Northamptonshire Rights & Equality Council

Second Equality Duties Audit (2013) on Public Authorities in Northamptonshire[1]

Publication of information and the setting of Equality Objectives

1. Executive Summary

Background

In 2011 Parliament approved the Specific Duties that apply to all public bodies in order to meet ***minimum*** legal requirements to discharge their duties under the Equality Act 2010 (EqA). At the time these were published it was acknowledged that they were significantly weaker specific duties than had previous applied prior to the EqA coming into force. The Government stated that their intention was to make the specific duties less onerous on public bodies, and to make their responsibilities simpler, clearer and more transparent for local communities.

In 2012 NREC published its first audit of most public bodies in Northamptonshire on how they were meeting these specific duties. We were very disappointed at that time to note, in our view, that ***no public body was meeting its legal obligations***, although some made more efforts than others in this regard. A copy of this 2012 report is available from NREC on request.

At the time of publishing this first audit in 2012 we indicate that we would be producing a second, updated, report/audit in 2013 to check compliance with legal requirements and to plot progress (if any) by public bodies during the subsequent 12 months 2012-13.

The 2013 Audit

In this, our second audit, we are extremely disappointed to note that still ***no*** public bodies in Northamptonshire we examined met these simplified and less onerous duties – i.e. **they are therefore still probably acting illegally, for the second year running, in failing to meet the specific duties imposed on them in law**.

This reality is not, however, necessarily a reflection on the *intentions* of the public bodies concerned; but "good intentions" are not part of the criteria used to assess legal compliance – but may, of course, be used in mitigation. Some may have had such "good intentions", but others certainly did not - as they made little or no effort to meet the requirements of the specific duties in 2012 and no progress has been made subsequently.

In order to distinguish those public bodies that at least ***attempted*** to meet their legal requirements from those that made no effort at all, this 2013 audit report acknowledges where progress has been made towards being legally compliant and

[1] Only some (not all) large public authorities (PA) that are distinctively based in Northamptonshire are included in this audit. National bodies are excluded (such as government agencies). Schools have also been excluded.

we have added an ***evaluation of progress*** to our codes in the audit table (Code 10) which illustrates the overall improvement (if any) from the period 2012 to 2013, with a score (out of 5) being given.

We further developed the audit assessment by adding new questions (4b and 4c), reflecting a more nuanced approach to the publication of information on protected characteristics from that adopted in our 2012 audit.

We are also mindful that even where a public body does not meet the legal requirements of the EqA, some are nonetheless doing good work around equality and diversity through a variety of initiatives or projects. Some have adopted equality schemes or action plans which in themselves are very welcome.

However, we still have to say that, even for these public bodies, ***it is not possible to make any kind of qualitative or quantitative assessment of whether or not these initiatives are having, or will have, any effect whatsoever in reducing substantive inequalities in Northamptonshire***. Reducing inequality, by setting at least one SMART objective, is a legal requirement and reflects the need to go beyond words to action in reducing ***identified inequalities*** and enables public bodies to be held to account for tackling it. This is the main purpose behind the EqA and the public sector equality duties in particular. A failure to get to grips with this undermines the whole purpose of the legislation and the cause of equality and justice for all.

Finally, as was reported last year, it is of concern to us that in all cases (bar one in 2012) we are not aware that there has been any **consultation or involvement** in drawing up equality objectives or identifying (from data, where it has been published) priority areas for equality interventions to address evidence based and identified inequalities.

So close!

In one case in particular (Northamptonshire Police), where data was produced and analysed (which is very encouraging and positive) which identified an important area of inequality, this evidence was subsequently ignored in drawing up the objective(s) which were not SMART. There was also no opportunity (as far as we are aware) for any intervention to question this decision by community organisations or other stakeholders. For this public body, a single failure (in our view) resulted in them not being legal compliant. They came so close! So did one or two others as well (Borough Council of Wellingborough and Northamptonshire County Council).

