

Measuring Up?

Report 2: Monitoring public authorities performance of the employment duties

September 2013



Equality and
Human Rights
Commission

Scotland

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Summary :

The Equality and Human Rights Commission (EHRC) is conducting a programme of work called 'Measuring Up?' which aims to monitor the compliance of listed authorities with the public sector equality duty in Scotland. In June, the EHRC commissioned a review of listed public authorities' performance of the employment duties which are set out in The Equality Act (2010) (Specific Duties) (S) Regulations 2012.

This report summarises the findings of the review and reports on the performance of 184 listed authorities. The duty to gather and use employee information requires listed authorities to publish information on the composition of their staff as well as the recruitment, retention and development of those staff. Overall, 93% of listed authorities published composition information by protected characteristic. However, listed authorities across all sectors performed poorly when publishing information on the protected characteristics of the staff they recruit and retain as well as the development that staff receive.

The review also examined how listed authorities with at least 150 staff met the duty to publish a gender pay gap figure and an equal pay statement which contained an equal pay policy and occupational segregation information. Listed authorities across all sectors performed more strongly: publishing rates for a gender pay gap figure was 94%, for equal pay policies it was 95% and for occupational segregation information it was 75%.

This report provides a summary of key findings from the review which used information held by the Commission on 31 July 2013.

Introduction

Under the Equality Act 2006, the Equality and Human Rights Commission has a statutory remit to protect, enforce and promote equality across nine protected characteristics which are set out in the Equality Act 2010. This includes regulating the Public Sector Equality Duty (PSED).

The Public Sector Equality Duty is a positive duty on public authorities and others carrying out public functions. It requires that public authorities consider equality in their day to day work in shaping policy, delivering services and in their employment practices. The PSED operates in two linked parts – the general equality duty and the specific duties.

The general equality duty is set out in S149 of the Equality Act 2010, and requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

The Specific Duties are set out in The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. They came into force on 27 May 2012¹ and are intended to assist listed authorities² to meet the three needs of the general equality duty.

¹ Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012
<http://www.legislation.gov.uk/sdsi/2012/9780111016718/contents>

² Listed authorities are authorities in Scotland who are listed within the Specific Duties Regulations and must meet those Regulations <http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/public-authorities-in-scotland-who-is-covered-by-the-specific-duties/>

The employment duties

Employment is a key theme of the Scottish specific duties. All listed authorities are required to take steps to gather and use employee information recording:

- the composition of its employees in relation to their relevant protected characteristics; and
- the recruitment, development and retention of employees in relation to their relevant protected characteristics

A listed authority's mainstreaming report must include an annual breakdown of this information and detail the progress that the authority has made in gathering and using this information to better perform the equality duty.

Public authorities with at least 150 employees at any point must also:

- publish information on the percentage difference among its employees between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime) – known as the gender pay gap
- publish a statement which sets out
 - the authority's policy on equal pay, and;
 - information on occupational segregation among its male and female employees.

Why are the employment duties important?

As well as being a legal requirement, the employment duties have a number of benefits for listed authorities and their employees. They:

- help identify potential action to tackle discrimination and harassment, advance equality of opportunity or foster good relations
- encourage the regular analysis of the impact of employment policies and practices
- support listed authorities to identify action that might be required to meet the needs of staff who share protected characteristics
- demonstrate the commitment to equality of listed authorities
- enable listed authorities to assess their performance against that of similar organisations, nationally or locally.

Methodology for the review of the duty to gather and use employee information

For the review of the duty to gather and use employee information, the Commission took the decision to **exclude from the review** 7 authorities whose compliance was already under consideration and 60 listed authorities who had no employees or fewer than 20 employees. These authorities were considered to have potential difficulty in publishing full employee information due to privacy concerns.

Therefore, of the 251 listed authorities subject to the Specific Duties, the review examined the employee information published by 184 listed authorities (the template for this review is included in the appendix).

The review also examined the 160 listed authorities who have **at least** 150 staff to establish if **gender pay gap information** and **equal pay statements** had been published.

