

Doing the duty - an overview of the Disability Equality Duty for the public sector

‘The Disability Equality Duty is a new way for public authorities to tackle disability discrimination in a practical way by introducing policies that actively promote opportunities and so prevent discrimination taking place. By taking an organisation-wide approach you can achieve tangible outcomes and improvements for disabled people. It will need the personal commitment from the top of your organisation and will make a real, positive change to your employees and service users.’

Bert Massie, Chairman
Disability Rights Commission

We all want to live in communities where we can participate fully and equally. We all want our children to do well at school; we all want to be able to use services like hospitals and libraries and not to be excluded. Many indicators show us that for disabled people this hasn't yet happened and there remains considerable work to be done to get to this point.

To ensure this happens a Disability Equality Duty is being introduced for the public sector. This new legal duty will mean that any public body will need to actively look at ways of ensuring that disabled people are treated equally. A similar duty was introduced on race equality a couple of years ago.

This new law requires organisations across the public sector (including hospitals, local and central government, schools and colleges) to be proactive in ensuring that disabled people are treated fairly.

An outline of the duty

There is a general duty which applies to all public authorities, plus additional specific duties to support the majority of public authorities in achieving the outcomes required by the general duty.

The basic requirement for a public authority when carrying out their functions is to have due regard to do the following:

- promote equality of opportunity between disabled people and other people
- eliminate discrimination that is unlawful under the Disability Discrimination Act
- eliminate harassment of disabled people that is related to their disability
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life
- take steps to meet disabled peoples needs, even if this requires more favourable treatment.

‘Due regard’ means that authorities should give due weight to the need to promote disability equality in proportion to its relevance.

Key dates

The general duty will come into force on 5 December 2006 and all public authorities should be prepared by then.

differences in other legislation. There is a Statutory Code of Practice for England and Wales and a separate one for Scotland.

Organisations covered by the duty

The general duty applies to all public authorities (apart from a small handful which have specific exemptions). It includes government departments, executive agencies and ministers, local authorities, governing bodies of colleges and universities, governing bodies of schools, NHS trusts and boards, police and fire authorities, the Crown Prosecution Service and the Crown Office, inspection and audit bodies and certain publicly funded museums.

It also includes any organisation which exercises some functions of a public nature.

Many, in fact most, public authorities will also have a set of specific duties which will help them to meet their overall general duty. A list of these public authorities is contained in the regulations, which set out the duties, and can be found at the back of the DRC Statutory Codes. These specific duties centre on the framework of the production of a Disability Equality Scheme.

Where to start

At first glance the duty can appear quite complex. However, if public authorities focus on what outcomes they want to achieve with this duty and break this down into manageable stages, then it's actually very straightforward.

An authority needs to consider what success will look like in relation to this duty, their particular responsibilities and how they will know they're making

town or community council, they do not have to produce a Disability Equality Scheme but they may still find the key actions within this provide a useful framework.

Stage One - Involving Disabled People

At the heart of the Disability Equality Duty is the requirement to involve disabled people in producing the Disability Equality Scheme including the action plan. This has to happen at the very outset and many public authorities will have little experience of involving disabled people. So this is the place to start.

Why?

Involving disabled people is not only a requirement of the duty but it should bring tremendous benefit in terms of expertise to the organisation.

However, in many cases, it can be a challenge both for the public body and for disabled people to ensure the involvement is straightforward and effective.

Involvement should not be confused with consultation. This duty requires a much more active engagement of disabled stakeholders at all stages.

Budgets for engaging with disabled people must take realistic account of the costs associated with ongoing communication and collaboration.

How?

The important thing is to identify the most effective ways of involving disabled people in the development of the Disability Equality Scheme and action plan and to take this involvement forward in a planned and efficient

been involved and others who are interested need to know what effect the involvement had but also areas where it was less influential, and why.

