



Women's National Commission

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Ms Jenny Watson
Chair
Equal Opportunities Commission
36 Broadway
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Dear Jenny,

Gender Equality Duty: Draft Code of Practice Great Britain

As Chair of the Women's National Commission (WNC), the Government's independent advisory body on women, I am pleased to attach our response to the public consultation on the *Gender Duty: Draft Code of Practice* (the "Draft Code") (see Attachment A).

If you would like to discuss any of the points made, or require any further assistance, please do not hesitate to contact Sue Green on 020 7215 6968 or Sue.Green@dti.gsi.gov.uk

Yours sincerely

Baroness Margaret Prosser of Battersea OBE
Chair

Attachment A:

Women's National Commission Response to the Gender Equality Duty: Draft Code of Practice Great Britain

Overall comments

As we have previously stated, the WNC is delighted that the Government is now taking action to introduce the Gender Duty, and welcomes the Draft Code. We are particularly pleased to see the detailed guidance set out in the Draft Code which should assist Public Bodies ("PB") in meeting their obligations pursuant to the Equality Act ("the Act"). We also warmly welcome this opportunity to respond to the consultation. The WNC believes that the gender duty represents the most important change to sex discrimination law in thirty years and that it is vital that we take this opportunity to implement it properly, ensuring real change to people's lives.

We look forward to providing further comments on the specific guidance to be drafted for the Criminal Justice System; Health; Education; Local Government; and Central Government. We also understand that these guidelines will no doubt impact upon the comments that we have made in this response. However, in the absence of these guidelines, we believe it is essential to raise the following issues.

Violence against women

As you well know, violence against women (VAW) is a major problem in our society and is both a cause and consequence of women's continued inequality. Almost 1 in 2 women in England and Wales experience domestic violence, sexual assault or stalking at some point in their lives. In 1999, the UN Secretary General, Kofi Annan said:

Violence Against Women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development, and peace.

With this in mind, we are concerned that the Draft Code does not currently go far enough to address VAW, particularly in terms of securing the provision of women-only services, so vital in providing women who are subject to violence, the support they need.

Currently, PB respond poorly to addressing VAW, as illustrated in our recent report *Making the Grade? An independent analysis of Government initiatives on violence against women*. As a result, the availability of appropriate services is extremely limited and, where they do exist, they are constantly struggling to survive, due to insecure and/or non-ongoing funding. In addition, conviction rates for VAW offences are far lower than for other offences.

The real challenge for Government, enforcement agencies and PB now, is to implement the Gender Duty effectively, in order for it to deal with this, and other forms of, gender inequality.

We would strongly argue that in order for this to happen, there first needs to be a clear, accessible statement about what gender inequality is and why a Gender Duty has been devised. To this end, we would strongly urge for you to include the following paragraph, kindly drafted by Professors Sylvia Walby and Liz Kelly, in the Draft Code:

Gender relations are the social relations between men and women. Gender inequality therefore refers to lasting and embedded patterns of advantage and disadvantage. Gender inequality exists in all aspects of social life, including employment, political representation, interpersonal violence, care and leisure. The gender duty, which both forbids sex discrimination and places a positive duty on public bodies to promote gender equality, is a legally binding instrument to address the persistence of women's inequality. It can also extend the choices and options open men. Difference, tradition and faith are no defence for inequality.

Lessons learnt from the Northern Ireland Act (Section 75)

There remains the danger that 'promoting equality of opportunity between men and women' will be misinterpreted by public bodies to mean 'same treatment' as opposed to 'appropriate treatment,' according to need.

The experience of our members in the women's voluntary sector in Northern Ireland, since the implementation of Section 75 of the NI Act, clearly illustrates how this can occur. As you know, Section 75 imposes a Statutory Duty on public authorities to promote good relations between people of different religious belief, political opinion or racial group, sexual orientation, marital status and age and also between men and women generally and public authorities must ensure their actions do not impact negatively on any of these groups.

In practice, however, this has been interpreted to be a legal obligation to treat all these groups in the same way, without taking into account already existing differences and inequalities between them. For example, civil servants insisted that any definition of domestic violence (DV) has to be gender neutral and that they cannot privilege the interests of female victims of DV above those of male victims, and that service delivery has to be 'equal'. This, of course, does not take in to account the reasons for the violence occurring in the first place and the fact that the proportion of women experiencing DV is far greater than the proportion of men experiencing DV.

We strongly urge government to learn lessons from poorly drafted guidelines in Northern Ireland regarding Section 75 and the ways in which the intentions of lawmakers have been subsequently undermined in practice.