Findings

The Commission's first report '**Measuring Up? Monitoring Public Authorities performance against the Scottish Specific Equality Duties**' (June 2013) found that 92% of listed authorities had published some information about the protected characteristics of their staff. This review examined a smaller number of listed authorities in more detail, looking specifically at reporting on composition, recruitment, retention and development.

The review found that 93% of the 184 listed authorities reviewed had published information about the composition of their staff, broken down by protected characteristic. In this review authorities were assessed as reporting on the composition of their workforce if they reported on any of the eight relevant protected characteristics.³

Listed authorities were more likely to publish information relating to age, sex, race and disability than to sexual orientation or religion or belief. Information on gender reassignment and pregnancy and maternity was poor across all sectors.

³ The public sector equality duty covers marriage and civil partnerships, with regard to eliminating unlawful discrimination in employment only.

Publication of breakdown of staff composition, by sector			
Sector	Bodies included in the review	Produced breakdown of staff composition	
		Number	%
Education Authorities	32	26	81%
Fire and Police Service	3	3	100%
Further and Higher Education	54	51	94%
Grant Aided Schools	5	4	80%
Health Boards	22	21	95%
Joint Boards	9	8	89%
Local Authorities	32	32	100%
Scottish Ministers	1	1	100%
Other	26	25	96%
Total	184	171	93%

Characteristics reported on by listed authorities in relation to staff composition		
Protected Characteristic	Number	%
Age	142	83%
Disability	145	85%
Gender Reassignment	37	22%
Race	149	87%
Religion or belief	88	51%
Sex	168	98%
Sexual orientation	81	47%
Pregnancy and maternity	36	21%
Total number of authorities who published information	171	

Publication of recruitment information

Overall, 55% of the listed authorities reviewed published information on recruitment. As with composition, the three most common areas on which listed authorities provided a breakdown of characteristics for staff recruitment were disability, race and sex.

Publication of breakdown of staff recruitment, by sector			
Sector	Bodies included in the review	Produced breakdown of staff recruitment	
		Number	%
Education Authorities	32	11	34%
Fire and Police Service	3	2	67%
Further and Higher Education	54	27	50%
Grant Aided Schools	5	3	60%
Health Boards	22	12	55%
Joint Boards	9	5	56%
Local Authorities	32	28	88%
Scottish Ministers	1	1	100%
Other	26	12	46%
Total	184	101	55%

Performance by these listed authorities in publishing recruitment information broken down by 'new' protected characteristics of sexual orientation, transgender status and pregnancy and maternity was poor across all sectors. Only 19% of listed authorities provided information regarding gender reassignment, with less than one in ten providing information on pregnancy and maternity.

Characteristics reported on by listed authorities in relation to staff recruitment		
Protected Characteristic	Number	%
Age	74	73%
Disability	93	92%
Gender Reassignment	19	19%
Race	96	95%
Religion or belief	52	51%
Sex	99	98%
Sexual orientation	48	48%
Pregnancy and maternity	8	8%
Total number of authorities who published information	101	

The way in which listed authorities gathered and used information about protected characteristics in relation to recruitment varied. Often, listed authorities highlighted that equalities monitoring for applicants was undertaken on an anonymous basis. This meant that while many organisations were able to provide figures for the characteristics of all applicants (and sometimes for those interviewed), they said they were not always able to follow this through to analyse the characteristics of those appointed.

Publication of staff development information

Overall, 40% of the listed authorities reviewed provided a breakdown of staff development in relation to any or all of the protected characteristics.

Publication of breakdown of staff development, by sector			
Sector	Bodies included in the review	Produced breakdown of staff development	
		Number	%
Education Authorities	32	6	19%
Fire and Police Service	3	1	33%
Further and Higher Education	54	16	30%
Grant Aided Schools	5	0	-
Health Boards	22	11	50%
Joint Boards	9	5	56%
Local Authorities	32	22	69%
Scottish Ministers	1	1	100%
Other	26	11	42%
Total	184	73	40%

Characteristics reported on by listed authorities in relation to staff development		
Protected Characteristic	Number	%
Age	44	60%
Disability	57	78%
Gender Reassignment	16	22%
Race	64	88%
Religion or belief	24	33%
Sex	65	89%
Sexual orientation	24	33%
Pregnancy and maternity	8	11%
Total number of authorities who published information	73	

Interpretations of staff development varied widely. Many interpreted “development” as training, but a significant minority interpreted it very narrowly as equalities training – and provided information on the protected characteristics of those who had undertaken equality and diversity training.

