

Measuring Up?

Report 3: Monitoring public authorities performance of the Scottish Specific Duties

November 2013

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Foreword

In April this year over 250 Scottish public bodies published equality outcomes to guide their work on fairness over the next four years. Alongside these commitments, public bodies were also required to publish details of their current performance on equality in the form of mainstreaming reports, and maintaining data about their staff composition. This work will act as a baseline from which to measure progress towards meeting equality outcomes over the next two years.

On launching the Scottish Government equality outcomes earlier this year, Shona Robison, the Minister responsible for Equality, made important commitments:

Our ambitions for economic success and social wellbeing in Scotland cannot be realised unless we address the prejudice, discrimination and disadvantage that hold people back. This message is clear in the Government Economic Strategy and our drive to make Scotland an attractive place to live, work and invest.

The specific duties help us to realise our ambitions. Keeping our focus on equality over the coming years will enable Scotland to grow, flourish and become stronger.

Like the Minister, we at the Equality and Human Rights Commission believe that harnessing the talents of all of our people is central to building a better, fairer future.

This report, 'Measuring Up? 3', is the summation of our analysis of how Scotland's public bodies have fared in meeting their specific duties.

The picture is mixed. Some authorities have made excellent progress, have clearly understood what is required of them, and have set themselves stretching targets that will make a real difference to people's lives. Others however are still near the start of their journey. Whilst they may have good intentions, they have failed to support these intentions with evidence of well-thought-through, measurable and attainable outcomes, or they do not have a robust baseline of data to monitor their progress going forward.

Good intentions are not enough. Too many disabled people are currently workless, and too many women and minority ethnic people in Scotland work below their potential. Too many people still face unequal access to public services or report that their basic needs are not being met.

This report calls for a renewed effort from the public sector in Scotland to make sure that all of their plans for equality 'measure up' to the expectations and needs of all of our communities. Only through a combined and coordinated effort can we build the better future that the Minister alludes to – a country where all people's talents and potential will be recognised and nurtured, developed and rewarded.

Kaliani Lyle

Scotland Commissioner

November 2013

Introduction

Between May and October 2013, the Equality and Human Rights Commission (EHRC) conducted 'Measuring Up?', a programme of work to monitor listed authorities' compliance with the Equality Act (2010) (Specific Duties) (Scotland) Regulations 2012, which set out actions to support listed authorities in meeting their public sector equality duty in Scotland. This monitoring programme was carried out in three stages.

Stage 1

EHRC staff monitored listed public authorities' against the requirements to publish information as required by the following duties:

- Duty to report progress on mainstreaming the equality duty;
- Duty to publish equality outcomes and report progress;
- Duty to gather and use employee information;
- Duty to publish gender pay gap information;
- Duty to publish statements on equal pay including occupational segregation information.

The EHRC published the results of this assessment in June 2013: ['Measuring Up? Monitoring Public Authorities' performance against the Scottish Specific Equality Duties'](#), which is available on the EHRC's website.

Stage 2

The EHRC commissioned a review of listed public authorities' performance of the employment duties. All listed authorities are required to take steps to gather and use employee information recording:

- Composition of employees in relation to their relevant protected characteristics; and
- Recruitment, development and retention of employees in relation to their relevant protected characteristics.

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

The findings of this work were published September 2013 in ['Measuring Up? Report 2: Monitoring public authorities' performance of the employment duties'](#), which is available on the EHRC's website.

Stage 3

The EHRC commissioned a team of researchers to carry out a more in-depth review of listed public authorities' equality outcomes. The EHRC also carried out its own analysis of the themes emerging from the equality outcomes published by Local Authorities, Education Authorities, Health Boards and Further and Higher Education institutions. This report is the third of the Measuring Up? Series and is set out in four parts:

- Part 1: Review of listed authorities' equality outcomes.
- Part 2: Key findings from the Measuring Up? programme.
- Part 3: Key recommendations.
- Part 4: Next steps to improving public authorities' performance of the Scottish specific duties.

Part 1: Review of listed authorities' equality outcomes

The EHRC commissioned a review of listed authorities'¹ equality outcomes in order to examine the process reported and the quality of the outcomes published.

The Scottish specific duties require each listed authority to publish a set of equality outcomes that it considers will enable the authority to better perform the General Equality Duty, by no later than 30 April 2013.

'Equality outcomes' are the results an authority intends to achieve through their work to further one or more of the requirements of the General Equality Duty, which are to eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct; to advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and to foster good relations between people who share a protected characteristic and those who do not.

By focusing on outcomes rather than activities or processes the duty aims to ensure improvements in the life chances of people who experience discrimination and disadvantage.

The outcomes duty requires that:

¹ Listed authorities are subject to the general duty and the specific duties. These listed authorities are named or described in the Schedule to the Regulations, which appears in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (see Note 3).

- In preparing this set of equality outcomes, the authority must take reasonable steps to involve people who share a relevant protected characteristic² and any person who appears to the authority to represent the interests of those people.
- The authority must also consider relevant evidence relating to people who share a relevant protected characteristic.
- If a set of outcomes does not seek to further the needs of the general equality duty in relation to every relevant protected characteristic, it must publish its reasons for proceeding in this way.
- An authority must publish a fresh set of equality outcomes within four years of publishing its previous set of equality outcomes.
- By no later than 30 April 2015, an authority must publish a report on the progress made to achieve the equality outcomes it has published, and thereafter it must report on progress at intervals of not more than two years, starting from the date on which it last published a report.³

Methodology

As of 31 July there were 251 listed public authorities in Scotland. The researchers excluded seven authorities whose compliance was already under review by the EHRC following earlier monitoring exercises; 244 listed authorities were therefore included in this review of equality outcomes.

