

Equality and Human Rights Commission

Monitoring

Public Authorities performance against the Scottish Specific Equality Duties, 2016

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Introduction

Under the Equality Act 2006, the Equality and Human Rights Commission ('the Commission') has a statutory remit to protect, enforce and promote equality across nine protected characteristics (PCs)¹ which are set out in the Equality Act 2010. This includes regulating the Public Sector Equality Duty (PSED).

The PSED is a positive duty on public authorities and others carrying out public functions. It requires that public authorities give proper consideration to equality in their day to day work in shaping policy, delivering services and in their employment practices. The PSED operates in two parts – the General Equality Duty and the Specific Duties.

The General Equality Duty is set out in s.149 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 PC and those who do not
- foster good relations between people who share a relevant PC and those who do not.

The Specific Duties are set out in The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012² as amended. These came into force on 27 May 2012 and are

¹ Protected characteristics are: age, disability, gender reassignment, race, religion or belief, sex and sexual orientation. Marriage and civil partnership are covered with regard to eliminating unlawful discrimination in employment only.

² The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2012 as amended <http://www.legislation.gov.uk/ssi?title=equality%20scotland>

intended to support listed authorities³ in meeting the three needs of the General Equality Duty.

The 2012 Regulations were amended by the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015 which added new bodies to the list of those subject to the duties. These newly listed authorities were required to carry out their duties and publish information for the first time by 30 April 2016. This report relates to how well those bodies met their duties.

Public authorities have a duty to:

- report progress on mainstreaming the equality duty
- publish equality outcomes and report progress
- 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 PCs of employees
- publish gender pay gap information, where the authority has 150 or more employees
- publish statements on equal pay where the authority has 150 or more employees
- publish in a manner that is accessible.

In May 2016 the Commission in Scotland examined listed public authorities performance against the requirements to publish information set out in the Equality Act (2010) (Specific Duties) (Scotland) Regulations 2012 as amended.

Publication rates are relatively high, indicating that newly listed Scottish public authorities have responded to their duties and committed themselves to achieve outcomes intended to advance equality for their service users and employees. However there are concerns about accessible and transparent publishing of this information – in the majority of cases Commission staff struggled to find the reports.

All 30 public authorities were required to publish: a set of equality outcomes; a mainstreaming report containing employee information (where the authority had employees); and, where an authority had 150 staff or more, a statement on equal pay and occupational segregation and gender pay gap information. The Commission found that 88% of public authorities published everything that was required of them.

³ Listed authorities are authorities in Scotland who are listed within the Specific Duties Regulations and must meet those Regulations <https://www.equalityhumanrights.com/en/advice-and-guidance/public-authorities-scotland-who-covered-specific-duties>

The findings detailed in this report reflect the information that the Commission held on 22 July 2016, over one month after public authorities were required to publish their information.

Part 1 – Publication requirements

Methodology for review of the publication requirements

Commission staff searched the websites of the 34 newly listed authorities between 1 May and 19 June, 2016. The search was restricted to a maximum of 15 minutes per authority, to test the accessibility of the information published. This replicates the approach taken in our initial ‘Measuring Up?’ work in 2013.⁴

Following this initial assessment, the Commission contacted 23 listed authorities whose publications could not be found during the website checks. As a result:

- 19 authorities responded to the Commission demonstrating that they had published as required
- 4 authorities failed to publish or provide the information required by the deadline for inclusion in this report of 22 July and were subject to further investigation by the Commission.

Commission staff assessed 30 listed authorities – 27 Integration Joint Boards and three ‘other’ bodies against the requirements of the Specific Duties.

Findings – publication rates

Although the majority of listed authorities were able to demonstrate that they had published online by 30 April 2016, the fact that Commission staff had to write to 23 listed authorities whose publications could not be found suggests they were not published in a ‘manner that makes the information published accessible to the public’ as required in the Regulations. Commission staff could not find the majority of

⁴ Since May 2013 the Commission has conducted ‘Measuring Up?’, a programme of work to monitor listed authorities’ compliance with the Equality Act (2010) (Specific Duties) (Scotland) Regulations 2012 as amended <https://www.equalityhumanrights.com/en/public-sector-equality-duty-scotland/scotland-public-sector-equality-duty-projects/measuring>

publications within the allotted 15 minute timeframe – a reasonable test of whether a document is accessible or not.

In summary, by 22 July:

- 30 out of the 34 listed authorities (88%) published a mainstreaming report
- 30 out of the 34 listed authorities (88%) published a set of equality outcomes
- the only listed authority required to do so (with 150 or more staff) published gender pay gap information and a statement on equal pay
- 3 out of 4 listed authorities required to publish employee information, or an explanation as to why publishing such information was not appropriate, did so.

