training and awareness programmes, commenting on documentation and participating in the consultation process.

**Promote best practice**

The CEHR should cooperate with other agencies such as the Audit Commission and IDeA to develop a publicly accessible database of best practice covering all the quality strands and promoting good relations.

**Preparation of templates**

The CEHR must be proactive and prepare at the earliest opportunity a series of templates and frameworks to assist public authorities in screening policies, reporting progress, monitoring project implementation, assessing consultation processes and other responsibilities.

## **Planning**

Preparation of guidance on planning systems to assess social needs of all the equality strands and how this should be reflected in spatial planning, economic strategies and service planning in public authorities.

## **Relationship to Regulatory Impact Assessments (RIAs)**

Government departments are required to carry out a Regulatory Impact Assessment on new policies and legislation to assess the effects on business. The legislation should be amended so that equality issues are mainstreamed in RIAs and impact assessment must identify the impact equality impact.

## **5.7 Enforcement and Implementation**

There are a number of issues related to enforcement and implementation of a Positive Public Duty on Age Equality need to be accounted for in supporting guidance and institutional structures.

### **Accountability**

It is vitally important that the equality plans and strategies of the CEHR and public authorities, as well as the processes such as screening and EQIA, are widely consulted with equality groups. The CEHR will be accountable to Parliament and local government is democratically accountable. But there are an increasing range of quasi-public/private organisations and companies which are not directly democratically accountable or where the lines of accountability are indirect. Consultation is therefore an essential component, as the Equality Commission in Northern Ireland and the Scottish Executive have demonstrated, of the implementation of a public duty.

### **Local capacity building**

Consultation practices alone are inadequate. Equality groups, community and trade union organisations must have the capacity to respond, participate and lead the debate. The CEHR and public bodies must also have responsibility for increasing public awareness of equality legislation, policies and processes. This will require allocating resources to support a community leadership role and providing assistance to enable equality groups to fully participate in the consultation process.

### **Scrutiny**

Rigorous national, regional and local monitoring and evaluation of the process, implementation and outputs/outcomes are vitally important so that experience, lessons learnt and good practice can be shared.

### **Impact assessment**

Screening and EQIA are key processes to identify adverse impact and create opportunities to promote equality of opportunity and good relations and should ultimately be an integral part of an integrated impact assessment of public policy-making and projects. An EQIA training programme will be needed and a system or framework of inspection devised for EQIA using regional scrutiny,



Audit Commission and, in the case of major EQIA or an annual sample, the CEHR.

### **Sliding scale of enforcement**

A series of linked enforcement mechanisms is essential to persuade and pressure those public authorities who address the equality agenda with reluctance. The aim is ultimately to achieve organisational and cultural change and this is more effectively achieved by a sliding scale of enforcement rather than a full legal challenge, which has its own drawbacks and can never be a certainty anyway.

## 6. Appendix: List of interviewees

Name	Position	Organisation
Elizabeth Duncan		Help the Aged Scotland
Andrea Murray	Head of Public Duty	Equal Opportunities Commission
Prof Teresa Rees		University of Cardiff and CEHR Taskforce
Cathy Peattie MSP	Convenor of the Equal Opportunities Committee	Scottish Parliament
John Griffiths	Deputy Minister with Responsibility for Older People	Welsh Assembly Government
Kate Bennett	Chief Executive	Equal Opportunities Commission Cymru
Tessa Harding	Policy Officer	Help the Aged
Helena Scott	Policy Officer	Age Concern Scotland
Patrick Grattan	Director	Third Age Employment Network
Gwenda Thomas AM	Chair, Equal Opportunities Committee	Welsh Assembly
Sarah Stone		Age Concern Cymru
Lisa King	Head of Public Duty	Commission for Racial Equality
Jaqui Dix	Policy and Research Officer	Age Concern Cymru
Claire Bennett	Clerk, Equal Opportunities Committee.	National Assembly for Wales
Anil Gupta	Policy Officer	COSLA
Tim Hopkins		Equality Network

Danny Lambe	Head of Section 75 Team	Equality Authority for Northern Ireland
Dr David McConnell	Policy Officer	Age Concern Northern Ireland
Brian Ferguson	UNISON Convenor	Northern Ireland
Colm O'Conneide		Faculty of Law, University College London
Charlotte Smith	Coordinator	London Older People's Resource Facility
Audrey Young	Head of Diversity Performance	Greater London Authority
Gordon Deuchers		Age Concern London
Helena Scott	Policy Officer	Age Concern Scotland
John Wilkes		EOC Scotland and CEHR Taskforce