Others provided information on the protected characteristics of staff who had undertaken any type of training, including information on the protected characteristics of those who had expressed an interest in training and those who had undertaken training.

Other interpretations of development included promotions, appraisal results and level within the organisation (for example the protected characteristics of people in senior posts).

Publication of staff retention information

Overall, 39% of listed authorities reviewed provided information on staff retention by any or all of the protected characteristics. A high percentage of local authorities published this information, with over two thirds meeting this requirement.

Publication of breakdown of staff retention, by sector			
Sector	Bodies included in the review	Produced breakdown of staff retention	
		Number	%
Education Authorities	32	9	28%
Fire and Police Service	3	2	67%
Further and Higher Education	54	18	33%
Grant Aided Schools	5	2	40%
Health Boards	22	7	32%
Joint Boards	9	3	33%
Local Authorities	32	22	69%
Scottish Ministers	1	1	100%
Other	26	7	27%
Total	184	71	39%

Staff retention information was presented as the characteristics of people leaving the organisation. As with the other requirements, the publication of information on staff retention was highest for sex and race, closely followed by disability. Levels of reporting around sexual orientation and gender reassignment were poor. Reporting around pregnancy and maternity were significantly higher in staff retention than around composition, recruitment and development. As with the other areas, sex, race and disability were most commonly reported.

Characteristics reported on by listed authorities in relation to staff retention		
Protected Characteristic	Number	%
Age	42	59%
Disability	55	77%
Gender Reassignment	12	17%
Race	64	90%
Religion or belief	21	30%
Sex	63	89%
Sexual orientation	23	32%
Pregnancy and maternity	28	39%
Total number of authorities who published information	71	

A breakdown of employee information published by sector is detailed below

Sector (Total Number of Organisations)	Produced breakdown of staff composition by any or all protected characteristic		Produced breakdown of staff recruitment by any or all protected characteristic		Produced breakdown of staff development by any or all protected characteristic		Produced breakdown of staff retention by any or all protected characteristic	
	Number	%	Number	%	Number	%	Number	%
Education Authorities (32)	26	81%	11	34%	6	19%	9	28%
Fire and Police Service (3)	3	100%	2	67%	1	33%	2	67%
Further and Higher Education (54)	51	94%	27	50%	16	30%	18	33%
Grant Aided Schools (5)	4	80%	3	60%	0	-	2	40%
Health Boards (22)	21	95%	12	55%	11	50%	7	32%
Joint Boards (9)	8	89%	5	56%	5	56%	3	30%
Local Authorities (32)	32	100%	28	88%	22	69%	22	69%
Other (26)	25	96%	12	46%	11	42%	7	27%
Scottish Ministers	1	100%	1	100%	1	100%	1	100%
Total (184)	171	93%	101	55%	73	40%	71	39%

Summary

Of the 184 public authorities examined:

- 171 (93 per cent) had produced a breakdown of their staff composition by any or all protected characteristics
- 101 (55 per cent) had produced a breakdown of staff recruitment by any or all protected characteristics
- 73 (40 per cent) had produced a breakdown of staff development by any or all protected characteristics
- 71 (39 per cent) had produced a breakdown of staff retention information by any or all protected characteristics

Local Authorities performed most strongly in meeting their duties across the four areas of composition, recruitment, development and retention. Smaller authorities performed less well in comparison.

The review found that separating out employee data between Local Authorities, Education Authorities and Joint Boards was, for some, problematic as different authorities and their internal departments had different arrangements in place, some of which allowed for this separation and others for whom such a separation of data was more difficult.