2. The Legal Equality Duties

2.1 SPECIFIC DUTIES:

The Specific Duties placed on public authorities under the EqA (published in 2011) state:

> 2(1) Each public authority listed in either Schedule to these Regulations **must publish information to demonstrate its compliance** with the duty imposed by section 149(1) of the Act.
>
> 2(2) A public authority listed in **Schedule 1** to these Regulations must publish the information—

(a) not later than 31st January 2012; and
(b) subsequently at intervals of not greater than one year beginning with the date of last publication.

2(3) A public authority listed in **Schedule 2** to these Regulations must publish the information—

(a) not later than 6th April 2012; and
(**b) subsequently at intervals of not greater than one year beginning with the date of last publication.**

2(4) The information a public authority publishes in compliance with paragraph **(1) must include, in particular, information relating to persons who share a relevant protected characteristic who are—**

(a) its employees;
(b) other persons affected by its policies and practices.

2(5) Paragraph (4)(a) does not apply to a public authority with fewer than 150 employees.

3(1) Each public authority listed in either Schedule to these Regulations **must prepare and publish one or more objectives** it thinks it should achieve to do any of the things mentioned in paragraphs (a) to (c) of subsection (1) of section 149 of the Act.

3(2) The objectives must be published—

(a) not later than 6th April 2012; and
(b) subsequently at intervals of not greater than four years beginning with the date of last publication.

3(3) An objective published by a public authority in compliance with paragraph (1) must be **specific and measurable**.

2.2 GENERAL DUTIES:

Section 149 of the EqA states:

(1) A public authority must, in the exercise of its functions, have **due regard** to the need to—

(a) **eliminate discrimination, harassment, victimisation** and any other conduct that is prohibited by or under this Act;

(b) **advance equality of opportunity** between persons who share a relevant protected characteristic and persons who do not share it;

(c) **foster good relations** between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having **due regard** to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) **remove or minimise disadvantages** suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) **take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it**;

(c) **encourage persons who share a relevant protected characteristic to participate in public life** or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in **meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**

(5) Having due regard to the need to **foster good relations** between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.

(6) **Compliance with the duties in this section may involve treating some persons more favourably than others**; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant **protected characteristics** are—

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation

(**Note:** the ninth protected characteristic within the Equality 2010 – Marriage and Civil Partnerships – is not relevant in the context of the specific or general duties)

3. The Audit criteria

3.1 In conducting the audit we looked for evidence that:

(a) **the information and objectives have been published by the dates specified in the duty,**

(b) **it was easy to find this information on a public body's web-site** (usually thorough searching for the terms "equality", "equality information" and/or "equality objectives"),

(c) the public body provides clear information/data on key **services they provide to the public** (in addition to that relating to the employment of staff). All public bodies exist to provide services to the public as their overwhelming aim and ensuring that there is equitable and fair delivery of such services to all section of Northamptonshire's diverse communities is a core component of the equality duties. A failure to monitor and collect data on services, by some (if not all) protected characteristics means that the public body concerned does not know it local community and has no information about whether sections of that community are being treated fairly or not.

(d) it is easy to identify (from this information/data) if there is **disadvantage/inequality in the way services are provided**, by looking at some key areas of activity (by all or most of the relevant protected characteristics covered by the legislation).

(e) if information/data is not presented at all, there is a transparent acknowledgement of this and a commitment to collect information in the future, with a clear deadline for this to be realised.

(f) if the required **objective(s)** have been published, they are **specific and measurable (SMART).**

4. Overall Assessment/Conclusions

If, following our examination of the evidence against the above criteria, we believed that the public authority failed to meet is statutory obligations, this is clearly identified in the audit.

The results of the audit/evaluation is outlined below (**Appendix 1**).

No public bodies in Northamptonshire are, in our view, legally compliant with the Equality Act 2010. This means that they are *probably* acting *unlawfully* but only the courts can ultimately rule on this matter.

