

Making the duty work

A guide to the Disability Equality
Duty for disabled people and their
organisations



Disability Rights Commission

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“How often have you felt frustrated when your local council, school or hospital just doesn’t take disability equality seriously?”

Now is the chance to help them to sort it out.

Foreword

To ensure that we, as disabled people, can live in communities where we can participate fully and equally, we now have the Disability Equality Duty for the public sector. This new legal duty means that public authorities such as schools, the NHS, local authorities and inspection bodies need to proactively look at ways of ensuring that we are treated equally, rather than as a special add-on afterwards. A similar duty was introduced on race equality a couple of years ago.

However, this duty is not necessarily about changes to buildings or adjustments for individuals, it's all about weaving equality for disabled people into the culture of public authorities in practical and demonstrated ways. This means that public authorities need to be actively thinking about the principles of disability equality from the outset, rather than responding to our individual disability-related discrimination complaints.

This institutional approach will help to tackle the underlying issues of discrimination and ultimately lead to both better employment prospects and the provision of discrimination-free services.

For the first time, public authorities will be involving us and our local disability organisations to help them really make a positive difference to the services and employment experiences we all receive. Compared to the individual rights focus of the Disability Discrimination Act (DDA)

1995, this is clearly a huge cultural change both for public authorities and us.

Bert Massie
Chairman Disability Rights Commission

Introduction

Why is this important for you?

How often have you felt frustrated when your local council, local hospital, local school or government department just doesn't take disability equality seriously and discriminates without even thinking? Now is the chance to help them to sort it out. The Disability Equality Duty is a new way to help do this. This is a new approach for public authorities to make them tackle disability discrimination in a proactive and practical way.

This guidance is aimed at disabled people and their local disability organisations to help them gear up for this new duty and to communicate the vital role which they have to play in utilising the effectiveness of this duty to achieve better disability equality outcomes from public services.

“Disabled people have rightly said that policymakers should do 'nothing about us without us'. None of us can improve opportunities for disabled people effectively – whether in employment or in the services we offer – unless we talk to disabled people and involve them in our decision-making. That is why I see involvement of disabled people as at the heart of the new Disability Equality Duty.” Anne Maguire Minister for Disabled People

The Disability Equality Duty provides an important new framework for achieving partnership between disabled

people and public authorities – to produce better services and careers for disabled people and more inclusive environments and communities. This guidance will help disabled people and their organisations play their full role in these partnerships.

“nothing about us without us“

What is the overall aim of the duty?

The main aim of the Disability Equality Duty is to get public authorities to think and act proactively on disability equality issues from the start. This will help them to identify from the beginning, where and how, unnecessary barriers are created to the equal participation of disabled users of their services as well as current and potential employees. This is not just about physical/sensory barriers but also barriers which are created by the way services, policies or practices are designed. Understanding these barriers will help ensure the public sector plays its full role in enabling disabled people to participate in all aspects of society as equal citizens.

This duty is therefore aimed at ensuring, for the first time ever, that public authorities take responsibility for tackling institutional disability-related discrimination. This is a really exciting step-change compared to the individual rights focus of the Disability Discrimination Act (DDA).

It is not about more individual rights; instead it is about improving public authorities' policies and services as a whole for all disabled people.

A college or school may have a policy on bullying or harassment which does not tackle disability related harassment. The Disability Equality Duty will help that college or school to review that policy to ensure that they are addressing disability equality issues.

In this sense, the duty reflects the social model of disability which takes the approach of focusing on structures and the barriers that disabled individuals experience (for example, inaccessible transport, housing and education provision) and provides tools for dismantling and preventing these. Adopting this social model approach challenges authorities to move from a solely medical approach to disability, which concentrates on medical conditions and impairments as the main reason for the difficulties experienced by disabled people, to a social model approach which recognises the negative impact on disabled people of a society designed for non-disabled people and takes active steps to promote equality for disabled people.

Of key importance are the obligations the duty gives to key public authorities to involve disabled people in developing their Disability Equality Scheme. This will allow public authorities to really understand what the issues are for disabled people and help them to tackle these issues at their root causes.

Which disabled people does the duty apply to?

The duty refers to disabled people and this is based on the definition of disability used in the Disability Discrimination Act. This applies to a wide range of disabilities, including those with long term health conditions, ranging from people with Alzheimer's and arthritis, to those with learning disabilities, depression, diabetes, cancer and so on. The duty requires authorities to consider the equality of all disabled people who fall within this definition. This means that public authorities may need to consider the impact of specific impairments as well as the general issues which might affect all disabled people.

The Disability Equality Duty

This chapter provides more detail about what the Disability Equality Duty requires so that disabled people and organisations of disabled people know what is expected of public authorities.

