

## The Care Inspectorate's equality duties

**Report to:** Board

**Date:** 24 October 2014

**Report by:** Margaret Paterson, Equalities and Engagement Adviser

**Report No:** B-23-2014

**Agenda Item:** 10

### **PURPOSE OF REPORT**

To advise members of duties arising from the Equality Act 2010 and possible changes to the role of women on boards of public bodies.

### **RECOMMENDATIONS**

That the Board

1. Notes the report.

**Version Control and Consultation Recording Form**

Version	Consultation	Manager	Brief Description of Changes	Date
1	Executive Team		Minor additions to text	25/9/14
	Legal Services			
	Resources Directorate			
	Committee Consultation (where appropriate)			
	Partnership Forum Consultation (where appropriate)			
<p><b>Equality Impact Assessment</b></p> <p>To be completed when submitting a new or updated policy (guidance, practice or procedure) for approval.</p>				
Policy Title:			N/A (Equalities update report only)	
Date of Initial Assessment:				
EIA Carried Out			YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
If yes, please attach the accompanying EIA and briefly outline the equality and diversity implications of this policy.				
If no, you are confirming that this policy will have no negative impact on people with a protected characteristic and a full Equality Impact Assessment is not required.			Name: R Okasha Position: Head of Quality and Improvement	
Authorised by Director		Name:	Date:	

## 1.0 BACKGROUND

The Equality Act was introduced in 2010 to help make Britain a fairer society. It aims to simplify, strengthen and harmonise over 120 pieces of equality legislation.

The purpose of the Act is to advance equality and good relations through:

- taking effective action on equality issues
- making sound evidence based decisions
- developing better policies and practices based on evidence and involvement
- being more transparent, accessible and accountable in our work
- delivering improved outcomes for all.

### 1.1 The public sector equality duty

The Equality Act 2010 places particular duties on the Care Inspectorate as a public body to consider how we can positively contribute to a more equal society and secure positive outcomes for all. The Public Sector Equality Duty (which came into force on 5 April 2011) says we must demonstrate 'due regard' to the need to:

- eliminate unlawful discrimination, victimisation and harassment
- advance equality of opportunity between people who share a relevant protected characteristic and persons who do not
- foster good relations between people who have protected characteristics with those who do not.

Existing case law on the previous equality duties highlights that public authorities must take action in a number of areas, noted here.

**Knowledge:** all staff should be aware of the general duty. Decision makers should be aware of the implications of the general duty when making decisions about their policies and practices.

**Timelines:** general equality duties arise before and at the time of considering a particular policy and decision. We cannot satisfy the duty by justifying a decision after it has been taken- hence the need for a robust equality impact assessment process.

**Meaningful consideration:** equalities should not be a 'tick box' exercise, must be a rigorous, integral way to influence final decisions.

**Sufficient Information:** all decision makers must consider what information they have as well as what further information might be needed to give proper consideration of the equality duty.

Version: 2.0	Status: Final	Date: 17/10/2014
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**Review:** we must pay due regard to the needs of the general duty not just when a policy is developed and decided upon but also when it is implemented and reviewed.

**Non-delegation:** anyone exercising public functions on our behalf is also subject to the duty. We can be held accountable for their actions.

Compliance with the duty should result in:

- better-informed decision making and policy development
- a clearer understanding of the needs of service users, resulting in better quality services which meet varied needs
- more effective targeting of policy, resources and the use of regulatory powers
- better results and greater confidence in, and satisfaction with public services
- a more effective use of talent in the workforce
- a reduction in instances of discrimination and resulting claims.

## 1.2 Key public information

We are required by law to undertake the equality duties. Not to do so may result in judicial review or enforcement action by the Equality and Human Rights Commission (EHRC). From April 2013, the public sector duty placed legal obligations upon the Care Inspectorate to report on particular areas of equality on a bi-annual basis. We must also publish these reports in a way that is accessible to the public. The requirements under the Act are listed in the table below:

<b>Duty &amp; Timescale</b>	<b>First publication date (all now complete)</b>	<b>Next reporting date</b>
Publish report on mainstreaming equality including how we have gathered, monitored and used employee information (Every 2 years)	Published 'Towards Equality' April 2013	No later than April 2015
Publish equality outcomes (Every 2 years)	Published 'Equality Outcomes 2013-17' April 2013	No later than April 2015
Publish gender pay gap information (Every 2 years)	April 2013	April 2015
Publish equal pay statement	April 2013	April 2017

Version: 2.0	Status: Final	Date: 17/10/2014
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(At least every 4 years)		
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Currently, we are examining how this information can be reported in the annual report and accounts cycle.