Over the past 12 months the following Northamptonshire public bodies have made some progress in meeting their legal obligations (in order with scores out of 5):

Borough Council of Wellingborough (5/5)
Northampton College (3/5)
Northamptonshire County Council (3/5)
Northamptonshire Police (3/5)
Northamptonshire Probation Trust (3/5)
Tresham College (3/5)
East Northamptonshire district Council (2/5)
Kettering General Hospital NHS Trust (2/5)
Kettering Borough Council (1/5)
Daventry District Council (1/5)

The following Northamptonshire public bodies made progress *up to* 2012 but showed no evidence of progress since:

Northampton Borough Council
Northampton General Hospital
Northamptonshire Healthcare NHS Foundation Trust

The following Northamptonshire public bodies have made little or no progress since 2011 (when the specific duties became law):

Corby Borough Council
Moulton College
South Northamptonshire Council
University of Northampton

***Important notes:** Nene (and Corby) NHS Clinical Commissioning Groups only became legal entities in April 2013. It is therefore not possible to audit their situation. However, it must be noted that their predecessor (Northamptonshire Primary Care Trust) was not legal compliant under the EqA in 2012.

This report has been prepared for Northamptonshire Rights and Equality Council and we formally present it to them and the wider public.

Martina Wappel and Paul Crofts

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Appendix 1: The Equality Duties Audit Assessment

Codes for table:

1 = Has some information (with reference to EqA requirements) been published by the Public Authority (PA) as is required by the due date (in all cases this was January 31st 2013)?
2 = Does information published contain data on the **services** provided by the PB?
3 = Does the published service data cover ***all*** protected characteristics?
4a = If not all protected characteristics are covered, is there a commitment to collect this information in the future?
4b = Have they published information on four protected characteristics (race, gender, disability, age)
4c = Have they published information on ***at least*** one of the other protected characteristics (e.g. religion/belief, sexual orientation, transgender)
5 = Is it possible from the **service** data to identify disadvantage by some protected characteristics
6 = Is the PA meeting the requirements of the specific duties (overall assessment) in respect of the provision of information (services)?
7 = Has the PA published some equality objectives in respect of services by April 1st 2013?
8 = Are these service objectives specific and measurable (SMART)?
9 = Is the PA meeting the requirements of the specific duties (overall assessment) in respect of publication of (specific and measurable) objectives?
10 = Improvement / Progress / Evaluation chart (score out of 5)

Name of PA	1	2	3	4a	4b	4c	5	6	7	8	9	10	NOTES/Comments/Observations
Borough Council of Wellingborough	√	√	X	√	√	√	√	√	√	X	X	5	Published new Equalities Information in January 2013 with good staff data and a good area profile. Also published a Corporate Equality Scheme 2012-2015 with Equality Objectives which are not related to the data collected and are not SMART. Published large numbers of Equality Impact Assessments. Many contained data against protected characteristics related to the specific issue being assessed. This is extremely welcome. However, no overall report has been issued cataloguing the data available which would be easily accessible to the general public.
Corby Borough Council	√	X	X	X	X	X	X	X	X	X	X	0	Just staff data published; no update on workforce data since 2010. Has an Equality policy, but it has not been reviewed or revised since March 2010.
Kettering Borough Council	√	X	X	X	X	X	X	X	X	X	X	1	Published a strategy document called "Treating People fairly". Provides good community profile and narrative on services but no data nor SMART objectives on how to improve equality in their Action Plan.
Northampton Borough Council	√	X	X	√	X	X	X	X	√	X	X	0	Has a good document called "Our Approaches to Equalities" Information on staff produced and comparative profile information for UK, Borough Council and County. Published a Review of Corporate Plan in February 2013 but there are no new SMART equality objectives (there is one smart objective related to E-learning which was to be achieved by 1st of March 2013. No report could be found on whether or not this fairly limited objective had been achieved.) Also could not find any data.
Daventry District Council	√ *	√	X	X	√	√	X	X	√ *	X	X	1	*Only staff data. Collects data on sexuality, religion/belief and disability (staff). Only corporate objectives (not equality specific) published. Has Corporate Equality Scheme but it is not SMART.
East Northants District Council	√	√*	X	√	√	√	X	X	X	X	X	2	Good updated community profile and workforce data. *Some information on services but no service data published. No specific/SMART objectives in their