Generally, there is little understanding among public bodies of what gender inequality is, or even that it still exists. It is therefore important that the Draft Code, as the key statutory document for interpreting the gender equality duty, clearly states that PB will be required to address the existing and persistent inequality between women and men. It must be made clear that it has not been devised simply to maintain an existing state of equality.

Having considered the proposals for the Draft Code and consulted our members, the WNC also has a number of specific concerns with regard to the provisions of the Draft Code, which are set out below.

CHAPTER 1: INTRODUCTION TO THE GENDER EQUALITY DUTY

1.1 General

We believe that the Draft Code needs to include a statement of the problem that it is designed to address and to this end, that the definition given above should be included. Further, the Draft Code needs a more rounded perspective of the ways in which women are disadvantaged (para 1.10). PB need to understand that gender inequality does not only apply to discrimination in the workplace and caring responsibilities, but also include experiences of violence and fear of crime and how this interacts with other aspects of women's lives.

As the Draft Code is currently drafted, there is a substantial amount of detail and guidance on how the Act will impact on employment issues. We believe, however, most PB should already be aware of how the Act, together with the various other pieces of discrimination legislation, and case law, will combine to impact on employment and pay. We also believe that while this advice is extremely useful, it is not the area that they need most assistance with.

In our experience, we believe the area PB will require most advice and assistance in is how to implement the Gender Duty in their policy development and service provision, which is precisely the issue on which the Draft Code is currently ambiguous. We anticipate, therefore that there will be substantial further advice in the specific guidance code for Local Government.

1.2 How will the Draft Code interact with other legal obligations?

No substantial guidance is currently provided on how the Draft Code will interact with other legal obligations, both current and future. There is brief reference in the Draft Code (para 1.26) to the race and disability equality duties. Although we understand that this area should be specifically dealt with in the specific guidance, it would still be helpful for PB to have more guidance on how the duties need to interact together and any particular difficulties they need to overcome with the slightly different models. For example, an explanation of how the gender and race equality duties will work together in relation to the delivery of services to Black and Minority Ethnic women in a privately run prison, would be useful to illustrate how the duties will apply together to contracted out public functions.

There is also no guidance as to how the interests of children should be dealt with in the event of a conflict between them and a gender issue.

1.3 Trans Gender

The element of the duty that deals with the promotion of equal opportunities between women and men does not currently include a specific obligation to promote equality of opportunity between trans gendered and other people. This is despite the fact that when the Government implements the European Goods and Services Directive in December

2007, it will be illegal to discriminate against trans gendered people in the provision of goods, facilities and services. The WNC would, therefore, suggest that such an obligation could be included in the Draft Code.

CHAPTER 2: HOW TO MEET THE GENERAL DUTY

2.1 How will you know when you are meeting the obligations set out under the Gender Duty?

A recent Amnesty International opinion poll has revealed that attitudes, which condone and tolerate VAW, still persist. Further, pilot work by WOMANKIND Worldwide shows that children and young people welcome opportunities to explore what respectful and consensual gender and sexual relations might be. Although, this may be included in the specific guidance for education, it might, be helpful, to include in para 2.8 a boxed example of how schools should be working with boys and girls on preventing VAW. This would show how an understanding of VAW, as a part of gender inequality, is relevant to services for boys and men.

The women's voluntary sector has a wealth of knowledge and expertise in delivering quality services to women and, therefore, how gender can be mainstreamed into service delivery. PB need to consider how they can tap into this expertise and facilitate working with these agencies both in terms of obtaining information and involving relevant people in identifying gender equality priorities in accordance with para 2.12. This could be achieved by, for example, offering funding to voluntary organisations to participate in this work. Including this advice would prevent PB misinterpreting the Duty to mean that funding for women-only services is illegal.

2.2 Ensuring delivery and developing expertise

Further to para 2.16 it should be made clear that PB should develop or buy in expertise on gender, and deliver training to all staff. This is needed to ensure commitment to a culture change on gender equality. Public servants should receive mandatory training in understanding gender and the causes of inequality and how this impacts on their specific work area, both at basic levels and when advancing to higher grades. Although training issues may be specifically covered in the additional guidance relating to Local and Central Government, in particular, what we envisage is not the 'gender sensitivity' or 'awareness' training which was developed in the 1980/90s, but new materials and approaches drawing on innovative insights from gender theory as to why change is difficult to achieve and how the status quo is embedded in a multitude of taken for granted practices. We would expect a focus on 'doing gender' in the routines of everyday, and how these can serve to reproduce inequality

2.3 Meeting the duty in policy development

In para 2.27, the Draft Code currently requires that PB collect evidence of the impact of core policies on men and women. PB should, however, be required to disaggregate all data collected by gender. Without this it will be impossible for them to measure how well they are meeting women's and men's needs, and in the long term, meeting their responsibilities under the Act.