The specific duties require authorities to involve disabled people who appear to them to have an interest in the way they carry out their functions in developing the scheme. This may include former, current and potential service users, staff and the wider community. It is important to consider the full diversity of disabled people - in terms of the type of impairment and barriers people experience, as well as other equality issues such as ethnicity, age, gender, sexual orientation and religion or belief.

There will be a wide variety of ways of involving disabled people. This could include through:

- local organisation/s of disabled people
- existing forums, such as disabled staff networks
- setting up specialist forums of disabled people (where none exist at present)
- workplace trade unions
- segmenting and developing existing consultation mechanisms or utilising existing networks.

Stage Two - Mapping

It is essential for a public authority to have some idea of how they are currently performing on disability equality to inform their Disability Equality Scheme. Mapping current performance areas for improvement can help identify further actions.

Often information will show up a particular pattern, trend or experience and this should act as a trigger to investigate further.

Many public authorities will have very limited information in relation to disability. An initial action may be to put in place additional mechanisms for gathering evidence on the authority's performance in relation to disability equality.

However, implementing new mechanisms for gathering evidence can take a long time. It is important that authorities do not wait for this additional information to be available before making plans to improve their performance. In some cases, qualitative research (including research from other relevant sources), and involvement of disabled people will be sufficient to initially identify key areas where action is needed to deliver improved outcomes for disabled people. With this, authorities can move ahead and build in actions to gradually increase their knowledge-base and measurement of progress.

Gathering information is an ongoing process and only having a limited amount of information is not an excuse for in-action.

How?

All authorities subject to the specific duties must set out in its disability scheme, its arrangements for gathering information in relation to recruitment, development and retention of disabled employees; and it must put these arrangements into practice.

Also, authorities must look at the extent to which the services they provide and the other functions take account of the needs of disabled people. For

Authorities may well have to set up specific mechanisms for identifying their performance on disability equality but they may also utilise the range of existing mechanisms to collect information (from examination results in educational bodies, homelessness statistics in local authorities or PSA targets in central government or just customer or staff surveys). Much of this information may already be easily broken down to identify the experience of disabled people, or if it isn't disaggregated then straightforward systems can set up to ensure this happens and to ensure good representation of disabled people on things like citizen's panels or focus groups.

Anyone designing a system within an authority to gather information should be considering whether the authority is going to make use of the information, particularly when monitoring according to impairment type. There is no point collecting information if you have no intention of making use of it. For this reason within the Disability Equality Scheme an authority must set out their arrangements for making use of the information obtained, in particular, for reviewing on a regular basis the effectiveness of the action plan and for preparing subsequent disability equality schemes.

Stage Three - The Disability Equality Scheme and Action Plan

The essential elements that the Disability Equality Scheme must include are:

- a statement of how disabled people have been involved in developing the scheme
- the action plan

Preparing the Disability Equality Scheme

It is important to ensure that the Disability Equality Scheme demonstrates commitment at the very highest level of the authority. The DRC strongly recommends that the introduction should have the endorsement of and be signed by the Chief Executive, the Chair or their equivalent. In addition, it would be valuable for a senior officer to take responsibility for the implementation of the duty and the scheme. Having someone with disability expertise to advise and co-ordinate would also be beneficial.

The scheme must be published and authorities will need to ensure that this is accessible to the whole community. It may be set out with another published document, such as an annual report, but to ensure transparency it would generally be appropriate to publish a scheme as a whole so that stakeholders can view its different elements and objectives together.

The Action Plan

The action plan is basically the steps that a public authority is going to take to meet the general duty. It will set out the key actions that the authority will take to promote disability equality over the period of the Disability Equality Scheme. It should address all areas of the duty, including elements like eliminating harassment and encouraging participation of disabled people in public life within the context of promoting disability equality.

