

Review of the Public Sector Equality Duty, spring 2013

Information and materials for schools

This paper

1. This paper from the Insted consultancy is not official. It is principally based, however, on official information published by the government equalities office (GEO), or else on material at the website of the equality and diversity forum (EDF). It was drafted in early January and will be updated when more information becomes available.
2. The purpose is to provide broad guidance to schools, and to those who support and advise schools professionally, on how they might contribute to the government's review of the public sector equality duty (PSED) that is taking place in spring 2013.
3. In summary, the paper's contents are as follows:

<p>Terms of reference for the review (<i>paragraphs 4–5</i>) How the review is being conducted (<i>paragraphs 6–9</i>) The PSED's core concepts and structure (<i>paragraphs 10–14</i>) Further information about the PSED (<i>paragraphs 15–16</i>) Background to the PSED review (<i>paragraphs 17–18</i>) The influence of the Stephen Lawrence Inquiry (<i>paragraphs 19–22</i>) Children and Young People's Equality Network (<i>paragraph 23</i>) Contributing to the review (<i>paragraphs 24–27</i>)</p>
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Terms of reference for the review

4. Briefly, the purpose of the review is to establish whether the public sector equality duty (PSED) is operating as intended. The review will lead to a report for ministers on the following three topics:
 - how the general duty and the specific duties are working
 - how effectively the PSED supports delivery of the government's equality strategy
 - options and recommendations for changes or improvements in the way the PSED operates.
5. There is fuller information about the terms of reference and scope of the review on the Home Office website at <http://www.homeoffice.gov.uk/equalities/equality-act/equality-duty/equality-duty-review/terms-of-reference/>.

How the review is being conducted

6. There is a steering group with 11 members. It is chaired by Rob Hayward OBE, who is a former member of parliament. The representative on the

group from the world of education is Rachel de Souza, who is executive principal of Ormiston Victory Academy, Norwich, and chief executive of the East Norfolk Academies Trust. Other members of the steering group include Baroness Onora O'Neill, chair of the equality and human rights commission, and Jonathan Rees, director general of the government equalities office.

7. The review is supported administratively by the Government Equalities Office.
8. It is currently (mid-January 2013) hoped and intended to produce a report by the end of April.
9. There is further information about the membership of the steering group at <http://www.homeoffice.gov.uk/equalities/equality-act/equality-duty/equality-duty-review/membership-steering-group/>

The PSED's core concepts and structure

10. The core concepts and terminology in the PSED are drawn from the race equality duty (RED) that was formulated in section 71 the Race Relations (Amendment) Act 2000 and that had been inspired in part by the Stephen Lawrence Inquiry report (1999). The wording of the RED was used later as a model for formulating the disability equality duty (DED) that came into force in 2005 and for the gender equality duty (GED) that came into force in 2007.
11. When the three duties were merged with each other into the PSED, and were joined there by similar duties for age, gender reassignment, pregnancy, religion and sexual identity and orientation, the formulation referred to three essential aims:
 - o to eliminate unlawful discrimination
 - o to advance equality of opportunity
 - o to foster good relations.
12. The key terms in this summary of aims – 'unlawful discrimination', 'equality of opportunity', 'fostering good relations' – are briefly explained on the face of the Act itself.
13. The PSED, like the RED, DED and GED before it, has two aspects – a general duty and certain specific duties. The general duty is stated in section 149 of the Equality Act 2010 and requires public bodies to have 'due regard' (a phrase whose meaning has been clarified and defined in recent years by case law) for the three essential aims summarised above.
14. The specific duties are not stated in the Equality Act itself but in regulations that were agreed by parliament, following substantial consultations, in July 2011. They require schools and other public bodies a) to publish information relevant to how they approach and implement the general duty and b) to publish specific and measurable objectives.

Further information about the PSED

15. There is further and fuller information about the PSED on the Home Office website at <http://www.homeoffice.gov.uk/equalities/equality-act/equality-duty/> and, in substantially greater detail, at the website of the Equality and Diversity Forum (EDF) at <http://www.edf.org.uk/blog/?cat=79>.
16. With particular regard to the PSED's implications for schools there is information in the Insted briefing papers entitled *The Changing Legal Framework* at <http://www.insted.co.uk/legal-frameworks.pdf> and *The Equality Act 2010 – Specific Duties for Schools* at <http://www.insted.co.uk/specific-duties.pdf>. Both these papers contain links to key documents issued by the Department of Education, the Equality and Human Rights Commission, the Government Equalities Office and Ofsted.

Background to the PSED review

17. The Equality Act received royal assent in April 2010, having obtained all-party support for virtually of its content during its passage through the House of Commons and House of Lords during the preceding 12 months. It was the culmination of debates, deliberations and legislative measures dating back several decades.
18. There were differences of opinion, however, both between and within the three main political parties, about what exactly the specific duties should entail. Also, there were differences of opinion within and between equality organisations and lobbies, and between campaigners and politicians, and between the separate jurisdictions in England, Scotland and Wales. In view of these disagreements, the coalition government indicated in July 2011 that it would in due course review both the general duty and the specific duties, and a further announcement was made in a written ministerial statement (WMS) in May 2012. The terms of reference for the review, referred to in paragraph 4 above, were published in December 2012.