If you would like more legal information, please refer to the Statutory Code of Practice entitled 'The Duty to Promote Disability Equality: Statutory Code of Practice'. This is available on the DRC's website at: www.dotheduty.org

The general duty

The Disability Equality Duty comprises two parts:

- i. the general duty, and
- ii. the specific duties (which are described later).

The general duty is an over-arching framework to help public authorities to better achieve disability equality. It asks authorities to respond to the following six requirements:

1 The need to promote equality of opportunity between disabled persons and other persons

This is based on a recognition that disabled people should have full opportunities and choices to improve the quality of their lives and be respected and included as members of society. Public authorities will be expected to start thinking about how they can make their policies and services fairer for disabled people (taking into account that different types of impairment can often mean differential levels of access to services).

2 The need to eliminate discrimination that is unlawful under the DDA

This coincides with and complements the reasonable adjustment provision in the Disability Discrimination Act. Whilst the nature of the reasonable adjustment provision varies depending on which areas of disabled people's lives are being considered (in particular, the anticipatory duty to make reasonable adjustments applies only in relation to services, functions and private clubs), the requirement for public authorities to eliminate discrimination under the general duty means all public authorities will be expected to adopt a similar proactive approach to ensure disabled people are not excluded at the outset.

3 The need to eliminate harassment of disabled persons that is related to their disabilities

Harassment is a very broad concept and can take many forms, from direct verbal abuse to comments which make

an individual feel uncomfortable, intimidated or degraded. Disabled people may experience considerable harassment in daily life – at work, when receiving services, or at home. Public authorities will be expected to review existing antiharassment policies to see whether disabled people are mentioned and, if not, to explicitly state that it is unacceptable for disabled people to experience such forms of harassment. Public authorities will also be expected to review the policy with disabled staff and service users through their involvement in the Disability Equality Scheme (which is described later) to make sure the policy is actually working in practice.

4 The need to promote positive attitudes towards disabled persons

Whilst many people have positive attitudes towards disabled people, some express pity, fear, lack of respect and/or contempt. Such attitudes are not only hurtful, but can lead to discrimination and place unnecessary restrictions on disabled people. In delivering services and employing staff, public authorities will need to consider what they can do to eliminate ignorance and prejudice in the wider community. For example, reviewing their communications strategy to spot-check how disabled people are portrayed (eg whether they are visibly portrayed in positive roles in leaflets etc) or look at staff training.

5 The need to encourage participation by disabled persons in public life

Public authorities will need to encourage disabled people to participate in particular forums and committees and so

on by advertising these opportunities in ways to reach disabled people and to ensure that these forums/committees operate in an inclusive manner.

6 The need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons

Equality of opportunity cannot be achieved by treating disabled and non-disabled people alike. Public authorities will need to use a specific approach to make sure they are including disabled people. For example, providing additional dedicated services or facilities to enable disabled people to access mainstream services on equitable terms.

A local authority intends to pedestrianise the town's main shopping centre area on Saturdays and ban access to all private vehicles. It recognises this may have a significant adverse effect on disabled people's ability to access the main shopping area where they can only use their own transport. Consequently, dedicated parking for disabled people is built into the scheme.

Who does the general duty apply to?

The general duty applies to all public authorities (with a handful of specialised exceptions). This includes government departments, local authorities and schools. Voluntary and private sector organisations are also subject to the general duty where they are delivering services commissioned by public authorities.

The specific duties

Many key public authorities are subject not only to the general duty but also have a set of specific duties. These offer a very practical framework for achieving better disability equality outcomes in relation to the six requirements of the general duty. The key feature of the specific duties is a requirement for these organisations to produce a Disability Equality Scheme.

The Disability Equality Scheme

The Disability Equality Scheme is a practical framework to assist public authorities in planning, delivering, evaluating and reporting on their activities to ensure compliance with the general duty. The scheme should be published by 4 December 2006 (except primary schools in England who must produce a scheme by December 2007 and all schools in Wales where the date is April 2007).

The essential elements the scheme must cover are:

- i. a statement of how disabled people have been involved in developing the scheme
- ii. an action plan (setting out the steps that the authority will take to comply with the general duty)
- iii. arrangements for gathering information about performance of the public authority on disability equality
- iv. arrangements for assessing the impact of the activities of the authority on disability equality; and

- v. details of how the public authority is going to use the information gathered, in particular in reviewing the effectiveness of its action plan and preparing subsequent schemes.

A report on the implementation of the scheme, in particular on the results of information gathering and what use has been made of the information, as well as what steps from the action plan have been taken, must be published annually. The scheme must be reviewed and revised every three years.

The following sections describe each of the scheme's components:

1 Involving disabled people and their organisations in the development of the scheme

The specific duties explicitly require public authorities to involve those disabled people and their organisations that appear to the authority to have an interest in the development of their scheme. For example, former, current and potential service users, staff and the wider community.

