Northamptonshire Rights & Equality Council

Third Equality Duties Audit (2014) 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. We repeated this audit in 2013 and came to similar conclusions. A copy of this 2013 report is available from NREC on request.

At the time of publishing this first audit in 2012 we indicated that we would be producing annual, updated, report/audits to check compliance with legal requirements and to plot progress (if any) by public bodies.

The 2014 Audit

[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.

In our third audit, we are pleased to note that two public bodies took our recommendations on board and currently meet the specific duties, however it is still disappointing to note that ***most*** public bodies failed to meet these simplified and less onerous duties – i.e. **they are therefore still probably acting illegally, for the third 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 2014 and no progress has been made subsequently.

In order to distinguish those public bodies that met their legal requirements from those that made no effort at all, this 2014 audit report acknowledges where progress has been made towards being legally compliant and 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 2013 to 2014, with a score (out of 5) being given.

We developed the audit assessment by adding improvement and evaluation scores (10a and 10b), comparing the 2013 data with the 2014 data in order to reach an overall evaluation of the level of progress.

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 still 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 Healthcare NHS Trust), where data was produced and analysed (which is very encouraging and positive), considerable improvement was noted. What was especially encouraging was the recognition of areas of weakness and the commitment to work to address these. We hope to see this improvement realised in future audits.

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 its 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)whether 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 its statutory obligations, this is clearly identified in the audit.

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

Only two public bodies in Northamptonshire are, in our view, legally compliant with the Equality Act 2010. This means that the other public bodies are *probably* acting *unlawfully* but only the courts can ultimately rule on this matter.

The two that are compliant are:

Northampton General Hospital NHS Trust
Northamptonshire Healthcare NHS Foundation Trust

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):

Northamptonshire Healthcare NHS Foundation Trust 4/5
Corby Clinical Commissioning Group & Nene Clinical Commissioning Group 3/5
East Northants District Council 3/5
Kettering Borough Council 3/5
Northampton General Hospital NHS Trust 2/5

The following Northamptonshire public bodies made progress *up to* 2013 but showed no evidence of progress since:

Borough Council of Wellingborough
Daventry District Council

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

Corby Borough Council
Kettering General Hospital Foundation NHS Trust
Moulton College
Northampton Borough Council
Northampton College
Northants Probation Trust
South Northamptonshire Council
Tresham College
University of Northampton

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

Olorunteleola Cartwright

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Appendix 1: The Equality Duties Audit Assessment

Codes for Table

1 = Has some information (with reference to the Equalities Act (2010) requirements) been published by the Public Authority (PA) as is required by the due date (in all cases this was January 31st 2014)?

2 = Does information published contain data on the **services** provided by the PA?

3 = Does the published service data cover **all** protected characteristics?

4a = If not all protected characteristics covered, is there a commitment to collect this information in the future?

4b = Have they published information 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 2014?

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 the publication of (specific and measurable) objectives?

10a = Improvement/progress (score out of 5)

10b = Evaluation (score out of 5)

Public Authority	1	2	3	4a	4b	4c	5	6	7	8	9	10a	10b	Notes/ Comments/ Observations
Borough Council of Wellingborough	√	√	√	NA	√	√	√	√	√	X	X	1	3	Minor improvements are notable in the breadth of material, however Equality Objectives are not SMART and this was highlighted in the previous report and is therefore a key contributing factor to the Improvement/Progress/Evaluation score (10a).
Corby Borough Council	√ *	X	X	X	X	X	X	X	X	X	X	0	0	*Not updated since March 2010. Previous reports noted the lack of updates to the data, this issue has not been addressed.
Corby Clinical Commissioning Group & Nene Clinical Commissioning Group*	√	√	X	√	X	X	X	√	√	X	X	3	3	*NHS Nene and NHS Corby Clinical Commissioning Groups have published a single "Inclusion and Equality Strategy 2013-2016" between them. The PB has updated its equality, inclusion and human rights policy. The policy outlines three objectives it aims to achieve in the next three years but does not outline the process by which they will be achieved; an inclusion of the process would make the policy SMART. Furthermore there is a need to include data indicating the level of progress.
Daventry District Council	√	√	X	X	X	√	X	X	√	X	X	1	1	The PB has updated its Equality Scheme and Plan, however there is only data in relation to three of the four characteristics identified in 4b. The PB has identified