² Protected characteristics age, disability, gender reassignment, race, religion and belief, sex and sexual orientation; marriage and civil partnership is covered with regard to eliminating unlawful discrimination in employment only.

³ Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, available at www.legislation.gov.uk/sdsi/2012/9780111016718/contents.

The assessment of equality outcomes used in this review was more in-depth than that used during the first stage of 'Measuring Up?', which simply considered whether a set of outcomes had been published in an accessible and transparent manner. Authorities were assessed as not having produced outcomes if:

- they specified actions or activities without at least broadly defining or referring to the end result (change) that they aimed to bring about;
- they published equality outcomes jointly with another listed authority or authorities, and it was not possible to see which outcomes were relevant to the individual authority (this was frequently the case for local authorities and licensing boards).

A further 20 listed authorities were identified as not having produced outcomes. Most of these fell into the middle category – they had published jointly with another listed authority and it was not possible to identify which outcomes were relevant to them. These authorities were subject to further investigation by the EHRC and excluded from the review.

The equality outcomes of the remaining 224 listed authorities were then reviewed and assessed. Information was gathered, including the measures and monitoring information detailed in mainstreaming and outcomes reports, to assess the quality of the outcomes published.

The following information was recorded in EHRC's Public Sector Duty monitoring database:

- the number of outcomes set;
- whether the outcomes dealt with employment issues only, service delivery only, or a mix of both;
- whether there was reference to involvement in the preparation of outcomes;
- whether there was reference to the use of evidence in the preparation of outcomes;
- whether the outcomes covered all of the relevant protected characteristics;
- whether the set of outcomes published referenced one or more of the needs of the General Equality Duty: to seek to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity for protected groups; and/or to foster good relations between people who share a protected characteristic and those who do not.

In addition, the EHRC carried out its own analysis of the themes appearing in equality outcomes set by Local Authorities, Education Authorities, Further and Higher Education institutions and Health Boards, since they are the largest sectors and service providers in the public sector. This analysis sought to allocate outcomes to the domains of the Equality Measurement Framework.⁴

⁴ For more information about the Equality Measurement Framework, see <http://www.equalityhumanrights.com/key-projects/our-measurement-framework>.

Findings from the review of equality outcomes

The review aimed to understand more about the quality and content of the equality outcomes published. It identified, where possible, evidence of the process that listed authorities adopted in developing their outcomes and the areas of inequality they aimed to address.

Number of outcomes published

The duty does not prescribe how many outcomes should be published. The review found that the number of outcomes published varied between public authorities, ranging from four to twenty nine outcomes.

Number of equality outcomes published, by sector			
Sector	Published equality outcomes per authority	Total number of outcomes per sector	Average number of outcomes per sector
Community Justice Authorities	7	20	3
Education Authorities	29	118	4
Fire and Police Services	4	28	7
Further and Higher Education	53	421	8
Grant-aided Schools	5	30	6
Health Boards	22	218	10
Joint Boards	11	35	3
Licensing Boards	24	93	4
Local Authorities	32	378	12
Scottish Ministers	1	8	8
Transport Partnerships	6	93	16
Other	30	143	5
Total	224	1,585	7

Transport Partnerships were most likely to set a high number of outcomes (with an average of 16 per listed authority). Joint Boards and Community Justice Authorities were most likely to set a small number of outcomes. Education Authorities and Licensing Boards (both of which often published jointly with the Local Authority) also generally had a small number of outcomes specific to their area of work.

Protected characteristics

A set of equality outcomes should include all relevant protected characteristics, and where this is not the case the authority must publish its reasons for proceeding in this way. Listed authorities frequently included at least one outcome that was generic and covered all protected characteristics. The table below shows the number of outcomes set for specific protected characteristics. The most commonly mentioned characteristic was disability and least common was pregnancy and maternity.

Protected characteristics explicitly mentioned in equality outcomes		
Protected characteristic	Number	%
Age	125	56
Disability	139	62
Gender reassignment	61	28
Race	119	53
Religion or belief	76	34
Sex	127	57
Sexual orientation	95	42
Pregnancy and maternity	39	17
Total listed authorities with equality outcomes	224	

Developing equality outcomes

This was the first time that listed authorities were required to produce equality outcomes. The review, in so far as it was able to, considered the process that listed authorities adopted to develop their outcomes, noting whether they reported on the use of evidence and involvement.

When developing equality outcomes, listed authorities are required to consider evidence relating to people who share a relevant protected characteristic and also to take steps to involve people who share a relevant protected characteristic or represent the interests of those people. They are not required by the regulations to report on this activity. Despite this, the Commission felt that it was important to capture evidence of activity undertaken to meet these parts of the outcome duty. The review identified information about evidence and involvement from mainstreaming reports and equality outcomes. Some authorities may have gathered evidence and involved communities without mentioning this in their reports.

Use of evidence

The review found that 55 per cent of listed authorities published information that made a clear reference to the use of evidence in the development of their equality outcomes.