## 7. References

- Acheson, D (1998), *Independent Inquiry into Inequalities in Health Report*, London: The Stationary Office.
- Advisory Group on a Strategy for Older People in Wales (2002), *When I'm 64...and more*, Cardiff: WAG
- Age Concern Cymru (2003), *Response to the DTI Equality and Diversity: Age Matters Age Consultation, 2003*, Cardiff: Age Concern Cymru.
- Age Concern England (2003) *Age Concern's Response to Equality and Diversity – The Way Ahead*, London.
- Age Concern England (2004) *The Economy and Older People*, London.
- Age Concern Northern Ireland (2003) *Agenda for the Age: Millennium Debate of the Age*, Belfast.
- Age Concern Northern Ireland (2003) *Report on the Analysis of its Questionnaire on the Impact of Section 75 on Public Authorities and the Older Community to date*, Belfast.
- Age Concern Scotland (2002), *Response to the Inquiry into Mainstreaming Equality into the Activities of the Scottish Parliament*, Edinburgh: Age Concern Scotland.
- Audit Commission (2003) *Greater London Authority: Equalities for All, Inspection Report*, London.
- Audit Commission (2004), *Older People – Independence and Well Being: The Challenge for Public Services*, London: Audit Commission.
- Audit Commission (2002), *Equality and Diversity*, London: Audit Commission.
- Audit Commission (2002a), *Directions in Diversity: Current opinion and good practice*, London: Audit Commission.
- Bennett, C; Booth, C and Yeandle S (2001), *Mainstreaming Equality in the Committees of the Scottish Parliament*, Sheffield: CRESR, Sheffield Hallam University.
- Breitenbach, E (2003), *Statutory Duties To Promote Equal Opportunities and Evidence of their Impact*, Briefing Note for the Strategic Group on Women, Scottish Executive, (March 2003).
- Centre for Public Services (2004), *Health and Social Care and Sustainable Development in the East of England*, Cambridge: Department of Health.
- Centre for Public Services (2003), *Report on the Survey of Social Workers in Lancashire County Council*, Sheffield: Centre for Public Services/Lancashire County UNISON.
- Chaney, P and Fevre, R (2002), *An Absolute Duty: Equal Opportunities and the National Assembly for Wales – A study of the Equality Policies of the Welsh Assembly Government and their Implementation: July 1999 to March 2002*, Cardiff: Institute of Welsh Affairs.

Collins, C. (2002) *Single Equality Body: Issues Paper*, Equality and Diversity Forum, London.

Collins, E. (2003) *Mainstreaming Equality in the Statutory Duties in Northern Ireland*, in *Mainstreaming Equality: Models for a Statutory Duty*, Belfast.

Collins, Clare (2004), *Public Involvement and the Commission for Equality and Human Rights*, London: Age Concern England.

Commission for Racial Equality (2002), *Towards Equality and Diversity: Implementing the Race and Employment Directives: A Response from the Commission for Racial Equality*, London: CRE.

Commission for Racial Equality and Schneider-Ross (2003) *Towards Racial Equality: An evaluation of the public duty to promote race equality and good relations in England and Wales 2002*, London.

Commission for Racial Equality (2003) *Equality and Diversity – The Way Ahead: Response by the Commission for Racial Equality*, London.

Commission for Racial Equality (2004) *A Formal Investigation of the Police Service in England and Wales: An Interim Report*, London.

Commission for Racial Equality (2004) *CRE to take enforcement action against police forces and authorities*, Press Release, 14 June, London.

Department of Health (2001) *National Service Framework for Older People*, London.

Department of Health (2001) *National Service Framework for Older People: Audit of Policies for Age-Related Criteria, A Guide*, London.

Department of Health (2002) *National Service Framework for Older People: Interim Report on Age Discrimination*, London.

Department of Health (2003) *National Service Framework for Older People: A Report of Progress and Future Challenges*, London.

Department of Health (2003), *Community Care Statistics 2003 Supported Residents (Adults), England*, London: DoH and ONS (December).