The term 'involvement' itself is a fundamentally more active engagement of disabled people and their organisations as opposed to the one-off formalised type of consultation often used by public authorities. In relation to the specific duties, involvement is about a supported professional relationship between disabled people, their organisations and public authorities. Disabled people and their organisations should be encouraged to have a

greater say in how they think public services such as social care or education provision affect them, how they can be improved and be a part of confirming whether improvements have been realised. Some may not want to be involved for a variety of reasons but for those disabled people and their organisations that do, this offers a real step-change in shaping better outcomes as well as the actual experience of delivering services themselves.

“This is a great opportunity to make a difference and include disabled people as a matter of course”

Helping public authorities to understand the range of barriers faced, for example, barriers in policy design or delivery as well as physical barriers, together with solutions, means actions can be identified which will help remove them and make things change. Without involvement, public authorities will continue to lack understanding, still make mistakes, not remove barriers and possibly still create them. This is a great opportunity to make a difference and include disabled people as a matter of course rather than solving problems after they occur.

A library wishes to ensure the maximum use of its audio books and needs to understand what barriers disabled users face in using the service so it can plan to overcome them. It engages with local disability organisations that include current and potential users.

They also encourage disabled people to get involved in the Library Users Group. This involvement determines other barriers not previously considered such as visually impaired people's difficulties in getting to the library, knowing what the full range of books are and the attitudes of staff in providing assistance.

To be fully effective the involvement process should:

- be focused – the process should be clear about where the public authority has scope to make changes and what resources are available
- use accessible mechanisms – it is possible for a wide range of disabled people to participate
- be proportionate – the approach taken should be reflective of the size of the public authority
- be influential – to maintain ongoing commitment by disabled people they need to know that it has been influential, not tokenistic
- be transparent – people outside the public authority should be able to see how the involvement has affected the authority's plans
- be financially supported – public authorities should make sure that they have a realistic budget for

supporting the involvement of disabled people and their organisations ie advocacy, communication support and travel expenses and commissioning disability organisations to facilitate involvement

- be organised – public authorities need to know what it is they are seeking advice about to make best use of the time of disabled people and their organisations and seek their views at the start of the scheme’s process, not later; and
- develop and agree a user involvement protocol.

Many disabled people and their organisations may be involved in this process as authorities are writing their schemes. If your organisation has not heard anything and/or you would like to find out what is happening in your area, do contact your local public authorities to find out where they are at in preparing for this.

Whilst the specific duties require involvement of disabled people specifically in the development of the Disability Equality Scheme, it would enhance an authority’s ability to comply with the duty to also involve disabled people and their organisations in other related tasks such as impact assessments and information gathering to really realise improved disability equality outcomes.

By Summer 2006, the DRC will have produced guidance for public authorities on involving disabled people and their organisations to support this process. This will be available on the DRC’s website at: www.dotheduty.org and in print and various formats.

Please refer to Appendix A which contains a list of useful questions which disabled people and their organisations might wish to use as an aid to involvement with public authorities.

2 Action plans

The action plan should set out clearly the steps that a public authority is going to take to promote disability equality over the period of the scheme. It should be aimed at making practical improvements to equality for disabled people, which means the specific outcomes must be clearly identified. The steps set out in the action plan must be carried out within three years of the scheme being published unless it can be demonstrated that it is unreasonable or impracticable to do so.

The action plan should reflect a number of things including:

- the priorities of disabled people
- the public authority's strategic priorities
- the specific outcomes which are to be achieved
- how the outcomes are to be measured and assessed
- who is responsible for delivering the outcomes; and
- a realistic timetable for delivering each outcome.

It is recommended that public authorities set specific targets in key employment or service delivery areas on which it can readily measure their performance.

An FE college decides to increase the number of disabled people enrolling for evening classes and sets a target of an overall 50 per cent increase, with varying improvements being set for each course, over the three years of the scheme. This outcome is to be achieved in a variety of ways including proactive promotion of courses to disability groups and the introduction of 'taster' sessions.

Schemes are unlikely to be able to address all areas of concern to disabled people in the first three years and priorities will need to be considered. This means that efforts should be concentrated on those areas that will have the maximum impact on disabled people's lives.

3 Gathering information

Public authorities must set out their arrangements for gathering information on the effect of their policies and practices on disabled people. The specific duties require authorities to set out in the Disability Equality Scheme a statement of their arrangements as follows:

- every authority must set out arrangements for gathering information on the effect of its policies and practices on the recruitment, development and retention of its disabled employees
- educational bodies (specified in Parts II, III, or IV of Schedule 1 in Appendix A of the Code of Practice on the Duty) must set out their arrangements for gathering information on the effect of their policies and practices on the educational opportunities

available to, and on the achievements of, disabled pupils and students; and

“It is recommended that public authorities set specific targets in key employment or service delivery”

- every authority other than educational bodies (specified in Parts II, III or IV of Schedule 1 in Appendix A of the Code of Practice on the Duty) must set out its arrangements for gathering information on the extent to which the services it provides, and those other functions it performs, take account of the needs of disabled persons.