Clear reference to evidence in producing outcomes, by sector			
Sector	Published equality outcomes	Clear reference to evidence	
		Number	%
Community Justice Authorities	7	0	0
Education Authorities	29	12	41
Fire and Police Services	4	4	100
Further and Higher Education	53	27	51
Grant-aided Schools	5	1	20
Health Boards	22	20	91
Joint Boards	11	10	91
Licensing Boards	24	6	25
Local Authorities	32	24	75
Scottish Ministers	1	1	100
Transport Partnerships	6	1	17
Other	30	17	57
Total	224	123	55

Many authorities demonstrated good use of evidence alongside their equality outcomes:

Example: Demonstrating how evidence informed an outcome

Outcome

We are an equal opportunities employer and have inclusive, accessible and modern employment practices, which help us attract, retain and make good use of our diverse workforce.

Why we will do this (our evidence and reasons for taking this action)

We know from our workforce statistical analysis that 3.9 per cent of our workforce is under the age of 24. This seems low in comparison with other age bands and we have seen a reduction in the percentage of young people from 8.2 per cent in 2006/7. We can take reasonable steps to promote the

Council as an employer of choice to young people. Identifying and making opportunities to lawfully encourage those aged 16–19 and 20–24 take up placements, work experience and apprenticeships will help us attract more young people and support the principles of employability. We can also take reasonable and lawful opportunities to promote ‘non-traditional’ roles to young people and try to help break down areas of occupational segregation.

We know from our workforce analysis that our percentage of employees from minority ethnic backgrounds remains low in comparison with the local population. Although the gap is not significant, taking reasonable opportunities to promote the Council as an employer of choice amongst local communities and minority ethnic groups may help attract talent from minority groups and raise the profile of the Council as an equal opportunities employer.

Example: Demonstrating how evidence informed an outcome

A health board set the following outcome

Disabled women, ethnic minority women and transgender people will have improved access to breast screening services in Scotland. The timescales for this outcome are guided by the National Planning Forum (NPF) and the rollout schedule of the digital breast screening units

Situation: The board was commissioned to carry out a national review of breast screening services in Scotland. In early 2011, NPF commissioned National Services Division (NSD) to undertake a major review of the Scottish

Breast Screening Programme (SBSP) to ensure the service provided was of the highest quality and delivered in the most efficient manner. Particular challenges were to convert to digital mammography without adversely impacting on uptake; to promote a sustainable workforce; and to continue to deliver SBSP within existing revenue.

Public consultation, undertaken as part of this review, indicated that women had no real preference on screening location, with ethnic minority groups favouring a local health facility or hospital location. In response, the review recommends utilising capacity within symptomatic services to undertake breast screening, reducing pressure and dependence on mobile screening units.

The public consultation was launched on 16 April 2012 and concluded on 11 June 2012. Respondents were asked to read the paper and then submit their responses via paper or web questionnaire or by letter or email.

A total of 309 people responded to the questionnaire, either via web or paper copy. Of these 65 were returned incomplete, and therefore could not be added to the overall conclusions. For the purpose of the review, 244 completed responses were analysed.

Their health inequality impact assessment (HIIA) identified areas for improvement and the review group acknowledged the findings in the final report, which was submitted to NPF in February 2013. The HIIA group met on two separate occasions, the first to assess SBSP as it is currently delivered and the second to assess the preferred option for service delivery.

Use of involvement

The review found that 56 per cent of listed authorities demonstrated evidence of involvement of service users, communities, staff and/or community planning partners in the development of their outcomes.

The table below demonstrates that evidence of involvement varied hugely across sectors with Police and Fire and Rescue Services, Health Boards and Local Authorities performing strongly in reporting on their involvement activity.

Clear reference to involvement in producing outcomes, by sector			
Sector	Published equality outcomes	Clear reference to involvement	
		Number	%
Community Justice Authorities	7	0	0
Education Authorities	29	15	52
Fire and Police Services	4	4	100
Further and Higher Education	53	32	60
Grant-aided Schools	5	0	0
Health Boards	22	21	95
Joint Boards	11	2	18
Licensing Boards	24	7	29
Local Authorities	32	26	81
Scottish Ministers	1	1	100
Transport Partnerships	6	2	33
Other	30	16	53
Total	224	126	56

Reports on the involvement practices used by authorities also varied hugely, some authorities conducted general involvement exercises on equality outcomes with all of their services users or with people representing different

protected characteristics. Other authorities tailored their approach to involve single protected groups separately. Some authorities detailed extensive involvement processes that involved multiple stages in designing their outcomes.

Example: Involving multiple stakeholders

A local authority carried out four workshops and community meetings over to establish key areas of concern for residents and community groups. It then established an Equality Forum to involve people from protected groups in developing their published equality outcomes.

Linking equality outcomes with the General Equality Duty

The specific duties are designed to support listed authorities in meeting the requirements of the General Equality Duty. If an authority's set of outcomes does not seek to further the needs of the General Equality Duty in relation to every relevant protected characteristic, it must publish its reasons for proceeding in this way.

The EHRC's guidance on equality outcomes recommends that listed authorities consider and record how the outcomes set will contribute to eliminating discrimination, advancing equality of opportunity and/or fostering good relations.