It is important to remember that women are not a homogenous group and often experience multiple layers of discrimination based on race, faith, disability or sexual orientation. We would, therefore, also, like to see all information further disaggregated in order to address intersectional issues such as how many black women, how many disabled women or how many young women are service users, to ensure that services are truly available on a non-discriminatory basis.

The boxed example in para 2.30 shows how important it is for public bodies to understand the nature of gender inequality and male violence as part of this. The statistics given can be read in a 'gender-blind' way because they do not explain that the majority of violence experienced by both men and women is committed by men. This has repercussions for the way services are provided, both to victims and offenders. For example, whilst most female rape victims prefer to be examined by a female police doctor, male rape victims also prefer to be examined by a woman.

2.4 Collecting data on your workforce

Included in the key employment issues (para 2.45) should be the impact of violence on women's ability to participate in the workplace and how employers need to respond. This is particularly relevant for maternity related issues as this is a trigger time in a woman's life for domestic violence starting or escalating.

2.5 Equal Pay

We understand that the philosophy of the Act is to allow substantial autonomy to PB to enable them to develop their own gender plans. Pursuant to para 2.71 all PB, however, need to ensure that they are complying with the Equal Pay Act and that the best way of doing this is to carry out an equal pay review (para 2.73). If, however, each PB carries out its own independent review, there is a likelihood that there will be numerous discrepancies across the country, with regard to how jobs are evaluated. This would, we suspect, be particularly prevalent with regard to calculating equal pay in the context of work of equal value. There is, therefore, a danger that rather than create a system that equalises pay, it will instead lead to a multitude of equal pay claims as employees look to other assessments across the country.

CHAPTER 3: HOW TO MEET THE SPECIFIC DUTIES

3.1 Conducting and publishing gender impact assessments

Pursuant to para 3.30, at present, Gender Impact Assessments (GIAs) are proposed only to cover new and major employment, policy or service delivery changes. There are many clear examples of where public bodies are currently not meeting the needs of women through current service provision, policies or employment practices. The WNC strongly calls for GIAs to be extended and also that gender becomes a key theme in the work of all regulatory bodies, including the Audit Commission and Inspectorates.

3.2 Consulting stakeholders and employers

As previously stated the women's voluntary sector has an enormous role to play in providing services to women, particularly with regard to violence. As the success of the Act depends largely on a strong and sustained voluntary sector, it therefore needs to be

explicitly identified as a key stakeholder for consultation. It would be useful in para 3.20 to give suggestions that these organisations, should be involved in consultation process, through, for example, funding.

CHAPTER 4: COMPLEX LEGAL ISSUES: PROCUREMENT, PARTNERSHIPS AND SINGLE-SEX SERVICES

4.1 Procurement

Pursuant to the Act, when a contract is entered into with an external supplier, the PB will still retain legal liability. Where the contractor is carrying out a public function, it too will be liable. Appendix A of the Draft Code sets out the circumstances in which PB or voluntary organisations are deemed to be carrying out public functions. It is not currently clear whether these criteria are cumulative or separate. As a result it is not clear who would be covered. For example are dentists who carry out NHS work or lawyers who carry out legal aid work subject to the duty? These issues, should, however, be covered by the codes relating to the NHS and the Criminal Justice System.

The Draft Code also suggests that public authorities build gender equality considerations into both their procurement processes and contracts. As these contracts will no doubt be evidentially very useful should a PB be required to demonstrate that they have performed their duties pursuant to the Act, it is essential that there is clear guidance in the Draft Code as to what might be required to off set any liabilities. PB would be well advised to seek warranties from contractors that they are aware of their obligations under the Act and have complied with them and indemnities against any claims that might arise out of the contractor's breach. However, these may be difficult to extract from external contractors who are unfamiliar with the Act and have not sought insurance to cover such liabilities. This in turn could cause delays in the contracting process.

It is also not clear the extent to which contractual terms can be used by a PB to ensure that a contractor has complied with the Act. For example, will it be necessary for a PB to carry out its own detailed due diligence on a contractor to establish, for example, if they have equal pay and employment policies or will asking for warranties be sufficient?