Publication rates across sectors

Sector	% of listed authorities who met all of their publication requirements by 22nd July (mainstreaming report, employee information, set of equality outcomes, statement on equal pay and gender pay gap information)
Integration Joint Boards	90% (27 out of 30)
Other Authorities	75% (3 out of 4)
Total	88% (30 out of 34)

4 listed authorities failed to meet all of their publication requirements within the designated timescale and were excluded from our analysis of performance in Parts 2 and 3 of this report.

Part 2 – Mainstreaming reports (including employee information duties), pay gap and equal pay reporting requirements

Methodology for review

30 listed authorities had no employees (all the Integration Joint Boards) and so were not subject to the requirement to publish employee information.

Of the remaining 4 listed authorities publishing in this reporting cycle, 1 did not publish in time for inclusion in this report. 1 other listed authority had fewer than 20 employees and did not provide detailed breakdowns of employee information due to data protection issues.

Findings – overview of performance against the employee 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 on:

- the composition of its employees in relation to their relevant PCs
- the recruitment, development and retention of employees in relation to their relevant PCs.

Where a listed authority has employees, their mainstreaming report must include an annual breakdown of this information and detail the progress which the authority has made in gathering and using this information to better perform the General Equality Duty. The Commission accepts that authorities with 20 or less staff may have data protection issues and, therefore, decide not to publish this information. However, these

authorities should still report on how they used this information in their second and subsequent reports.

The assessment included a check for the publication of any employee information in relation to composition, recruitment, development and retention. This meant that the listed authority was considered to have published even if it provided information for just one PC against each part of the duty, an approach consistent with the one taken in 2013.

Listed authorities failed to report on the PCs of pregnancy and maternity and gender reassignment, as was often the case in the 2013 reporting cycle and reported on in 'Measuring Up? 2'. In addition, listed authorities failed for the most part to report employee information across the areas of retention and development.

Findings – overview of performance against the pay gap and statement on equal pay requirements (including information on occupational segregation)

The only listed authority required to do so published gender pay gap information and a statement on equal pay (including information on occupational segregation).

Part 3 – Duty to publish a set of equality outcomes

Review of listed authorities' equality outcomes

Commission staff assessed the equality outcomes of 30 listed authorities in order to assess the quality of the outcomes published.

The Scottish Specific Duties require each of the newly listed authorities to publish a set of equality outcomes that it considers will enable it to better perform the General Equality Duty, by no later than 30 April 2016.

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:

- In preparing a set of equality outcomes, the listed authority must take reasonable steps to involve people who share a relevant PC 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 PC.
- If a set of outcomes does not seek to further the needs of the General Equality Duty in relation to every relevant PC, a listed authority must publish its reasons for proceeding in this way.

Methodology

There were 34 listed public authorities in Scotland who were required to publish a set of equality outcomes by 30 April 2016. Four listed authorities failed to publish by 22

July, our cut off point for this assessment. 30 listed authorities were therefore included in this review of equality outcomes.

The equality outcomes of these 30 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.

20% of the sets of outcomes assessed were subject to a quality assurance process, whereby they were assessed independently by a second member of Commission staff to ensure the reviews were accurate and consistent.

The Commission considered:

- the number of outcomes set
- 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 PCs.

Findings from the review of equality outcomes

Number of outcomes published

The duty does not prescribe how many outcomes should be published. The review found that the number of outcomes published ranged from 2 to 10.

Number of equality outcomes published, by sector			
Sector	Number of listed authorities publishing outcomes	Total number of outcomes per sector	Average number of outcomes per authority per sector
Integration Joint Boards	27	167	6
Other	3	10	3
Total	30	177	6

Protected characteristics (PCs)

The prevailing trend in the 2016 reporting cycle was for the vast majority of outcomes to be listed as relevant to 'all protected characteristics'. The table below shows the number of outcomes set for specific PCs. The most commonly mentioned standalone characteristics were age and disability and least common was pregnancy and maternity.

Protected characteristic	% of total outcomes referencing each protected characteristic (from 177 total outcomes)
Age	12%
Disability	11%
Gender reassignment	3%
Race	6%
Religion or belief	2%
Sex	5%
Sexual orientation	3%
Pregnancy and maternity	2%
Presented as 'All protected characteristics'	73%

Developing equality outcomes

This was the first time this group of listed authorities were required to produce equality outcomes. The review 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 PC and also to take steps to involve people who share a relevant PC or represent the interests of those people. They are not required by the regulations to report on this activity. However, as in the 2013 reporting cycle, the Commission felt that it was important to capture evidence of activity undertaken to meet these parts of the outcome duty, where that evidence was available. The review identified information about evidence and involvement from mainstreaming reports and equality outcomes. Some listed authorities may have gathered evidence and involved communities without mentioning this in their reports.