The influence of the Stephen Lawrence Inquiry

19. As mentioned above (paragraph 10), the PSED derives from the race equality duty formulated in the Race Relations (Amendment) Act 2000, and this in its turn had been deeply influenced by the report of the Stephen Lawrence Inquiry conducted by Sir William Macpherson in 1997-99. On 19 November 2012 Doreen Lawrence (Stephen's mother) and Dr Richard Stone (an adviser to the Inquiry) wrote an open letter to the prime minister, the deputy prime minister and the leader of the opposition at Westminster, and to the first ministers of Scotland and Wales, requesting clarification about the PSED review that had been announced earlier in the year. The letter was supported and endorsed by 14 organisations working in the field of race equality.
20. In the absence of a reply to this letter from any of those to whom it was addressed, Mrs Lawrence gave an interview to the journalist Hugh Muir, and this was published in the Guardian on 18 December 2012. On the following day the interview received coverage and publicity in the *Daily Mail*, the *Daily Telegraph* and the *Evening Standard*.

21. The prime minister and deputy prime minister replied to the interview by writing personally to Mrs Lawrence and Dr Stone on 19 December and the full text of their letter was made public. Also the first minister of Wales wrote personally to Mrs Lawrence and Dr Stone on 19 December, distancing himself from the PSED review, and also this letter was published.
22. The correspondence, interview and media coverage can be read at the following web references:

Open letter from Mrs Lawrence and Dr Stone, 19 November, slightly revised 27 November

<http://www.edf.org.uk/blog/wp-content/uploads/2012/11/PSED-letter-to-party-leaders-November-2012-revised-final-27-11-12.pdf>

Hugh Muir's interview with Mrs Lawrence, 18 December

<http://www.guardian.co.uk/uk/2012/dec/18/stephen-lawrence-mother-race-discrimination?INTCMP=SRCH>

Daily Telegraph, 19 December

<http://www.telegraph.co.uk/active/9754583/Race-not-on-Governments-agenda-says-Doreen-Lawrence.html>

Daily Mail, 19 December

<http://www.dailymail.co.uk/news/article-2250334/Police-given-Stephen-says-Doreen-Lawrence.html?ito=feeds-newsxml>

Evening Standard, 19 December

<http://www.standard.co.uk/news/politics/doreen-lawrence-met-no-longer-want-to-pursue-stephens-killers-8425566.html>

Response from the prime minister and deputy prime minister, 19 December

http://www.edf.org.uk/blog/wp-content/uploads/2012/12/copier@stephenlawrence-org-uk_20121220_151226.pdf

Response from the first minister of Wales, 19 December

http://www.edf.org.uk/blog/wp-content/uploads/2012/12/Outgoing_2.pdf

Media coverage of the response from the prime minister and deputy prime minister, 23 December

<http://www.guardian.co.uk/uk/2012/dec/23/coalition-respond-doreen-lawrence-equality?INTCMP=SRCH>

Children and Young People's Equality Network

23. The children and young people's equality network has about 50 members, most of whom work, or have until very recently worked, as senior officers or inspectors in local authorities. In December 2012 the network wrote about the PSED review to Maria Miller (secretary of state for culture, media and sport, and minister of state for women and equalities), requesting further information and offering to assist in any way that might be appropriate. The text of the network's letter has been published at <http://www.edf.org.uk/blog/wp-content/uploads/2012/12/PSED-review-2012-Final-.docx>

Contributing to the review

24. Schools can contribute to the review by writing directly to the government equalities office (GEO), or indirectly through unions and professional associations, or through local authorities or academy chains. Similarly parents and community groups can contribute directly, or else indirectly through representative organisations with which they are in contact.
25. It may also be appropriate to send copies of submissions to the Equality and Diversity Forum (see paragraph 14) at info@edf.org.uk.
26. The steering group will hopefully issue a list of specific questions to which it would welcome responses. If it does, the list will be a mutually convenient way of structuring the submissions which schools make, though may not focus adequately on schools' distinctive concerns and challenges. In the meanwhile, some or all the following questions may prove relevant and useful.

1) Did you feel that you were adequately briefed about the requirements of the specific duties in advance of the April 2012 deadline? If so, which of the following, if any, were helpful to you?

- documentation from your local authority or academy chain?
- documentation from the DfE or EHRC?
- documentation from your union or professional association?
- attendance at a conference or training session?

Please comment or explain.

2) Have there already been clearly measurable changes or improvements at your school as a direct consequence of the specific duties? If so, please comment and describe.

3) If there are already measurable changes or improvements at your school as a consequence of the specific duties, to what extent are these to do with narrowing gaps in pupils' outcomes and results, as distinct from aspects of school organisation such as monitoring and staff training?

4) How confident are you that the specific duties *will* lead to measurable changes and improvements?

5) Have the specific duties had the consequence of increasing transparency and a sense of accountability towards parents and the local community? Please describe and explain.

6) Would you welcome more guidance and advice? If so, can you indicate in general terms what you feel you require?

27. As phrased, these questions are addressed directly to schools. With slight modifications they can be addressed to people who work professionally with schools, for example as advisers, inspectors, trainers or consultants.
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