## **2.0 SPECIFIC RESPONSIBILITIES OF BOARD MEMBERS**

Board members have a crucial role to play in championing equalities in all aspects of their involvement with the Care Inspectorate. The Board are legally responsible and accountable for ensuring that equality considerations have been made when making key decisions in the governance of the Care Inspectorate. Board members of the Care Inspectorate have a responsibility under the Equality Act to uphold the values of the organisation, relating in particular to our values of fairness and respect.

### **Setting the strategic direction of the organisation**

Board members must be aware of the general equality duty and consider this when setting strategic direction for the organisation, for example when approving corporate plans, policies or initiatives. As the board scrutinise any new policies and decisions they should demonstrate in their decision making how they have paid 'due regard' to equalities in this process.

### **Executing good governance and managing performance**

Board members should be mindful of the duties when reviewing the performance of and ensuring good governance of the organisation. Board members will review or instruct the completion of Equality Impact Assessments of all new and revised policies and practices. Where appropriate, we have a legal obligation to complete, publish and monitor the impact of EIAs. The duties provide an opportunity to have a better understanding of needs of particular groups of staff and service users which should lead to better decision making and cultural change to achieve equality outcomes.

### **Taking account of legislation and policy guidance from the Scottish Government to contribute to national outcomes and priorities**

As leaders of the work of the Care Inspectorate, the equality duties represent an opportunity for Board members to make robust, evidence based decisions that support us to work towards national outcomes such as National Outcome 7 'to reduce the most persistent inequalities in Scotland'.

Version: 2.0	Status: Final	Date: 17/10/2014
--------------	---------------	------------------

## 2.1 Principles of corporate governance

The principles below are taken from the Scottish Governments publication, "On Board: A Guide for Board Members of Public Bodies in Scotland".

**Principle 1: Good governance means focusing on the organisation's purpose and on outcomes for citizens and service users.**

The equality duty with its emphasis on fairness and on gathering and analysing evidence on equality outcomes helps us to ensure we are clear about our purpose and priorities. The outcomes should be written and monitored in a way that focuses on outcomes that make a difference for service users and staff.

**Principle 2: Good governance means performing effectively in clearly defined functions and roles.**

Board members should be clear about their individual and corporate responsibilities under the Equality Act and make sure that those responsibilities are carried out effectively throughout the organisation.

**Principle 3: Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour.**

Board members lead the vision of the organisation by being role models in how they interact with each other, make decisions, and interact with others internally and externally. By putting organisational values into practice individual governors demonstrate how to uphold and exemplify effective governance.

**Principle 4: Good governance means taking informed, transparent decisions and managing risk**

Meaningful and rigorous Equality Impact Assessments should provide good quality information and advice to make informed decisions. Equality Impact Assessments being published in an accessible manner means we can be transparent about how these decisions have been taken.

**Principle 5: Good governance means developing the capacity and capability of the governing body to be effective**

By keeping the Board up to date on equality legislation, our public sector duties and progress on the equality action plan, we will allow them to make effective decisions on the direction and implementation of our equality action plan.

**Principle 6: Good governance means engaging stakeholders and making accountability real**

The equality legislation and in particular the Equality Impact Assessment process requires us to take an active and planned approach to dialogue with, and accountability to the public, staff and equality groups. They can view and have a say in the equality outcomes and targets we set and review

Version: 2.0	Status: Final	Date: 17/10/2014
--------------	---------------	------------------

information on our progress in these matters.

### **3.0 BOARD APPOINTMENTS**

At present women are still under represented on public boards. According to the April 2014 Scottish Government Consultation paper 'Women on Board: Quality through Diversity', women hold only 36% of board places and 21% of the current board chairs in Scotland. Currently, the Care Inspectorate has seven women and five men on its board.

Appointments to Boards must be made on merit, demonstrated through fair and transparent criteria and procedures. The competency framework details the specific skills, knowledge and attributes for Board members.

In general, it constitutes unlawful sex discrimination to select a person for a role because of their gender. The law does not permit positive discrimination when making an appointment or a promotion.

However, the law provides scope for organisations to address any disadvantage or disproportionately low participation on boards by enabling or encouraging applications from a particular gender, provided selection is made on merit. This is known as positive action.

Individuals responsible for appointments to board positions must avoid making unwarranted assumptions based on gender which result in one gender being favoured over another for appointment. Selection criteria and procedures that are likely to present barriers to the appointment of either gender will constitute unlawful indirect discrimination unless they can be justified.

Selecting a candidate for appointment to a board on the basis of gender is only lawful when the individual is objectively assessed as being equally qualified as a candidate of the opposite gender, when the individual's gender is under-represented on the board and when other conditions have been satisfied.

There are, however, proposals for change. The Scottish Government does not currently have legislative powers to address the significant gender inequality on public boards and are in discussion with the UK Government about devolving powers to enable them to take action on this matter.

