



**Equality Bill: Making it work  
Policy proposals for specific duties**

## **UNITE – the Union Response**

**September 2009**

## Introduction

This response is submitted by Unite the union. Unite is Britain and Ireland's largest trade union with almost 2 million members across the public and private sectors. As the union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, health and not for profit sectors, we have extensive experience of representing men and women workers who are faced with discrimination on all grounds. We believe that the specific duties are an important opportunity to ensure action to prevent and tackle this discrimination in employment and in the provision of public services in the wider community.

Unite plays a significant role in the public sector with more than 250,000 members employed in a wide range of professions and occupations across the NHS, education, local government, central government departments and government agencies, craft and maintenance workers in prisons, Royal Mail managers and British Waterways. Unite sits on the Cabinet Office's Public Services Forum (PSF), and the Equality and Diversity Sub-Group of the PSF. In the public sector Unite also represent many workers who provide public services through public procurement in the private and not for profit sectors, and is represented on the Senior Stakeholder Group on the Equality Bill.

## Key points

1. Unite welcomes the extension of the public sector duties to other areas of equality placing a duty on all public sector employers and service providers to promote gender, race, disability, LGBT, religion/belief, and age equality, including recognition of caring responsibilities.
2. Unite supports the integration and extension of the public sector duties on the principal of harmonisation and not regression. **We strongly believe that any measure other than strengthening the current duties is regression.**
3. Unite is very concerned to ensure that the move to extend the public sector duties to cover all areas of equality is not done on the basis of "one size fits all". It should instead recognise the need to act on specific forms of discrimination
4. Unite emphasises the important role of trade unions including the new role of the union equality reps in implementing the public sector duties and calls for trade union involvement to be recognised in the new duty as it currently is in the Gender Equality Duty.
5. Unite believes that the positive case for public sector duties needs to be made much more strongly than suggested in the consultation. Promotion of equality as stated in the Equality Bill is a move to eliminate all forms of discrimination, advance equality of opportunity and foster good relations. Unite would highlight the following:
  - Public sector duties have been vital in raising the importance of equality for workers and service users.
  - Looking at public sector policies and practices through the equality lens will identify under-representation of women or black

workers and find remedies for recruitment and training; or gaps in services. For examples Job Centres can put in measures to eradicate discrimination in accessing the labour market.

- Specific duties helping public bodies meet the general duty are a benefit to the whole community and should not be identified as a “burden”. This was clearly stated in the Schneider Ross<sup>1</sup> report which concluded that specific duties were widely seen to be effective. Positive examples of which Unite has experienced include the MoD where there are staff/union networks in all equality areas which identified lack of training available to the lower grades was identified. As a result the Department is now reviewing its New Horizons program with a view to encompassing all areas of equality and covering the lowest grades. It is union participation at all levels that ensures MoD policies are followed safeguarding our members’ interests. A further good example is the work carried out by the Health and Safety Executive (HSE) on disability sensitive health and safety which shows the equality duty working for disabled people.
6. Unite also believes there is a strong case for and support the requirement of the public sector duties to be extended to the private sector so that there is effective protection from discrimination across workplaces and communities.

**1. Do you think the criteria set out above are the right ones? Please give your reasons.**

**2. Are there any other criteria we should use? If so, what do you suggest?**

We consider that the duty should apply to all public bodies. As the employer of one in five of the employees in Britain the public sector should be an exemplar employer. Tackling inequality in the public sector has a massive impact on society. We are concerned that four out of five public sector employees work in places where, according to the proposed remit as set out in the consultation, public sector duties will not apply. We do not believe there are any viable reasons or arguments for not applying the specific duties to all public authorities. We disagree with the suggested exclusion of smaller organisations such as schools, charities or small NHS trusts. This reduced scope would seriously dilute the impact of the duty. Small public authorities can have a big impact on equality in the community in which they operate. For instance, schools should be supported in their role in tackling inequalities, such as homophobic and racist bullying of their employees as well as pupils.

We consider that the rationale implied in the consultation document for limiting the remit of the duties, namely that it would be too onerous to expect smaller organisations to comply, is inappropriate and simply reinforces the impression of many employers/businesses that equality is burdensome.