This information gathering is not an end in itself but should be used to help public authorities make decisions about what actions would best improve disability equality. Often information will show up a particular pattern, trend or experience and this will act as a trigger to investigate further.

It is recognised that disclosure of disability is often low. Public authorities must make it clear when they are asking for information, the purpose this is being used for, that they will support disabled people in the information that they give by treating information confidentially and that they will inform disabled people what has happened as a result of the information gathering exercise.

At the end of the day, this has to be an action-based activity where the main emphasis is on using information to really achieve improved outcomes for disabled people.

A local authority gathers information on who uses its youth services and what barriers they experience. It discovers very few young people who are deaf or have a hearing impairment use their services and then works with local groups of young people who are deaf or have a hearing impairment to improve their service.

A government department reviews its training provision and notes that very few disabled employees take up management training. When the department looks into this, the feedback from some disabled employees is that moving into management seems like something that they will never be able to achieve. The department decides to lay on a taster session for disabled employees using a trainer who is a disabled person with a background in senior management. After the session, several disabled people sign up for management training and the department benefits by developing an understanding of the blockages and barriers many of their training courses present to disabled people. This approach is repeated on a regular basis.

Only having a limited amount of information is not an excuse for inaction

In drawing up the Local Development Frameworks section regarding future housing provision, a local authority involves local disability groups who raise the issue of the chronic shortage of accessible housing. They argue the need for all new housing to be constructed to Lifetime Home standards, and for a proportion to be built to wheelchair housing standards. The local authority staff investigate the evidence base to support these proposals. They find substantial information about the regional prevalence of disabled people, and in particular the mobility impairments which would particularly benefit from Lifetime Home standards (from the housing need surveys). However, there is no statistical information about the regional prevalence of wheelchair users. Rather than using this absence as an excuse for inaction they take further evidence from local groups, local housing, social services and health authorities on the shortfall of wheelchair housing provision. They also consider the relevance of the evidence base of other regions. On this basis they establish a target of 20 per cent wheelchair accessible housing. They also take steps to improve the regional evidence for housing needs of people with a variety of impairments.

“An impact assessment is not an end itself”

4 Impact assessments

Public authorities must include in their Disability Equality Schemes, details of their methods for assessing the impact (or likely impact) of their policies and practices on equality for disabled people. The purpose of an impact assessment is to ensure that the activities of public authorities:

- do not disadvantage disabled people
- identify potential barriers in advance; and
- best promote equality of opportunity.

Where the assessment identifies a negative impact or missed opportunity to achieve a more positive impact, then the public authority should look at what it can do to remedy this or to take up this missed opportunity.

Essentially, an impact assessment is a proactive screening approach to looking at potential issues. This review of policies and services will allow negative impacts and missed opportunities in relation to disability equality to be identified and remedied. Identifying these should be seen as a positive action as it will help prevent issues arising later and help everyone learn more about how to develop good practices and policies in the future.

Obviously, a public authority’s approach to impact assessment will vary widely, depending on its nature and the degree of relevance of the function for disabled people. Where the relevance is high, there is a need for a

thorough impact assessment but where it is clear that relevance is low, there may be other actions that take priority. Public authorities will need to have a system for identifying the level of relevance and recording what actions they have taken if they do not do a full impact assessment. For more information about the range of actions that a full impact assessment is likely to involve, refer to the chapter 'Working with public authorities' of this guidance about making the duty work.

An impact assessment is not an end in itself but a process which needs to be gone through to identify and address the potential issues for disabled people. Where a negative impact or missed opportunity is found action needs to be taken to address this and ensure disability equality is considered appropriately.

A Scottish NHS Board considers advertising its promotion opportunities only on its intranet. During the impact assessment it discovers this would have a significant adverse impact on visually impaired employees using screen readers because the intranet does not comply with recognised accessibility standards. The introduction of the new system of advertising promotion is delayed until the intranet's accessibility issues have been addressed.

As well as including details of how impact assessments will be carried out on policies and practices in future, a Disability Equality Scheme should also include information about how an authority will impact assess existing policies and activities. A timetable for doing this over the period of the scheme and a prioritisation system will prove critical.

Where difficulties are identified then actions should be developed to address them and these should become part of the action plan.

As part of its programme of reviewing existing policies, an FE college considers the policy requiring detailed medical questionnaires to be completed in advance by all applicants for employment. It is concerned that questionnaires may put off disabled applicants, and decides that medical questions will only be posed to successful job applicants and that the purpose of these will be clearly explained.

“It’s about involvement”

Working with public authorities

Getting involved in the development of the Disability Equality Scheme and action plans will be challenging for disabled people, their organisations and public authorities.