														weaknesses in the quality of information it holds concerning its service users and their needs. The PB seems to be working to support different partners and it would be beneficial to see statistical data highlighting this. The PB has failed to meet their requirements on specific duties because, although there is information on service users, there is inadequate data on their employees.
Public Authority	**1**	**2**	**3**	**4a**	**4b**	**4c**	**5**	**6**	**7**	**8**	**9**	**10a**	**10b**	**Notes/ Comments/ Observations**
East Northants District Council	√	√	X *	√	√	√	√ **	√	√	X	X	3	3	*The published service data covers the majority of protected characteristics, but excludes: pregnancy and maternity; and gender reassignment. **Disadvantage is discussed in relation to both service users and employees. Clear objectives are published, however these are not SMART. By including service data, which was absent previously, the published data is much improved.
Kettering Borough Council	√	√	X	X	√	√ *	√	√	√	X **	X	3	3	The PB has published a document titled "Social Inclusion" which includes data on services, service users and employees. The last report the absence of data on services and noted that objectives were not SMART, the former has been addressed however the latter hasn't been remedied. *Only covers religion/belief. **Objectives are generic rather than specific and measurable. There needs to be

														data published that correlates to the aims and objectives.
Public Authority	**1**	**2**	**3**	**4a**	**4b**	**4c**	**5**	**6**	**7**	**8**	**9**	**10a**	**10b**	**Notes/ Comments/ Observations**
Kettering General Hospital Foundation NHS Trust	√	√	X *	√	X	X	X	X	√	X	X	0	1	*The PB has described the requirements of the EqA but have not published any data about how they meet these requirements. The PB has published an updated "Equality Strategy and Action Plan" however this is not reflective of the protected characteristics. On the face of it sample feedbacks seem to demonstrate good practice, however there is a lack of evidence. A statistical breakdown of the feedback would improve the data. The Action Plan lists certain services and outcomes but does not include any data to support this information. It is suggested that the inclusion of data identifying perceived problems and targets/goals would make the Action Plan. Good workforce data.
Moulton College	√ *	X **	X	X ***	√	X	X	X	X	X	X	1	0	*Data has only been published for academic year 2012/13. **The PB provides data on student numbers by protected characteristics, however they do not provide details of the services provided or analysis of the data. ***There is a commitment to monitor staff and student recruitment and "all systems and procedures" in the "Equality Policy", however this is not specific to the

														protected characteristics.
Public Authority	**1**	**2**	**3**	**4a**	**4b**	**4c**	**5**	**6**	**7**	**8**	**9**	**10a**	**10b**	**Notes/ Comments/ Observations**
Northampton Borough Council	√	X	√ *	X	√ *	√ *	X	X	√	X	X	0	1	*There is only workforce data, however there is a commitment to carry out equality impact assessments in relation to services.
Northampton College	√	X	X	X	X	X	X	X	√	X	X	0	1	There is no data in relation to the PB's service users or workforce as a result, it is impossible to identify any areas of inequality. Similarly, equality objectives are not SMART.
Northampton General Hospital NHS Trust	√	X	X	√	X	X	X	X	√ *	√	√	3**	2	*PB objective is to achieve representation from 100% of protected groups in two years and aims to improve staff satisfaction rates by 2014. **There are positive commitments to improve, however there is a lack of data.
Northants Probation Trust	X	X	X	X	X	X	X	X	X	X	X	0	0	It appears that the PB has a new website which contains no information on equality and diversity.
Northamptonshire County Council	√	√	√	NA	√	√	√	√	√	X	X	2	4	Data is good on workforce and services and is broken down by all protected characteristics. There are objectives, however these are not SMART.
Northamptonshire Healthcare NHS Foundation Trust	√	√	X **	√	X *	√	√	√	√	√	√	5	4	*The PB has published information on four of the protected characteristics, however they haven't published data on disability. However there is a commitment to collect information on disability and sexual orientation. **The PB states that "corporately we have

														made the decision not to publish monitoring information for service users and staff based on their gender reassignment." The workforce data covers all of the protected characteristics.
Public Authority	**1**	**2**	**3**	**4a**	**4b**	**4c**	**5**	**6**	**7**	**8**	**9**	**10a**	**10b**	**Notes/ Comments/ Observations**
Northamptonshire Police	√	X	X	X	X	X	X	X	√	X	X	0	1	The 'Integrated Equality Scheme' is the only equality document under the 'policies' tab on the website, this is dated 2010-2012. The 'performance' tab on the website does not work. A search of the website identified the 'Equality, Diversity and Human Rights Strategy 2013-2016', as this is the only document discovered which is not out of date the audit is based solely on this.
South Northamptonshire Council	√	X	X	X	X	X	X	X	√	X	X	0	1	No data on service users or workforce was published. PB has published a three-year action plan however objectives are not SMART.
Tresham College	√ *	X	X	X	X	X	X	X	√	X	X	0	0	*The only document published on the PB's website is one set of minutes with four equality objectives. The objectives are not SMART.
University of Northampton	X *	X	X	X	X	X	X	X	X	X	X	0	0	*The University's E&D policy on the website is dated 2010
Public Authority	**1**	**2**	**3**	**4a**	**4b**	**4c**	**5**	**6**	**7**	**8**	**9**	**10a**	**10b**	**Notes/ Comments/ Observations**