Department for Education and Skills (2003), *Education and Skills: The Economic Benefit*, London: DfES.

Department for Education and Skills (2004) *Five Year Strategy for Children and Learners*, Cm 6272, London.

Department for Education and Skills (2004) *Building Schools for the Future: The Local Education Partnership (LEP) Model*, London.

Department for Environment, Transport and the Regions (2001), *Older People and their Transport Needs and Requirements*, London: DETR.

Department of Health and HM Treasury (2002), *National Strategy for Neighbourhood Renewal*, London: HM Treasury.

Department for Trade and Industry, Department for Constitutional Affairs, Department for Education and Skills, Department for Work and Pensions, Home Office (2004), *Fairness and Opportunity for All: A New Commission for Equality and Human Rights*, White Paper, London: DTI (CM6185).

Department for Trade and Industry (2003), *Equality and Diversity: Age Matters – Age Consultation 2003*, London: DTI.

Escott, K and Whitfield, D (2002), *Promoting Gender Equality in the Public Sector*, EOC Working Paper 2, Manchester: Equal Opportunities Commission.

Escott, K and Whitfield, D (1995), *The Gender Impact of CCT in Local Government*, Manchester: Equal Opportunities Commission.

European Employment Taskforce (2003), *Jobs, jobs, jobs: Creating more employment in Europe, Report of the Employment Taskforce*, Brussels: European Commission.

Equality Authority (2003) *Mainstreaming Equality: Models for a Statutory Duty*, Conference Report, Dublin.

Equality Commission for Northern Ireland (2002) *Equality Monitoring, Consultation Document*, Belfast.

Equality Commission (2002) *Guide to the Statutory Duties - A guide to the implementation of the statutory duties on public authorities arising from Section 75 of the Northern Ireland Act 1998*, Belfast.

Equality Commission for Northern Ireland (2003) *Report on the Implementation of the Section 75 Equality and Good Relations Duties by Public Authorities, 1 January 2000 – 31 March 2002*, Belfast.

Equality Commission for Northern Ireland (2003) *Report on the Implementation of the Section 75 Statutory Duties, 1 April 2002 – 31 March 2003*, Belfast.

Equality Commission for Northern Ireland (2003) *Practical Guidance on Equality Impact Assessment*, Belfast.

Equality Commission for Northern Ireland (2003) *Legislative Reform: Commission Powers/Judicial Process*, Belfast.

Equality Commission for Northern Ireland (2003) *Response to Equality and Diversity – The Way Ahead*, Belfast.

Equality Commission for Northern Ireland (2004) *Equality Commission's Response to the Review of Public Administration*, Belfast.

Equal Opportunities Commission (2004), *What Difference: Action Points and summary record from the Public Duty Seminar*, Cardiff 21 April 2004, Wales: EOC.

Equality and Diversity Forum (2004), *Why Britain Needs an Equality Act*, London: Equality and Diversity Forum.

Evans, J.G. (2000) Service and Research for an Ageing Population, *Age and Ageing*, 29, p5-8.

Evans J.G. (2001) *Age Discrimination: Implications for of the Ageing Process*, in Fredman and Spencer, *Age as an Equality Issue*, Hart Publishing, Oxford.

Fletcher, A., Smeeth, L. and Breeze, E. (2002) The End of Age: But not for the worst off, *Age and Ageing*, 31, p11-12.



Forum on Discrimination (2004), *Equality and Human Rights in the 21<sup>st</sup> Century: The Scottish Context*, Edinburgh: SCVO.

Fredman, S (2002), *The Future of Equality in Britain*, EOC Working Paper no 5, Manchester: EOC.

Fredman, S (2001), "What do we mean by Age Equality", paper to the IPPR Seminar on *Age As An Equality Issue*, (21<sup>st</sup> November).

Fredman, S. and Spencer, S. (2003) *Age as an Equality Issue: Legal and Policy Perspectives*, Hart Publishing, Oxford.

Greater London Authority (undated) *Core GLA Procurement Strategy*, London.

Greater London Authority (2002) *Equalities for All, Best Value Review*, London.

Greater London Authority (2003) *Equalities Toolkit*, London.

Greater London Authority (2003) *Equality Impact Assessments*, London.

Greater London Authority (2003) *Equalities Framework 2002-04*, London.

Greater London Authority (2003) *Gender Equality Scheme*, London.