Through involvement

As mentioned previously, it is important that everyone is very clear about what their role is in the process of developing the scheme. The involvement of disabled people and their organisations in the development of Disability Equality Schemes must be a genuine process which will achieve positive outcomes. To achieve this, it is important that disabled people and their organisations ask questions about what is being asked of them and challenge the methods of involvement if they do not work. This might include asking questions like:

- Who else is being involved
- both individuals and organisations?
- What liaison arrangements are in place to share information and ideas?
- What is required of them and their organisation (eg in time, expertise and resources)?
- What are the timescales involved?
- What arrangements are in place to reimburse costs?
- Will the public authority help build capacity to maintain involvement and how will this be done?

Again, please refer to Appendix A which lists comprehensive and helpful questions to aid the involvement process.

In addition, it will also be helpful for disabled people and their organisations to:

- be realistic in the expectations of what might be achieved in both the short and long term
- be objective about the issues and their priority to the wider community
- provide specific examples about the difficulties and the successful ways they can be overcome
- share specific experiences but try not to always focus on these as it is about a scheme for all disabled people rather than individual rights
- consider whether a contribution is representative of personal interests or of a wider group of interested people; and
- consider whether liaising with other people or groups would be useful.

A point to remember is that with the best will in the world, it will not be possible to address everyone's priorities and wishes immediately. This means that public authorities working with disabled people and their organisations will need to consider the priorities which will have to be applied. It would be useful to provide views on priority areas which might need to be addressed quickly and why. This will help the public authority understand the issues and assist in setting the short, medium and long term priorities.

A local authority commissions a local disabled persons' coalition to undertake a review of the policy governing the Dial-a-Ride and subsidised taxi card scheme and how it is working. The group consults its members and other local disabled people and puts together a report on the views of the relative priorities of the two schemes and seeks to have this reflected in the policy. Consequently, it suggests the modest increase in budget for the coming year should be spent to improve the reliability of the Dial-a-Ride scheme as opposed to increasing the number of subsidised taxi journeys allocated to each user. This reflects the fact that more people use the Dial-a-Ride facility and a modest increase would have a marked impact on the quality of service.

It is worth remembering that it is the public authority's responsibility to ensure appropriate and effective engagement. However, public authorities are relatively new to this. If concerns exist that involvement is not happening, it is appropriate to take the initiative to support them to make this happen. One approach to suggest might be for the public authority to establish a specific group to investigate how to engage effectively. This has proved successful with disabled minority ethnic groups in the past.

Through monitoring progress of schemes

Whilst the duty requires public authorities to only involve disabled people and their organisations in the development of Disability Equality Schemes, it is

recommended that authorities also involve disabled people in other aspects of schemes and action plans.

The role of disabled people and their organisations in helping to collect and analyse aspects of appropriate data, as well as helping to develop current and new monitoring systems, will prove to be key for public authorities to confirm whether they are seeing real improved outcomes for disabled people as a result of the scheme and the actions set out in their action plans.

Determining progress is a proactive process which consists of four stages, all of which disabled people and their organisations can help public authorities with. These stages and suggested questions which could be asked to guide this process are:

1 Collecting and assessing information on performance

- What was achieved in those areas where targets and outcomes had been set?
- Is it possible to measure performance in all of the areas which need to be assessed, if not what changes need to be made to the monitoring regime?
- Is information available to assess progress on all targets?
- Does the data indicate any trends or patterns?

2 Assessing performance against targets and the outcomes set out in the scheme and action plan

- Did the actual performance achieve the desired targets and outcomes?
- Were the trends moving in the right direction?
- If targets and outcomes were not achieved, why not?

3 Identifying shortfalls and gaps together with their causes

- What targets and outcomes were missed or exceeded?
- Why did performance under- /overshoot expectation?
- Is performance likely to change?
- Are the original targets and outcomes still realistic and achievable?

4 Identifying and implementing additional actions to address these shortfalls

- What needs to be done differently in order to get back on track to achieve targets and outcomes?
- Do targets and outcomes need to be adjusted?
- What additional steps need to be taken to avoid difficulties in future?
- Are any additional resources needed to develop the action plan?
- What lessons can be learnt from the scheme?

Part of a Regional Development Agency's (RDA) action plan to improve communication includes an action to ensure that within 12 months all Agency publications have a standard strapline stating that the document is available in a range of accessible formats including Easy Read. A disabled person who is a member of the RDA Disability Forum routinely reviews all Agency publications and notices that not all of the documents have the strapline on them and where it does appear, it is not always standard. Consequently, they feed this back to the RDA Disability Forum and ask that this is investigated and remedied.

Through impact assessments

As well as helping authorities to accurately monitor outcomes of the scheme and subsequent action plan, disabled people and their organisations can also play a helpful role in assisting with authorities' ongoing impact assessments. In particular, through helping authorities to identify the level of relevance of functions to disability equality and what actions need to be taken to achieve better disability equality outcomes.