The review identified equality outcomes that were explicitly linked to the requirements of the General Equality Duty. This was to a degree a subjective assessment and the researchers found that:

- 67 per cent of listed authorities made a clear link between their outcomes and the need to advance equality for protected groups;
- 55 per cent made a clear link between their outcomes and the need to eliminate unlawful discrimination, harassment and victimisation;
- 51 per cent made a clear link between their outcomes and the need to foster good relations between people who share a protected characteristic and those who do not.

Quality of equality outcomes

The researchers carried out a qualitative assessment of outcomes to explore if public authorities had produced high quality outcomes that were specific and measurable. A ratings system was established by the researchers and is detailed in appendix 3:

- 31 per cent of authorities were rated as ‘good’ – it was clear what equality problems the listed authority was addressing, the outcomes were specific and there was a clear rationale for their selection;
- 40 per cent of authorities were rated as ‘mixed’ – a mix of good and poor outcomes.
- 29 per cent of authorities were rated as ‘poor’ – the ‘outcomes’ were not actually outcomes, in that they did not focus on bringing about change for individuals or communities.

Good outcomes were succinct, clear and written in plain language; they focused on the change (the outcome) that was to be achieved and showed how it would be measured. Some authorities gave examples of actions, or full action plans to accompany their outcomes.

Example: Clear and well-defined outcomes

A health board produced very clear outcomes, referencing a strong evidence base. It also reported actions with measures and timescales, with a named responsible action officer in charge of the process. Each equality outcome is linked to a broader intermediate outcome.

Intermediate Outcome 2: People are able to live well at home or in the community

Equality Outcome 2.1: Improve the early identification of women and men experiencing gender-based violence.

Each outcome is followed by a table showing:

- What the evidence tells us
- Outputs
- Actions
- Responsibility and timescales
- Measurement
- General Equality Duty aims
- Protected characteristics

Poor outcomes tended to be descriptions of intended activity without a clear purpose: for example ‘we will consult with equality groups every six months’, which are best described as being outputs (activity) rather than outcomes (results).

Measuring progress towards outcomes

The specific duty regulations require that listed authorities report on progress in achieving the outcomes set. Outcomes must therefore be measurable to allow progress to be tracked and reported on. The qualitative assessment of equality outcomes using the ratings system detailed in appendix 3 found that:

- 24 per cent achieved a 'good' rating as there was clear indication within the outcomes of how progress would be measured against a baseline, and there were either mechanisms in place to measure progress or there was a commitment to developing the baseline in the short term;
- 35 per cent were rated 'limited' as there were references to how progress towards achieving outcomes will be measured, but it was not clear how this would be achieved, or there was no baseline information;
- 41 per cent were rated 'none' as there was no reference to measurements.

Those listed authorities that provided a set of clear and well-structured performance indicators made it clear how progress on achieving their outcomes would be monitored. This included detail on actions, measurements and timescales.

Example: Clear and evidenced performance indicators

A local authority provided clear information on indicators and measures for each outcome and baseline where this was available and targets in 2013 for having all baseline information.

The authority set out a 'traffic light system' for measuring performance as 'developing', 'achieving' or 'excelling'. It specified the data source to be used to track performance and the frequency for reviewing performance.

Example: Inclusion of comprehensive performance indicators

A local authority produced a comprehensive set of performance indicators that were clear and easily measurable.

For example, one of its outcomes is 'People with disabilities experience greater independence in their lives'. Increases in five performance indicators are specified:

- % of people who have physical disabilities with intensive care needs receiving 10 or more hours care at home;
- % of people with learning disabilities supported in their own tenancies;
- % of residents with access to hourly or more frequent bus service;
- % of public buildings that are suitable for and accessible to disabled people; and
- % of council housing properties with needs-based equipment and adaptations installed/carried out.

Themes and trends of equality outcomes

In order to identify key trends and themes, the EHRC analysed the equality outcomes set by Local Authorities, Education Authorities, Further Education and Higher Education Institutions and Health Boards. Where possible, outcomes were linked to the 10 domains of central and valuable freedoms defined in the Equality Measurement Framework (see appendix 2).

The most frequent themes across all four of the sectors were productive and valued activities (employment) and standard of living. Listed authorities generally set outcomes that were directly relevant to their sectors, so for example health and wellbeing outcomes were most common in Health Boards.

Local Authorities

Themes of outcomes in the Local Authority sector (percentage)	
Standard of living	37%
Productive and valued activities	25%
Physical security	14%
Participation, voice and influence	14%
Individual, family and social life	5%
Health	3%
Other/not defined	2%

Local authorities frequently set outcomes that related most closely to standard of living, identifying improvements required for protected groups to better access council services, outcomes that would improve community relations or poverty and deprivation.

Outcomes that were identified as related to productive and valued activities covered internal employment practices such as equal pay or workplace discrimination and harassment. Where local authorities set physical security outcomes, they focused on identifying outcomes for victims of crime and improving services for them.

Outcomes that were closely related to participation, voice and influence were focused on representation and the capacity of protected groups to influence

decision makers. For local authorities these outcomes were most often about better engagement with people from protected groups, and in some cases about improving the profile of underrepresented groups in the community.