Kenyon, R and Hill, H (2004), "Race Equality Schemes Reviewed", Briefing 307, *Discrimination Law Association*, 21: (February).

Law Commission of Canada (2004) *Does Age Matter: Law and Relationships Between Generations*, Ottawa, Canada.

Levenson, R. (2003) *Auditing Age Discrimination: A Practical Approach to Promoting Age Equality in Health and Social Care*, Kings Fund, London.

Mayor of London (2003) *The First London Older People's Assembly, November 2002: Key Messages from the Event*, London.

Mayor of London (2003) *Low Incomes Among Older People in London: Interim Findings from GLA Research on Pensioner Poverty*, London.

Mayor of London (2003) *Report on the Mayor's Procurement and Fair Employment Seminar*, GLA, London.

Mayor of London (2003) *Report of the Mayor's Procurement and Fair Employment Seminar*, GLA, London.

Mayor of London (2004) *Leading the Field, Setting the Standard, The Mayor's Equalities Annual Report, 2003/04*, Greater London Authority, London.

Mayor of London (2004) *Budget and Equalities 2004-05: A Review of Progress across the GLA Group*, London.

Mayor of London (2004) *Older Peoples Assembly: The second London Older People's Assembly, Key Messages from the Event*, London.

National Assembly for Wales (2004), *Committee Response to UK Government Consultation: Equality and Diversity, Making it Happen*, Equal Opportunities Committee Paper (1 April) EOC(2)03-04(04), Cardiff: Equal Opportunities Committee.

National Assembly for Wales (2004a), *Draft Report on Mainstreaming Equality in the Work of the Assembly*, Committee Paper (May), EOC(2)04-04(06-Annex A).

National Assembly for Wales (2004b), *The National Assembly for Wales: Arrangements to Promote Equality of Opportunity Financial Year 2002 – 2003*, Cardiff: EOC.

National Assembly for Wales (2003), *Mainstreaming Equality Policy Review*, Cardiff: Equal Opportunities Committee.

National Assembly for Wales (2003a), *Mainstreaming Equality Review – Consultation Results and Outline Programme*, Committee Paper (2 October), EOC(2)03-03(8), Cardiff: Equal Opportunities Committee.

National Assembly for Wales (2003b), *Service Provision for Gypsies and Travellers in Wales*, Cardiff: Equal Opportunities Committee.

Northern Ireland Social Care Council (2003) *Annual Review of Progress 2002-03 on the Implementation of the Equality and Good Relations Duties under Section 75 of the Northern Ireland Act 1998*, Belfast.

O’Cinneide, Colm (2002), *A Single Equality Body: Lessons from Abroad*, EOC Working Paper Series No 4, Manchester: EOC.

O’Cinneide, Colm (2001), *Taking Equal Opportunities Seriously: The Extension of Positive Duties to Promote Equality*, London: Equality and Diversity Forum.

O’Cinneide, C. (2002) *Comparative European perspectives on Age Discrimination Legislation*, UCL, London.

O’Cinneide, C. (2003) *Taking Equal Opportunities Seriously: The extension of positive duties to promote equality*, Equality and Diversity Forum, London.

O’Cinneide, C. (2003) *Beyond the Limits of Equal Treatment: The Use of Positive Duties in Equality Law*, in *Mainstreaming Equality: Models for a Statutory Duty*, Equality Authority, Dublin.

O’Cinneide, C. (2004) *A New Generation of Equality Legislation? Positive Duties and Disability Rights*, UCL, London

Office for National Statistics (2004), *Age People & Migration Age structure: Average age rose to 38.2 years in 2002*, London: ONS.

Office for National Statistics (2004a), *UK 2004*, London: ONS.

Office of the First Minister and Deputy First Minister (2003) *Cross-Departmental Equality and Social Need Research and Information Strategy*, Belfast.

Office of the First Minister and Deputy First Minister (2004) *Ageing in an Inclusive Society: Promoting the social inclusion of older people – A consultation document*, Belfast.

Office of the First Minister and Deputy First Minister (2004) *A Single Equality Bill for Northern Ireland: A Discussion Paper on options for a Bill to harmonise, update and extend, where appropriate, anti-discrimination and equality legislation in Northern Ireland*, Belfast.