There is a range of actions that a full impact assessment is likely to involve. These include:

- considering the available information
- assessing the effect the policy or decision would have on disabled people

- considering the measures which may mitigate any adverse impact; and
- identifying alternative approaches which may better achieve promotion of equality for disabled people.

Disabled people and their organisations can also:

- use their experience and understanding of the potential barriers to provide specific examples of where issues might arise
- identify missed opportunities
- advise on measures to avoid negative impacts on disabled people
- enhance the positive aspects of the policy or procedure as it is developed and implemented
- assess whether available information is sufficient to determine the impact of any policy or procedure
- identify specific measures which might be taken to help improve areas where policies/services do not help disabled people enough
- identify whether there might be different approaches to help achieve better outcomes.

A local authority considers changing from a doorstep recycling collection system to one which uses community bins placed at intervals in the street and to which residents take their own recycling. By involving disabled residents in the impact assessment, the authority obtains detailed information about the potential problems that this system would create for disabled residents. Based on this information, the authority adapts the proposed methodology so that disabled residents retain their doorstep recycling collections.

“Ask the right questions”

Making change happen

Most public authorities will take their responsibilities seriously. However, if disabled people and their organisations still do not feel that any change is happening from a particular public authority, then they may wish to approach the authority directly by asking the following helpful questions:

- Does the authority have a Disability Equality Scheme and do disabled people and their organisations have a copy of this?
- What is their overall approach to the duty?
- How have they decided on their priorities?
- How have they developed and publicised their Disability Equality Scheme and action plan?
- What are the monitoring arrangements for assessing performance?
- Has anything changed as a result of the Disability Equality Scheme and action plan, if so what and if not, why?
- How were disabled people and their groups involved?
- What mechanisms were used for this involvement?
- Why were these disabled people or groups used and how were they identified?
- What changes have been achieved because of the involvement process and how was this publicised?

- What lessons have been learned so far and how are these being incorporated into future work?

By contacting the public authority directly, it is anticipated many of the issues should be resolved. This approach may even help the public authority develop its understanding and approach so that they more effectively meet their obligations and achieve positive outcomes.

A disabled person with a hearing impairment not involved in any formal involvement procedures of a Scottish NHS Board wishes to see the Disability Equality Scheme and the action plan but is unable to find it on their website. Consequently, she emails the Board and asks how the Disability Equality Scheme and action plan is being publicised. She highlights her concern about it not being on the website, especially as this is a good way for a significant number of disabled people to access information.

In raising concerns this way, it is anticipated that a positive response will be received from the public authority and the majority of issues will be addressed and resolved. However, if this does not work it might be appropriate to broaden the approach and seek to involve others in taking this forward. For example, contacting other interested disability organisations. These could include local, regional or national organisations of and for disabled people or specific disabilities, coalitions of disabled people, those already involved in the duty with the public authority, campaign groups and so on.

Public authorities often have lines of accountability through independent and elected individuals, management boards, Trustees and so on. Such people are likely to be sensitive to issues raised about the public authority not being seen to take their responsibilities seriously or failing to act effectively. Contacting such individuals as local councillors, Board members, MPs or Secretaries of State might be a route to consider if concerns continue to be unanswered.

A regional disability organisation is concerned that a large health body in their area does not have clear actions or targets in their Disability Equality Scheme. In their first annual report on the Disability Equality Duty, they have not identified any outcomes. The disability organisation raises this at the Patient's Forum meetings and contacts the Chief Executive but gets no response. So they write to the Chair of the Board and offer to meet to discuss ways forward.

Depending on the issue that needs to be raised, it might be useful to consider the role of those inspection bodies whose job is to monitor the performance of various parts of the public sector. Inspection bodies will be building the duty into their assessments of effectiveness wherever possible and reporting on performance as they themselves are subject to the Disability Equality Duty and will be developing their own Disability Equality Schemes. This itself can help make the duty work effectively by ensuring actions are included in their schemes to ensure the inspection bodies assess public authorities'

performance and that they are doing what they should in respect of disability equality.

Legal action can be taken if a public authority is not thought to be effectively discharging either the general or specific duties. However, it is anticipated that early pressure on public authorities along with constructive engagement should minimise the need for such action.

If a public authority does not comply with the general duty this may, depending on the circumstances, be the subject of a claim to the High Court or Court of Session for judicial review by anyone with sufficient interest in the matter, or by the DRC.

If a public authority does not comply with its specific duties, it could face action by the DRC in the form of a compliance notice which can be enforced in the County or Sheriff Court.

If disabled people and their organisations need further advice about the duty, please contact the DRC's Helpline – the first point of contact for all enquiries (see the back cover of this booklet for details).