Education Authorities

Themes of outcomes in the Education Authority sector (percentage)	
Education	83%
Standard of living	7%
Participation, voice and influence	4%
Productive and valued activities	2%
Physical security	2%
Other/not defined	2%

Eighty-three per cent of Education Authority outcomes related to the provision of education itself. Common themes included raising the attainment levels of protected groups such as ethnic minority children or improving access for girls to science, technology, engineering and maths (STEM) subject areas. Education Authority staff are employed by the Local Authority and so outcomes concerning employment issues were linked with the Local Authority employment outcomes and focused on ensuring inclusive working environments and access to opportunities for all staff.

Further and Higher Education institutions

Themes of outcomes in the Further Education and Higher Education sector (percentage)	
Productive and valued activities	34%
Education	33%
Participation, voice and influence	14%
Standard of Living	13%
Health	3%
Physical security	1%
Individual, family and social life	1%
Other/not defined	1%

In Further and Higher Education, productive and valued activities-focused outcomes generally concentrated on internal employment issues, occupational segregation and equal pay. Education outcomes were also common and these tended to be focused on improving students' attainment.

Health Boards

Themes of outcomes in the Health sector (percentage)	
Health	40%
Employment	28%
Standard of living	17%
Physical security	5%
Participation, voice and influence	5%
Individual, family and social life	3%
Other/not defined	2%

Standard of living outcomes were mainly related to access to services, and health outcomes were most frequently focused on health improvement and wellbeing.

Part 2: Key findings from the Measuring Up? programme

This section highlights the key findings from all monitoring work carried out since May 2013.

1. Publication of Public Sector Equality Duty reports

What is required?

Listed authorities were required to publish by 30 April 2013:

- a mainstreaming report (which includes employee information);
- equality outcomes (prepared using involvement and evidence);
- gender pay gap information;
- a statement on equal pay and occupational segregation.

Why is this important?

As well as being a regulatory requirement it is important that public authorities are able to demonstrate that they are meeting the needs of the people they are required to serve.

What did the review find?

There were high levels of compliance with the reporting requirements. By May 2013, 83 per cent of listed public authorities met all of their publication requirements.

Those authorities that had over 150 staff were also required to publish an equal pay statement and gender pay gap information. Of the 169 public authorities subject to these duties the Commission found that 96 per cent published an equal pay statement and 95 per cent published gender pay gap

information. This reflects widespread awareness of the publication requirements of the Public Sector Equality Duty in Scotland.

2. Employment monitoring

What is required?

Listed authorities are required to take steps to gather information on the composition of its employees (if any) as well as annual information on the recruitment, development and retention of employees with respect to the number and relevant protected characteristics of employees. Importantly, the authority must use this information to better perform the General Equality Duty.

Mainstreaming reports must include an annual breakdown of the information gathered. It must also include details of the progress that the authority has made in gathering and using the information to enable it to better perform the General Equality Duty.

Why is this important?

The Commission published non-statutory guidance,⁵ which highlighted that as well as being a regulatory requirement, gathering and using employee information will support authorities to better understand the impact of their employment policies, practices and decisions on their staff. It will also enable them to make informed decisions about policies and practices that are based on evidence.

⁵ 'Employee information and the public sector equality duty: A guide for public authorities (Scotland)' is available at www.equalityhumanrights.com/scotland/public-sector-equality-duty/non-statutory-guidance-for-scottish-public-authorities/

What did the review find?

The review found that employee monitoring was patchy and inconsistent across all sectors. Of the 184 public authorities examined, the review found that performance was poor. Only 27 per cent of authorities produced the full set of information on the protected characteristics of their staff for composition, recruitment, retention and development.

Listed authorities performed most strongly in producing general information about staff composition, with 93 per cent of authorities producing a breakdown of their staff composition by any or all protected characteristics. However, the review found that:

- 55 per cent of authorities produced a breakdown of staff recruitment by any or all protected characteristics;
- 39 per cent of authorities produced a breakdown of staff retention information by any or all protected characteristics;
- 40 per cent of authorities produced a breakdown of staff development by any or all protected characteristics.

The Commission found that interpretations of staff development varied widely. Many interpreted 'development' as training but a significant minority interpreted it very narrowly: for example, as equalities training providing information on the protected characteristics of those who had undertaken equality and diversity training.⁶

⁶ The Commissions Technical Guidance stated: 'In relation to "development", steps could be taken to gather relevant information about training (such as who applies for training, who is offered training, and what types of training) and promotion (such as success rates of employees by protected characteristic). "Development" can also cover performance reviews, workplace benefits and facilities, as well as treatment generally, including harassment, discrimination, and related grievance and disciplinary action.'

Key protected groups absent from employee monitoring

The review found that public authorities rarely reported employee information relating to all protected characteristics and that data on religion or belief, and sexual orientation of staff was frequently missing.

3. Equality outcomes

What is required?

Listed authorities are required to publish a set of equality outcomes which it considers will enable the authority to better perform the General Equality Duty.

In preparing equality outcomes, the authority must take reasonable steps to involve people and consider equality evidence. If the outcomes do not seek to further the needs of the General Equality Duty in relation to every relevant protected characteristic, it must publish its reasons for proceeding in this way.

Why is this important?

The EHRC published guidance⁷ explains that an equality outcome is a result that an authority aims to achieve in order to further one or more of the needs mentioned in the general equality duty. By focusing on outcomes rather than objectives, the duty aims to bring about practical improvements in the life chances of those who experience discrimination and disadvantage. By setting clear, measurable outcomes public authorities will be able to monitor and report on these in 2015.