- Reid Howie Associates (2002), *Good Practice Guidance for Consultation with Equalities Groups*, Edinburgh: Scottish Executive.
- Roberts, E, Robinson, J. and Seymour, L. (2002) *Old Habits Die Hard: Tackling Age Discrimination in Health and Social Care*, Kings Fund, London.
- Scottish Executive (2004), *The Local Government in Scotland Act 2003: Best Value Guidance*, Edinburgh: Scottish Executive, (1/2004).
- Scottish Executive (2003), *Making Progress: Equality Annual Report*, Edinburgh: Scottish Executive.
- Scottish Executive (2003a), *Learning from Experience: Lessons in Mainstreaming Equal Opportunities*, Edinburgh: Scottish Executive.
- Scottish Executive (2000), *Equality Strategy: Working Together for Equality*, Edinburgh: Scottish Executive.
- Scottish Office (1998), *Shaping Scotland's Parliament, Report of the Consultative Steering Group on the Scottish Parliament*, Edinburgh: Scottish Office.
- Kidner, Camilla (2004), "The Commission for Equality and Human Rights", *SPICe Briefing*, 04/43 (11 June).
- Scottish Parliament Equal Opportunities Committee (2004), *Minutes of the Equal Opportunities Committee*, Meeting No 6, Edinburgh, Scottish Parliament (23 March).
- Scottish Parliament Equal Opportunities Committee (2004a), *Minutes of the Equal Opportunities Committee*, Meeting No 8, Edinburgh, Scottish Parliament (27 April).
- Scottish Parliament Equal Opportunities Committee (2004b), *Minutes of the Equal Opportunities Committee*, Meeting No 9, Edinburgh, Scottish Parliament (10 May).
- Scottish Parliament Equal Opportunities Committee (2004c), *Minutes of the Equal Opportunities Committee*, Meeting No 12, Edinburgh, Scottish Parliament (15 June).
- Scottish Parliament Equal Opportunities Committee (2003), *Mainstreaming Equality in the Work of Parliamentary Committees*, Session 2: Meeting 2, EO/S2/03/2/3 Edinburgh: Scottish Parliament (9 September).
- Scottish Representative to the Commission for Equalities and Human Rights Task Force (2004), *Report on the work of the pre- White Paper phase of the Commission for Equality and Human Rights Task Force December 2003-April 2004*, paper to Scottish Parliament Equal Opportunities Committee, 12<sup>th</sup> Meeting, 2004 (Session 2), 15<sup>th</sup> June.
- UNISON Scotland (2002), *Mainstreaming Equality into the activities of committees of the Scottish Parliament, The UNISON Scotland Response*, Edinburgh: Scotland.
- Welsh Assembly Government (2003), *The Strategy for Older People in Wales*, Cardiff: WAG (January).

Welsh Assembly Government (2003a), *Strategy for Older People in Wales – Progress Report*, Paper by the Minister of Health and Social Services to the Cabinet Sub-Committee for Older People, OP(03-04)1, (November), Cardiff: WAG.

Welsh Assembly Government (2002), *Response to Recommendations in the Report of the Advisory Group on a Strategy for Older People in Wales ‘When I’m 64 ... and more’*, Cardiff: WAG.

Welsh Assembly Government (2004) *Welsh Procurement Initiative Annual Report 2003*, Cardiff.

Women & Equality Unit (2003) *Gender Impact Assessment*, Department of Trade and Industry, London.

Zappone, K. (2002) *Charting the Equality Agenda: A Coherent Framework for Equality Strategies in Ireland, North and South*, Equality Authority (Dublin and the Equality Commission for Northern Ireland (Belfast)).

## Legislation

Antisocial Behaviour etc Scotland Bill, London: The Stationary Office.

Government of Wales Act (1998) (c38), London: The Stationary Office.

Greater London Authority Act (1999), London: The Stationary Office.

Housing (Scotland) Act (2001), London: The Stationary Office.

Scotland Act (1998), London: The Stationary Office.

Standards in Scotland’s Schools Act (2000), London: The Stationary Office.

Local Government in Scotland Act (2003), London: The Stationary Office.

Northern Ireland Act (1998), London: The Stationary Office.

European Council Directive (27 November 2000) 2000/78/EC, establishing a general framework for equal treatment in employment and occupation, *Official Journal of the European Communities*, (2.12.2000), L 303/16.