Conclusion

Clearly, the Disability Equality Duty represents a major step-change from the individual focus of the Disability Discrimination Act. For the first time ever, public authorities will be formally asking disabled people and their organisations to be involved to help them in developing their Disability Equality Schemes. This is an exciting opportunity to help get public services right for all disabled people.

It has to be recognised that improving public services for disabled people is likely to be a learning process for everyone and that progress will be realisable over a period of time. Disabled people and their organisations will play a significant part in this process.

“Public authorities may not get everything right from the outset but what is important is whether they are genuinely trying to respond to the duty to achieve improved outcomes for disabled people and that these are realised in a sustained way in the long term.”

Appendix A - Getting involved: the questions to ask

The following sections identify some of the key issues to consider when getting involved and related questions that might prove useful to help ensure the effectiveness of the involvement process.

Commitment

Public authorities should be able to demonstrate their commitment to the process of involvement and this can be done in a number of ways. The most obvious is that senior managers have a direct interest in what is happening and demonstrate this by, for example, including it in organisational priorities, ensuring effective training and showing an interest in the process and outcomes. Questions to ask might include:

- Who are the senior managers with responsibility in the areas under consideration and how are they involved?
- How are senior managers showing their commitment? For example, do managers openly and readily participate in discussions and meetings?
- Have senior managers undertaken any training to help them understand the issues?

A local disabled persons' coalition is asked to review the policy governing the community safety programme being developed jointly between the police and local authority and asks how it works for disabled people. The coalition discovers that the responsible manager from the police is not going to attend the meetings and will not be responsible for agreeing the final report. The coalition raises its concerns about the implied lack of commitment and the meetings are subsequently attended by the senior officer responsible for the scheme.

An important way in which a public authority can show commitment is by ensuring that adequate resources are made available to support involvement in the development of the scheme and action plan. This means public authorities will have to take a realistic account of the costs (both in terms of time and money) associated with work in this field. This might mean public authorities setting aside a budget for the involvement of disabled people and their organisations (eg for reimbursing expenses for travel and providing support for reasonable adjustments such as communication support). It should also mean that resources need to be made available for staff training and using, where appropriate, outside expertise to help facilitate involvement processes.

Questions to ask might include:

- What are the costs likely to be for getting involved and who will meet these?
- Are any additional resources needed, such as training or personal support to make sure involvement is effective?
- Will any training be paid for?
- What training are the staff getting?
- How easy is it to claim expenses and additional costs and how long will it take to get the money paid?

A museum reviews its approach to all aspects of access for disabled visitors and establishes a review group to do this which includes representatives from a range of local disability organisations including the local organisation of Deaf people. The museum meets the costs of getting people to the meetings and provides support where it is needed including BSL interpreters and pallantype where required. It also funds the cost of a facilitator to run several focus groups to undertake the basic research about barriers and to prepare a report of the outcomes for the review group meetings to discuss. This report is made available in alternative formats.

It might be appropriate for a fee to be paid if disabled people and their organisations are being asked to do something for which the public authority would normally be expected to pay. For example, undertaking an access

audit which might require technical expertise or advising on the adaptation of a website to make it accessible.

It is suggested that this issue is discussed early on in the process of involvement to ensure an agreed position and that any practical issues are identified and resolved. If it is agreed that payment might be appropriate there are a range of legal and practical issues which would need to be considered and resolved, for example the potential impact on any benefits and tax and national insurance implications.

If a public authority commissions specific work to be undertaken by a disability group, then it may well be appropriate for this to be recognised by agreeing in advance a payment or contribution. The level of such payments would need to reflect the amount of work and expertise involved.

A local authority's leisure centre commissions the local coalition of disabled people to undertake research into what would encourage disabled people to use their facilities. The costs of this research are met by the centre and a contribution for the work involved in undertaking it and writing the report are agreed.

It is worth noting that the Government's report 'Improving the Life Chances of Disabled People' (January 2005) identified that one of the areas which should be included in the protocols governing the involvement of disabled people in policy development included the payment of fees and expenses (at recommendation 4.1, pages 90-

91). It is reasonable to expect, therefore, that the issue of payment is discussed and an agreed line taken at an early stage to avoid difficulties and misunderstandings at a later stage.

Inclusivity

The issue of inclusivity is key and essential throughout the involvement in the development of the scheme. This means the methods of involvement should be adapted to enable the effective representation of people with all types of impairment. Questions to ask might include:

- Which other people and organisations are being involved?
- How have the decisions about involving people and organisations been made and by whom?
- What arrangements are being made to ensure inclusivity?
- What adjustments are being made to facilitate wide participation?
- Are the participation arrangements appropriate for everyone?
- Have people been excluded because adjustments were not made and, if so, why?

A school which has a number of pupils with a range of learning difficulties seeks their involvement in the students' school council. The school sets up a specific discussion group which includes the pupils and, where appropriate, their support workers; it also funds the group.