⁷ See Note 5.

What did the review find?

The review found that public authorities frequently published poorly defined equality outcomes. There appeared to be widespread misunderstanding about the definition of an 'equality outcome'. Instead authorities frequently described 'outputs' and 'actions' but called them outcomes.

The review found limited evidence that listed authorities had the ability to report on progress towards achieving outcomes and these authorities thus run the risk of being unable to report on progress against their equality outcomes in 2015.

Part 3: Key recommendations

The context

The specific duties are not ends in themselves. They are designed to assist listed public authorities in meeting the General Equality Duty, which in itself is intended to integrate consideration of equality and good relations into the day-to-day business of public authorities.

If a public authority does not consider how a function can affect different groups in different ways, it is unlikely to have the intended effect. This can contribute to greater inequality and poor outcomes.

Poorly designed equality outcomes or employee monitoring data that is not robust will impede the ability of public bodies to demonstrate that their approach to employment and service delivery is fair and open to all.

In terms of employment data, if no reliable baseline is available by now, public bodies will find it difficult, if not impossible, to track progress over time. They will be prevented from using their employment data to inform their employment policies and practices, and will not be able to demonstrate equality or fairness.

In terms of outcomes, if an outcome is not sufficiently robust – if it is not based on evidence and has not been developed with the involvement of those people most affected by it – it will not properly define the issue it seeks to address. If the outcome is actually just a series of activities rather than a clearly focused

result, the efforts of the organisation are less likely to reap the benefits of better, more accessible services. Authorities run the risk of ‘tinkering around the edges’ of major public policy issues, rather than addressing them head-on.

Lastly, if the outcome is not supported by robust performance indicators the organisation will find it impossible to track progress and provide evidence that they have achieved what they set out to achieve.

Action to address these shortcomings is required now – it cannot wait until the next iteration of the duties in 2015.

This is an opportune time for organisations to be reconsidering their targets and outcomes, as the full 2011 Census equality data will be published in early 2014. This will provide a very different picture to that of the 2001 Census; for example, far more information about new migrant communities who have come into Scotland since the last Census will be available along with increases in the under-5 population, the over-65s, and especially over-90 age groups. All of these factors will have significant impacts on the employment and service delivery profiles of the communities that public authorities serve.

Recommendations

Although most Scottish public authorities published basic information in accordance with the duties and by the due date, too often the quality of what was published was poor. The Commission noted specific areas where urgent improvement is needed if public authorities are to 'measure up' to the expectations set for them by the Scottish Government:

1. Many authorities struggled to produce basic information about their employees' equality characteristics beyond simple headcounts of staff. The majority of authorities failed to produce information on the recruitment, retention and development of their own staff, despite having been required to do so for some protected groups for many years. This is a significant failure and suggests that the majority of authorities do not have systems in place that enable them to track the progress of employees during their tenure with the authority.
The Commission recommends that the Scottish Government, in partnership with professional and improvement agencies, investigate why this has been the case, identify the best practice that is evident and seek to transfer this knowledge across and between sectors.
2. Many authorities struggled to produce basic information about their employees' equality characteristics. This is especially true of the newer protected characteristics introduced in 2006, particularly religion and belief, and sexual orientation. The Commission appreciates that gathering sensitive personal data can be problematic, but some agencies have proven that it is possible and not unduly burdensome to do so.

The Commission recommends that the Scottish Government, in partnership with professional and improvement agencies investigate why this has been the case, identify the best practice that is evident, and seek to transfer this knowledge across and between sectors.

3. Many authorities were unable to distinguish between outcomes and outputs. Most authorities are familiar with the concept of outcome setting from other public sector activity such as Single Outcome Agreements that cover Local Authorities, the NHS and Further Education amongst others. The Commission believes that these authorities have the capacity, knowledge and experience to produce outcomes but have not applied this knowledge to the setting of equality outcomes. This is a significant failure and will lead to poorly focused activity, which has the potential to waste resources.

The Commission recommends that the Scottish Government, in partnership with professional and improvement agencies, work together to identify the best practice that is evident, and seek to transfer this knowledge across and between sectors.

If listed public authorities in Scotland are committed to the principles of equality, they must achieve these recommendations without delay, so as to be able to demonstrate measurable improvements in two years' time.

Part 4: Next steps to improving public authorities' performance of the Scottish specific duties

Following the publication of 'Measuring Up? 1' and 'Measuring Up? 2', the Commission held early conversations with the Scottish Government and seminars with listed authorities.

Where further inquiry was required into whether the duties had been fully met, for example when an authority failed to meet a publishing requirement, this has been followed up by the Commission.

What is clear is that the Commission cannot achieve change through compliance action alone. Whilst there are a minority of bodies for whom intervention by the Commission was required, for the vast majority of public bodies there appear to be barriers to the full attainment of the duties that are systemic or procedural. It may be that systems are poorly designed or not operating as intended, are not joined up or accessible to interrogation, or perhaps that knowledge is simply lacking.

To start to address this the Commission will be meeting in November with a range of bodies that are critical to making the duties work, including: the Scottish Government, the Convention of Scottish Local Authorities (COSLA), the Society of Local Authority Chief Executives & Senior Managers (SOLACE) and other professionally representative bodies; the Improvement Service, as managers of change; and the sector regulators, as setters and monitors of standards.