In terms of reporting by protected characteristic, listed authorities published most information in relation to age, race, sex and disability. Many listed authorities identified the need for learning, development and confidence-building to improve their monitoring, particularly for sexual orientation and gender reassignment where publication rates were consistently low.

Reporting levels for gender reassignment and pregnancy and maternity were particularly low with the exception of staff retention. Some listed authorities highlighted that they had gathered information, but had taken the decision not to publish it. This was generally due to privacy concerns, particularly for gender reassignment.

Equal Pay Statements

Listed public authorities with 150 or more employees have a duty to publish an equal pay statement. This duty requires that listed authorities publish, within their statements, an equal pay policy and information on occupational segregation both by grade and by occupation. This review examined 160 listed authorities – those with at least 150 employees - and provides detail of performance across sectors. The review did not assess the quality or content of equal pay statements.

Publication of Equal Pay policies

Overall, 95 per cent of relevant listed authorities published an equal pay policy.

Publication of Equal Pay policy, by sector			
Sector	Bodies with 150 or more employees	Published an equal pay policy	
		Number	%
Education Authorities	32	28	88%
Fire and Police Service	2	2	100%
Further and Higher Education	49	48	98%
Health Boards	22	21	95%
Local Authorities	32	32	100%
Scottish Ministers	1	1	100%
Other	22	20	91%
Total	160	152	95%

Publication of occupational segregation information

Overall, 118 public authorities (74 %) published occupational segregation information (two in draft form).

Publication of occupational segregation information			
Sector	Bodies with 150 or more employees	Published occupational segregation Information	
		Number	%
Education Authorities	32	27	84%
Fire and Police Service	2	2	100%
Further and Higher Education	49	32	65%
Health Boards	22	14	64%
Local Authorities	32	26	82%
Scottish Ministers	1	1	100%
Other	22	18	82%
Total	160	120	75%

Across almost all sectors, relevant listed authorities were more likely to have published an equal pay policy than to have detailed information on occupational segregation within their organisation.

Publication of gender pay gap information

Those listed authorities with 150 or more employees are also required to publish data on the percentage difference among its employees between men’s average hourly pay (excluding overtime) and women’s average hourly pay (excluding overtime).

Overall, 149 relevant listed authorities (93 %) had published pay gap information (one of these in draft form). Compliance rates were high across all sectors.

Publication of pay gap information, by sector			
Sector	Bodies with 150 or more employees	Published pay gap information	
		Number	%
Education Authorities	32	28	88%
Fire and Police Service	2	2	100%
Further and Higher Education	49	48	98%
Health Boards	22	20	91%
Local Authorities	32	30	94%
Scottish Ministers	1	1	100%
Other	22	21	95%
Total	160	150	94%

Conclusions

- While most listed authorities have taken steps to gather and use some employment information, many authorities were unable to present data on their employee's sexual orientation, religion or belief or in relation to pregnancy and maternity. Without a robust baseline, it will be difficult for them to use this information to inform their decisions in the future.
- Similarly, many authorities were unable to present data on the equality characteristics of the employees that they recruited, developed or who left the organisation. Again, this will restrict their ability to use the information effectively and to report over time how any new policies or practices which have been adopted are having a positive impact.
- Findings on the reporting on pay gaps and the production of equal pay statements supported the findings of the Commission's first review, which also found that publication rates were high. Of those included in this review, 95% of authorities published both information and policies. Information on occupational segregation was, however, lower with 25% of authorities being unable to publish any information.
- The Commission's intended response to these findings will be set out in the third report of our monitoring programme.

Appendix

PSED monitoring questions		
Duty	Requirement	By protected group
Duty to report progress on mainstreaming the equality duty (including employee information)	Has the authority published a mainstreaming report by the 30 April?	Age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation
	Has the authority provided an annual breakdown of the composition of its staff?	Age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation
	Has the authority provided an annual breakdown of its recruitment of staff?	Age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation
	Has the authority provided an annual breakdown of staff retention levels?	Age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation
	Has the authority provided an annual breakdown of the development of its staff?	Age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation

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