Practicalities

Public authorities should be aware of all of the practical barriers that are likely to arise from involvement and they should be able to find solutions. For example, ensuring attendance at a meeting venue, producing data in appropriate accessible formats and ensuring the venues themselves are accessible.

Questions to ask might include:

- What are the various methods of involvement and are they effective or do they need reviewing?
- What adjustments have been made to ensure particular needs are going to be met?
- When will information needed be made available to allow sufficient time to prepare for any discussions?
- Will meetings be conducted in such a way to ensure full participation of everyone irrespective of their requirements, eg BSL interpreter or advocate?

Liaison

To make sure that effective use is made of time, public authorities will be encouraged to liaise with each other or with other departments within their own organisation and share information that might apply to each other. This approach is really important as it recognises the constraints that a lot of disability organisations are under both in terms of staffing and resources. It will also reduce pressures to 'reinvent the wheel' and do the same or similar work for different public authorities. It might be appropriate to ask a public authority whether they have

thought about this and check whether wider liaison might be worth considering. Questions to ask might include:

- Could the issues have a use in other parts of the organisation or other authorities?
- What has been done to identify and include these?
- What steps are being taken to share information and work?
- Are other organisations being involved and are they a good representative sample of those who have an interest?
- How will future liaison work to maximise the effectiveness of what is being done and get best results for everyone?

A sixth form college sets up a new forum for disabled students and their parents to consider the way the college addresses the education of disabled students and to help develop the Disability Equality Scheme. The college asks nearby schools to join the forum to facilitate the sharing of information and ideas.

Outcomes

The important thing about involvement is what happens differently as a result. Efforts need to be concentrated on achieving change and not setting up procedures for their own sake. There is a critical role for disabled people in checking that things change and barriers are broken down and that public authorities understand what they are trying to achieve in terms of positive change.

Questions to ask might include:

- What overall outcomes are being sought and how will success be measured?
- Does the action plan include assessable targets and how will they be monitored and assessed?
- How will the public authority inform everyone about progress against targets and the consequent outcomes?
- What will happen as a result of involvement and how will the ideas be used?
- What is the reviewing process and what will happen as a result of lack of progress?
- How will the Disability Equality Scheme and action plans be publicised and made accessible?

A government department has established a range of forums to involve disabled people. Evidence shows a low response rate to policy consultations from disabled people and disability organisations. The forums identify barriers such as poor accessibility of consultation documents. The government department sets a target of doubling the responses to the next five consultations from disabled people and puts in place measures such as increased accessibility and targeted promotions to disability organisations.

A health authority is drawing up its scheme with the involvement of local disability organisations including the local group of mental health survivors. Evidence shows very poor take-up of health promotion by people who are mental health survivors. The group identify a lack of awareness of health promotion. The health authority put in place targeted advertising and agree to run sessions in conjunction with the local group. They set a target of doubling the number of people who are mental health survivors participating in key health promotions within one year.

“It’s all about outcomes”

Appendix B

Further information The DRC are producing a wide range of guidance to help disabled people, their organisations and public authorities prepare for and implement the Disability Equality Duty.

This guidance, as well as the overview and involvement guidance, will be published in a range of formats. The following guidance documents produced in 2006 and 2007 will be online documents and can be downloaded free of charge from the DRC website: www.drc-gb.org

- Central government
- Education
- Higher Education - and Further Education
- Education – Schools (England and Wales)
- Education – Schools (Scotland)
- Employment
- Evidence gathering
- FAQ for education in schools in Scotland
- Health (England and Wales)
- Health (Scotland)
- Housing
- Impact assessments
- Involvement
- Listed authorities – a list and explanation (Scotland)
- Local authorities

- National Assembly for Wales
- Overview and introduction
- Planning and Highways
- Note on procurement
- Scottish Executive Departments and Agencies
(further chapter in future for Scottish Ministers,
2006)
- Social Care (England)
- Social Care (Scotland)
- Social Care (Wales).

You can get a copy of the published guidance by contacting the DRC Helpline – see the back cover of this booklet for details.

Copies of the Act and regulations made under it can be purchased from The Stationery Office. Separate Codes covering other aspects of the Act and guidance relating to the definition of disability are also available from The Stationery Office. The text of all the DRC's Codes can also be downloaded free of charge from the DRC website.

Disclaimer

This booklet has been produced to provide guidance to disabled people and their organisations on the Disability Equality Duty. It is not a statement of the law, and readers are referred to the Statutory Code of Practice for full information on this.

For more information and practical advice on the Disability Equality Duty visit: www.dotheduty.org

If you'd like this publication in an alternative format or language please contact the Helpline.

It's also available on the DRC website.

You can contact the DRC Helpline by voice, text, fax, post or by email via the website. You can speak to an operator at any time between 8am and 8pm Monday to Friday.

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