These meetings aim to achieve two things. First, working with the Scottish Government to identify actions that they can take to assist public bodies in meeting their duties, including the Scottish Ministers' Duty, which will be published by 30 December 2013.

Second, agencies need to collaborate to discuss their plans and share ideas with, and learn from, each other. Rather than working in isolation the Commission wishes to see agencies strive to join their outcomes together at a Community Planning level to ensure that through collective effort the social and economic outcomes for Scotland's diverse communities is significantly improved.

The Commission will continue to hold listed authorities to account throughout this process. The Commission is to see the duties operationalised in a meaningful way to ensure that authorities are confident in their ability to identify and address some of the most critical equality challenges they face, and that they have the tools, information and knowledge to be able to tell whether their efforts are paying dividends or not.

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Appendix I

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 153(3), 155(1)(c) and (2), and 207(4) of the Equality Act 2010(a) and all other powers enabling them to do so. In accordance with section 153(4) of that Act, they have consulted the Commission for Equality and Human Rights. In accordance with section 210 of that Act(b), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and come into force on 27th May 2012.

Interpretation

2. In these Regulations—

“the Act” means the Equality Act 2010;

“employee” is to be construed in accordance with section 83 of the Act except that it is also to include a constable (including a chief constable) and a police cadet of a police force maintained under section 1 of the Police (Scotland) Act 1967(c); “listed authority” means a public authority listed in the Schedule to these Regulations(d); “relevant protected characteristic” is to be construed in accordance with section 149(7) of the Act; and “the equality duty” means the duty of the listed authority to have, in the exercise of its functions, due regard to the needs mentioned in section 149(1) of the Act.

Duty to report progress on mainstreaming the equality duty

3. A listed authority must publish a report on the progress it has made to make the equality duty integral to the exercise of its functions so as to better perform that duty—

(a) not later than 30th April 2013; and

(b) subsequently, at intervals of not more than 2 years, beginning with the date on which it last published a report under this regulation.

Duty to publish equality outcomes and report progress

4.—(1) A listed authority must publish a set of equality outcomes which it considers will enable it to better perform the equality duty—

(a) not later than 30th April 2013; and

(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published a set of equality outcomes under this paragraph.

(2) In preparing a set of equality outcomes under paragraph (1), a listed authority must—

(a) take reasonable steps to involve persons who share a relevant protected characteristic and any person who appears to the authority to represent the interests of those persons; and

(b) consider relevant evidence relating to persons who share a relevant protected characteristic.

(3) If a set of equality outcomes published by a listed authority does not seek to further the needs mentioned in section 149(1) of the Act in relation to every relevant protected characteristic,

the authority must publish its reasons for proceeding in this way.

(4) A listed authority must publish a report on the progress made to achieve the equality outcomes published by it under paragraph (1)—

(a) not later than 30th April 2015; and

(b) subsequently, at intervals of not more than 2 years, beginning with the date on which it last published a report under this paragraph.

(5) In this regulation, “equality outcome” means a result that the listed authority aims to achieve in order to further one or more of the needs mentioned in section 149(1) of the Act.

Duty to assess and review policies and practices

5.—(1) A listed authority must, where and to the extent necessary to fulfil the equality duty, assess the impact of applying a proposed new or revised policy or practice against the needs mentioned in section 149(1) of the Act.

(2) In making the assessment, a listed authority must consider relevant evidence relating to persons who share a relevant protected characteristic (including any received from those persons).

(3) A listed authority must, in developing a policy or practice, take account of the results of any assessment made by it under paragraph (1) in respect of that policy or practice.

(4) A listed authority must publish, within a reasonable period, the results of any assessment made by it under paragraph (1) in respect of a policy or practice that it decides to apply.

(5) A listed authority must make such arrangements as it considers appropriate to review and, where necessary, revise any policy or practice that it applies in

the exercise of its functions to ensure that, in exercising those functions, it complies with the equality duty.

(6) For the purposes of this regulation, any consideration by a listed authority as to whether or not it is necessary to assess the impact of applying a proposed new or revised policy or practice under paragraph (1) is not to be treated as an assessment of its impact.

Duty to gather and use employee information

6.—(1) A listed authority must take steps to gather information on—

(a) the composition of the authority's employees (if any); and
(b) the recruitment, development and retention of persons as employees of the authority, with respect to, in each year, the number and relevant protected characteristics of such persons.

(2) The authority must use this information to better perform the equality duty.

(3) A report published by the listed authority in accordance with regulation 3 must include—

(a) an annual breakdown of information gathered by it in accordance with paragraph (1) which has not been published previously in such a report; and
(b) details of the progress that the authority has made in gathering and using that information to enable it to better perform the equality duty.

Duty to publish gender pay gap information

7.—(1) A listed authority must 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).

- (2) The information is to be published no later than 30th April in—
- (a) 2013; and
 - (b) each second year after that.
- (3) The information published must be based on the most recent data available for a date when the authority had at least 150 employees.
- (4) No publication is necessary if, throughout the period since these Regulations came into force or since publication was last due, the authority did not have 150 or more employees at any point.
- (5) The Scottish Ministers must review from time to time whether the figure of “150” in paragraphs (3) and (4) should be amended.

Duty to publish statements on equal pay, etc.