In a highly effective Disability Equality Scheme the action plan will reflect a number of things. This would include the priorities of disabled people (and this is the information which would come from involving disabled people), the strategic priorities of the authority (including things like major forthcoming programmes and business milestones), evidence of where the issues and priorities lie and very importantly the specific outcomes which

Where an authority has within it distinct units with discreet areas of activity, it will be appropriate for those units to have separate action plans within the generic Disability Equality Scheme for that authority.

External contractors

Sometimes services will be being delivered for the public authority by an external contractor. If this contractor is not itself a public body then the contracting public authority, and in particular those procuring or commissioning a service, need to build relevant disability considerations into that process to ensure that the authority is meeting the duty even when the service is being carried out by an external contractor.

Equality schemes

Some authorities have produced combined equality schemes and there is nothing within the legislation to prevent this. However, the Disability Equality Scheme must be clearly identifiable and presented in such a way as to enable all interested stakeholders to readily access it.

The most effective combined schemes are likely to be those where an overall approach is outlined, the different mechanisms for achieving improvements are identified but the various equality areas are then clearly presented and specific actions and outcomes identified.

From the point of view of disability equality, the duty is unlikely to be effectively met if clear outcomes relating to the promotion of disability equality are not clearly forthcoming from a combined scheme.

Why?

The purpose of these impact assessments is to ensure that an authority's activities do not disadvantage disabled people in any way (either intentionally or not), and also crucially, to identify where they can best promote equality of opportunity. Where the assessment identifies an adverse impact or missed opportunity to achieve a more positive impact, then the authority should look at what it can do to remedy this and to take up this missed opportunity.

Gaps, adverse impacts and missed opportunities in relation to disability equality can be identified by looking over things carefully and using criteria developed with disabled people. Identifying these should be seen as positive and if an authority can't identify something to improve in a policy or practice they probably aren't looking hard enough!

An impact assessment is not an end in itself but is merely the process which an authority will go through in order to identify and then act on the need to modify and change policies and practices to better promote disability equality. It's what an authority does to decide on actions and improvements. If they only do the identification of issues and don't do the actions or improvements and the necessary follow through then it's a pretty fruitless task.

How?

Approaches to impact assessments are likely to vary depending upon the nature of the public body and the degree of relevance of the function for disabled people. Where the relevance of function is high, this indicates a need for a very thorough impact assessment. Where it is clear that relevance is low, authorities may wish to have a system for identifying this

There are a range of actions which a full impact assessment is likely to involve. These would include consideration of the available information, assessment of the effect the policy or decision would have on disabled people, or for existing programmes and policies, an assessment of any detrimental impact on, or short-fall in take up by, disabled people. Additionally consideration of the measures which may mitigate any adverse impact and alternative approaches which may better achieve promotion of equality for disabled people are essential. It's also important to build in arrangements for monitoring for future adverse impact.

Stage Five - Getting on with it

Once the scheme is written and approved it will need to be published, but that is only the beginning. The core of the work is taking forward the actions, improving the performance of the authority through the outcomes of impact assessments, building up the information base about performance on disability equality and actually improving and changing things for disabled people.

The scheme can last for up to three years and it should be regularly reviewed and information gathered to review the effectiveness of the action plan will help prepare subsequent schemes. Public authorities should report annually on progress and be aware that organisations like inspection bodies will be looking at progress, as will disabled people.

The DRC will be providing a wide range of information for public authorities. But we also play a key role in enforcing the duty. The general duty can be enforced via a judicial review (which anyone with a legal basis can take via the High Court and Court of Session) but the specific duties are enforced through a compliance notice issued by the DRC.

The first set of these reports is due in December 2008. This duty allows for a greater degree of strategic co-ordination across government.

This guidance should be read in conjunction with the DRC Statutory Codes of Practice which give full details of the duty and the legal obligations. These can be viewed on the DRC website section on the DED www.dotheduty.org or from the Stationery Office.

Every effort has been made to make sure that the information in this booklet is correct. However, it is not intended to be an authoritative statement of the law, and the DRC cannot accept any legal responsibility or liability.