													Equality Objective Action Plan 2013/14. The review of the Single Equality Scheme from 2010 is overdue since March 2013.
Kettering General Hospital Foundation NHS Trust	√	X	X	X	X	X	X	X	√	X	X	2	Updated workforce information January 2013, also distinctions between starters and leavers of staff (gender, age, sexual orientation, ethnicity) comparison between staff and population with ethnicity only.
Northampton College	√	√	X	√	X	X	√	√*	√	X	X	3	Information published is only a profile of staff and students. Does not help to identify areas of inequality or over/underrepresentation in respect of students, but has tried to benchmark college staff data against local community data to limited extend. Information on services provided but still no SMART objectives.
Moulton College	X	X	X	X	X	X	√	X	X	X	X	0	Couldn't find any current information or objectives on the website.
Nene Clinical Commissioning Group / Corby Clinical Commissioning Group													The two CCGs are working together on the Equality Agenda. Both of these organisations only came in existence from 1st of April 2013. As a shadow Board Nene CCG adopted a draft Equality Strategy in 2012 but have acknowledged that it was not legally compliant and are producing a new strategy for approval in November 2013

Name of PA	1	2	3	4a	4b	4c	5	6	7	8	9	10	NOTES/Comments/Observations
Northampton General Hospital NHS Trust	√	X	X	√	X	X	X	X	√	X	X	0	Good workforce data produced but does not inform any SMART objectives. No new action plan or workforce data since 2009. No service/patient data produced. Has Single Equality Strategy 2010-15 and corporate equality objectives, but they are not SMART.
Northamptonshire County Council	√	√	X	√	√	√	√	√	√	X	X	3	Has produced some good information/data on both staff and for some key services (education, social care, fire and rescue). Has an Equality Strategy (2011-14) but could not find any SMART or explicit Equality Objectives published on web-site. The Equality Duty Information Report 2013 analyses and narrates the data provided insufficiently and draws no SMART objectives out of them.
Northamptonshire Healthcare NHS Foundation Trust	√	√ *	X	√	√	X	X	X	√	X	X	0	*Only information on service **complaints** published. Good info in respect of employees but not services (to patients/community). Has published equality objectives but not SMART. No new data or information published.
Northamptonshire Police	√	√	√	√	√	√	√	√	√	X	X	3	Information on Complaints, victim satisfaction and stop and search (Race/ethnicity and gender) published in respect of services. Good staff data published. Data on gender, age disability, and ethnicity for both staff and services is collected. Information also supplied for sexual orientation and religion and belief has been supplied in respect of staff. Has set equality objectives but they are not SMART; Objectives focus on disabilities in staff and engagement with Muslim community. Objectives remain unchanged from 2012/13.
Northants Probation Trust	√	√	X	√	√	√	√	√	√	X	X	3	Equality Information is easily accessible. Good information published on both staff and services. Has set equality objectives for 2012-2013, but they are not SMART nor relate back to data published. Last year they aimed for good statistical measures of outcomes, but nothing has been published yet.

South Northamptonshire Council	√ *	X	X	√			X	X	√ *	X	X	0	*Contained in revised (Jan 2012) Equality & Diversity policy. Still no data on services. Objectives set but not SMART. All I found were drafts of a Consultation Questionnaire on asking for Equality Action Ideas.
Tresham College	√	X	X	√	√	X	X	X	√	X	X	3	Published a Singe Equality Scheme with good student profile data by reference to some protected characteristics, but out of date since November 2012. No SMART equality objectives.
University of Northampton	√	X*	X	X	√	X	X	X	√*	X	X	0	Only student profile published. Reasonable info in respect of staff but not services (to students). Only ***draft*** objectives published in 2012 (and nothing in 2013) and they are not SMART, nor do student objectives relate back to any evidence/ information published.