Use of evidence

The review found that 83% 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	Number of authorities that published equality outcomes by sector	Clear reference to evidence	
		Number of authorities	% of authorities
Integration Joint Boards	27	22	81
Other	3	3	100
Total	30	25	83

Use of involvement

The review found that 77% of listed authorities either demonstrated or set out evidence of involvement of service users, communities, staff and/or community planning partners in the development of their outcomes.

Clear reference to involvement in producing outcomes, by sector			
Sector	Number of authorities that published equality outcomes by sector	Clear reference to involvement	
		Number of authorities	% of authorities
Integration Joint Boards	27	20	74
Other	3	3	100
Total	30	23	77

Reports detailing the involvement practices used by listed authorities also varied hugely. Many Integration Joint Boards conducted general involvement exercises to discuss equality outcomes as part of their consultations on their Strategic Plans. Other authorities tailored their approach to involve single PC groups separately. Some authorities described extensive involvement processes that involved multiple stages in developing their outcomes.

Quality of equality outcomes

Commission staff carried out a qualitative assessment of outcomes to explore if listed authorities had produced high quality outcomes that were specific and measurable. The same assessment framework used to evaluate the quality of outcomes in previous reporting cycles was again used in 2016. This framework is detailed in Appendix 1.

- 13% 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
- 70% of authorities were rated as 'mixed' – a mix of good and poor outcomes

- 17% 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, including timescales and an indication of what criteria would be measured and when.

Poor outcomes tended to be descriptions of intended activity without a clear purpose or focus on the desired change: for example 'Provision of Accessible Information and Inclusive Communication', which are best described as outputs (activity) rather than outcomes (results).

Commission staff also noted that a significant number of equality outcomes simply stated that the requirements of the Specific Duties, or other legislative requirements, would be met, such as carrying out Equality Impact Assessments, monitoring employment data, or having accessible buildings.

In the Integration Joint Board sector, a number of authorities stated that they intended to review their equality outcomes after the sector was better 'bedded in'.

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. Listed authorities publishing in 2016 will have to report on the progress they are making to achieve their outcomes by 30 April 2018. The qualitative assessment of equality outcomes using the ratings system detailed in Appendix 1 found that:

- 10% 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
- 30% 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
- 60% were rated 'none' as there was no reference to measurements.

73% of all outcomes published in this reporting cycle stated that they were relevant to 'all protected characteristics'. Commission staff concluded that it was unclear in many cases whether baselines had been set for each PC, and whether information relevant to each PC would be analysed over the interim period to enable the listed authorities to report meaningfully on progress by 30 April 2018.

Part 4 – Issues of concern

The Commission had to write to 23 of the 34 listed authorities reporting in 2016 as the required publications could not be located online within the allocated 15 minutes, indicating that a majority of bodies failed to publish accessibly. Listed authorities should seek to improve the online visibility of these publications, locate them in appropriate and relevant parts of their websites, and ensure that they are appropriately tagged so that the search engine function on their website easily finds them.

The majority of published outcomes we assessed related to ‘all protected characteristics’ (PCs) rather than specific groups. It is unclear from our analysis if these agencies actually meant that they had evidence or concerns that the outcome did relate to each individual PC and will have the means to measure their progress against each PC over time. If they cannot this suggests a significant weakness in their approach in setting SMART outcomes.

Although not required by the regulations, public authorities will provide greater clarity for all if they set out how they intend to monitor progress at the same time as they publish equality outcomes. However, 60% of outcomes published in the 2016 reporting cycle lacked any reference to measurements.

We also noted that a significant number of equality outcomes published related to pre-existing legislative requirements – for example, carrying out Equality Impact Assessments, monitoring employment data, or having accessible buildings. These are legal requirements and not equality outcomes, which require moving beyond basic legal compliance.

Finally, only 13% of equality outcomes assessed achieved a ‘good’ rating. A number of Integration Joint Boards mentioned in their reports the intention to revisit their outcomes either once the sector had ‘bedded in’, or once the way of working with their local authority and health board partners had become clearer. The Commission undertook a project to improve the equality outcomes for almost 50 public authorities in 2014/15. The vast majority of authorities publishing in 2016 would benefit from

considering the processes and tools relevant to that project, and how they can be applied to newly listed authorities.

What next?

Next year, approximately 250 public authorities will publish the final reports of the initial 4-year reporting cycle. The Commission will conduct and publish a review of their performance with recommendations relevant to the Duty of the Scottish Ministers to publish proposals to enable better performance.

Appendix I – 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 PCs. 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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