- 8.—**(1) A listed authority must publish a statement containing the information specified in paragraph (2) no later than 30th April in—
- (a) 2013; and
 - (b) each fourth year after that.
- (2) The statement must specify—
- (a) the authority’s policy on equal pay among its employees between—
 - (i) men and women;
 - (ii) persons who are disabled and persons who are not; and
 - (iii) persons who fall into a minority racial group and persons who do not; and

(b) occupational segregation among its employees, being the concentration of—

(i) men and women;

(ii) persons who are disabled and persons who are not; and

(iii) persons who fall into a minority racial group and persons who do not, in particular grades and in particular occupations.

(3) The information published must be based on the most recent data available for a date when the authority had at least 150 employees.

(4) No publication is necessary if, throughout the period since these Regulations came into force or since publication was last due, the authority did not have 150 or more employees at any point.

(5) Paragraphs (2)(a)(ii) and (iii) and (2)(b)(ii) and (iii) apply only in relation to the second and subsequent statements published by a listed authority under paragraph (1).

(6) In paragraph (2), “racial group” is to be construed in accordance with section 9 of the Act.

(7) The Scottish Ministers must review from time to time whether the matters specified in paragraph (2) and the figure of “150” in paragraphs (3) and (4) should be amended.

Duty to consider award criteria and conditions in relation to public procurement

9.—(1) Where a listed authority is a contracting authority and proposes to enter into a relevant agreement on the basis of an offer which is the most economically advantageous, it must have due regard to whether the award

criteria should include considerations to enable it to better perform the equality duty.

(2) Where a listed authority is a contracting authority and proposes to stipulate conditions relating to the performance of a relevant agreement, it must have due regard to whether the conditions should include considerations to enable it to better perform the equality duty.

(3) Nothing in this regulation imposes any requirement on a listed authority where in all the circumstances such a requirement would not be related to and proportionate to the subject matter of the proposed agreement.

(4) In this regulation— “contracting authority”, “framework agreement” and “public contract” have the same meaning as in the Public Contracts (Scotland) Regulations 2012(a); and “relevant agreement” means a public contract or a framework agreement that is regulated by the Public Contracts (Scotland) Regulations 2012.

Duty to publish in a manner that is accessible, etc.

10.—(1) A listed authority must comply with its duty to publish under Regulations 3, 4, 7 and 8 in a manner that makes the information published accessible to the public.

(2) A listed authority must, so far as practicable, comply with its duty to publish under regulations 3, 4, 7 and 8 by employing an existing means of public performance reporting.

Duty to consider other matters

11. In carrying out its duties under these Regulations, a listed authority may be required to consider such matters as may be specified from time to time by the Scottish Ministers.

Duty of the Scottish Ministers to publish proposals to enable better performance

12.—(1) The Scottish Ministers must publish proposals for activity to enable a listed authority to better perform the equality duty—

(a) not later than 31st December 2013; and

(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published proposals under this paragraph.

(2) The Scottish Ministers must publish a report on progress in relation to the activity—

(a) not later than 31st December 2015; and

(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published a report under this paragraph.

Appendix II

Equality Measurement Framework domains

Equality Measurement Framework (EMF) domains	EMF examples
1. Life	Life expectancy, mortality rates, causes of death including suicide and homicide
2. Health	Physical and mental health, health improvement, dignity and respect in health treatment
3. Physical security	Issues for victims of crime, hate crime, gender-based violence, fear of crime, other criminal justice subjects
4. Legal security	Offences reported and brought to justice, equal treatment by police and criminal justice system, deprivation of liberty
5. Education and learning	Basic skills, educational qualifications, participation in lifelong learning
6. Standard of living	Housing quality, poverty and security of income, access to services, community relations, local environment.
7. Productive and valued activities (employment)	Employment rates and earnings, occupational segregation, workplace discrimination and harassment

<p>8. Individual, family and social life</p>	<p>Availability and support, participation in community and cultural life, access to care, carers, childcare.</p>
<p>9. Identity, expression and self respect</p>	<p>Freedom to practise religion or belief, freedom from stigma, ability to communicate in language of choice.</p>
<p>10. Participation, voice and influence (power and voice)</p>	<p>Political representation and participation, engagement, influencing decision makers.</p>

Appendix III

Assessment criteria for equality outcomes and performance measurement

Quality of outcomes	Poor: The outcomes are not actually outcomes – focused on bringing about change for individuals and communities. Inequality problems are not identified. They reflect activities planned to be completed by the authority without stating an overarching purpose. They are vague and unlikely to be able to be monitored because they are neither specific nor measurable.
	Mixed: Some outcomes are good and others are poor or are not actually outcomes. This may be because they are not specific and measurable; or because there is no clear rationale or evidence for the selection of the outcomes; or because they do not address an identified inequality problem; or because they do not link to the general duty.
	Good: It is clear what inequality problem it is addressing and how achieving the outcomes would bring about reduced inequality for individuals and communities with protected characteristics. The outcomes are specific and measurable and there is a clear rationale for their selection.

Measurement	None demonstrated: There is no mention of how progress towards achieving outcomes will be measured.
	Limited: There is mention of how progress will be measured, but this is not clear, is partial or fails to allow real change to be measured. For example there is no baseline information.
	Good: There is mention of how progress will be measured (against a baseline), and meaningful targets and indicators or other mechanisms for measuring progress are included.

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