A consultation exercise 'Women On Board' has taken place on how the proposed gender quotas of 40% representation of women on public boards should be introduced. The Scottish Government are not consulting on whether quotas should be introduced but how this would work in practice and what sanctions is any would be relevant. The consultation closed in July 2014 and we will update Board members of the outcome in due course.

Version: 2.0	Status: Final	Date: 17/10/2014
--------------	---------------	------------------

#### **4.0 CURRENT EQUALITIES WORK - INTERNAL**

The Care Inspectorate's equality work now sits within a single Involvement and Equalities Team created in October 2013. A Senior Involvement and Equalities Adviser leads this work and a seconded equalities adviser is in post until 31 October 2014. The implementation of the Equality Action Plan is supported by quarterly meetings of the Equality Implementation Group.

Since the Equality Act 2010, some key changes have been made internally to better mainstream equalities work in the Care Inspectorate and build capacity, as follows:

- 2011 Training on Equality and Diversity delivered to Board. (Further work in this area is contained in the Board development plan).
- 2012 Project Initiation Document on delivery of equality duties,
- 2013 Board approved the external publications 'Towards Equality: Fairer Care, Support and Social Work Services in Scotland' and 'Equality Outcomes 2013 -17' which publicly outline our Equality Action Plan to meet our duties under the legislation. Equality action plan implementation on going.
- 2013 Creation of a single Involvement and Equalities team.
- 2014 Draft internal Equality and Diversity policy produced by Organisational Development team to outline staff rights, responsibilities and procedures under the legislation.

#### **4.1 Internal training**

Mandatory equality and diversity training is currently being delivered to all staff within the Care Inspectorate and is due to be complete by November 2014. This training will ensure that all staff are aware of the Equality Act 2010 and their responsibilities under the legislation. The training includes:

- information about the nine protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief and sexual orientation
- an opportunity for staff to explore their own attitudes and values and discuss these with colleagues
- links for further personal development; the Organisational Development team are sourcing online training for more in depth training for staff or for new starts to the organisation
- an opportunity for staff to complete a self-evaluation about their equality training needs.

Version: 2.0	Status: Final	Date: 17/10/2014
--------------	---------------	------------------

## **4.2 Equality impact assessments – further developments**

We must ensure that the relevant equality impact considerations have been made and that we have sufficient information to satisfy the legal requirement to pay 'due regard' to equality. Noting that an EIA has been carried out is not sufficient and the board should endeavour to show how they gave equalities or the EIA findings due regard when making a decision. At present we are reviewing the format and tool we have been using for EIAs as part of the implementation of our Equality Action Plan, aiming for improvements to the format and the process of completing an EIA.

## **5.0 CURRENT EQUALITIES WORK - EXTERNAL**

The Care Inspectorate plays a significant role in promoting equality across Scotland. This is embedded throughout our scrutiny and improvement work. Our approach, which emphasises the importance of involving people who use care services in decisions about their care, is central to this. Our belief that every person is entitled to safe, compassionate and high-quality care underpins the emphasis we place on empowering people to exercise choice and control about their own lives.

Changes in the policy landscape will mean significant changes in our working practices which will enhance further the need for equality duties to be mainstreamed around our work. The review of the national care standards is likely to result in standards which are human-rights based. Our inspection methodology, in turn, will need to become even more outcome-focused and reflect on the choice and control afforded to all people using a care service. These changes are being taken forward as part of the review of scrutiny and improvement methodology and will impact across the Care Inspectorate's activities.

We have been further developing links with equality groups and organisations to support our work and strengthen our knowledge. The Involvement & Equalities team have established links with, amongst others, Stonewall, CEMVO, Scottish Human Rights Commission, the NDPD Equality Group to work in partnership and improve our own equality process and practice.

We are due to publish a report no later than April 2015 on the progress on the Equality Outcomes. Collating and analysing information for this report is a significant piece of work and any new or refined outcomes for 2015-17 should be consulted on externally.

## **6.0 RESOURCE IMPLICATIONS**

There are no direct financial implications as a result of this update report.

Version: 2.0	Status: Final	Date: 17/10/2014
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## **7.0 BENEFITS FOR PEOPLE WHO USE SERVICES AND THEIR CARERS**

By fulfilling the commitments in our equality action plan and working towards achieving our equality outcomes we will continue to involve people who use services and carers in our work and ensure we respond to the diverse needs of all communities. Reporting to our Board members on a regular basis will also provide up to date information in equalities which helps to enhance our culture of openness and transparency, building confidence with our many stakeholders.

## **8.0 CONCLUSION**

Equality updates will continue to be made available for Board members where appropriate for updates and action. Our Involvement and Equalities team continue to make progress on our legislative responsibilities by progressing the Care Inspectorate equality outcomes and action plan and reporting on these in line with the public sector equality duties.