If it is ultimately decided, notwithstanding our comments, that the remit of

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<sup>1</sup> Equality Duties - Assessing the Cost & Cost Effectiveness of the Specific Race, Disability & Gender Equality Duties - 2009 – Government Equalities Office & Schneider Ross Not for Profit organisation

application of the specific duties will be narrower than we consider appropriate, we would comment that the criteria suggested in the consultation document to determine whether or not a body would be subject to the specific duties are insufficiently precise. There is no definition of a “significant employer”, or of what a “significant effect on equality” might be, nor of what “significant direct dealings” are, nor of what “unduly burdensome” might mean. In addition, it is not clear whether these criteria are to be applied cumulatively or in the alternative, i.e. does a body need to satisfy all four before becoming subject to the specific duties, or simply one? Given our comments above about widening the remit of the application of the duties, we consider that they should be applied in the alternative, i.e. the specific duties will apply to a body that satisfies any one of the four criteria.

Many public sector employers provide information on gender, BAEM and disabled workers and many have already started providing data on other areas of equality in advance of the Equality Bill. Unite believes that practical issues regarding the size and the make up of an organisation can be addressed by providing support. However, we believe there should be a general requirement at least as good as the existing duties covering all areas of equality and applying to all bodies. For those organisation with more than 150 employees more detailed and extended duties can be applied. However Unite recommends differences in requirements between smaller and larger organisations is monitored in order to avoid ‘two tier’ compliance with equality measures.

### **3. Do you agree that public bodies should have a specific duty to publish equality objectives with reference to the relevant evidence and their wider general Equality Duty obligations?**

Whilst this duty is welcomed, we consider that it is imperative that in addition, there is a specific duty to gather evidence of inequalities encountered by workers and service users in relation to each of the protected characteristics. Failure to do so would lead to objectives being set which are too general and only address the most apparent inequalities or at worst irrelevant to the needs of workers and the community they serve. This is much more likely to result in a “box ticking” exercise, something which we note that the Government Equality Office is understandably keen to avoid. Given that there is provision under the existing duties for, at the very least, public bodies to set out their arrangements for evidence-gathering, omitting the duty suggested here would be a regressive step. Unite supports the TUC in asking for a specific duty on public bodies to gather evidence prior to setting their objectives.

Unite also considers that, as part of this duty, there should also be a specific duty on bodies to consult with trade unions, employees and service users with a view to reaching agreement when identifying and publishing the equality objectives, considering how best to evidence gather, in identifying the steps to be taken towards achieving those objectives, and in reviewing the objectives.

It is also to be noted that the questions set out at paragraph 5.10 of the consultation document, ostensibly to enable equality objectives to be developed, would wholly fail to identify inequalities in employment. This is of

concern to Unite.

We welcome the extension of the requirement for organisations to set equality objectives as currently exists in the gender equality duty but developing these objectives should be a **requirement** and not only an “intention”. The current proposals will give too much discretion to public authorities to act in a limited number of areas. The duty should require goals to be identified and action to be taken to progress towards these goals.

Additionally, equality training is a key component in developing an understanding of the practical implication and meaning of equality law and part of the necessary processes that need to be in place in a workplace to ensure understanding at all levels of an organisation. Unfortunately, we note that this has been omitted from the proposed specific duties. This was evident in our joint training on Sexual Orientation & Religion or Belief Regulations in London Buses and Newham local government. Management and our members gave us a very positive feedback. This also helped with reaching agreements due a better understanding of the issues. Unite supports the need for equality training and is concerned that this has been omitted from the proposed specific duties. At the very minimum it should be encouraged as part of this process rather than left to institutions to decide. Anything less is a regression from the current Race Equality Duty. If an institution decides not to provide any training this will leave employees, particularly middle management, in an extremely vulnerable position where they can be held accountable for inequalities but, perhaps because of a lack of awareness of the need for training, they have not received any training to enable them to understand their responsibilities.

**4. Do you agree that public bodies should set out the steps they intend to take to achieve their equality objectives?**

Yes we believe this is extremely important. We consider that it would be extremely difficult for equality objectives to be met without consideration being required to be given to how these objectives should be met. A requirement to set out the steps necessitates bodies focusing on identifying what these steps should be. We support the current requirements for authorities to publish an Equality Scheme. These Schemes have not been a “bureaucratic” exercise but a plan to ensure action is taken on equality. Currently Equality Schemes strongly support authorities’ promotion of equality to come to fruition. These Schemes should be easy to access and also simple to read and understand. As mentioned above, we consider that the steps should be identified through consultation with a view to reaching agreement with trade unions, employees and service users.

**5. Do you agree that public bodies should be required to implement steps they have set out for themselves within the business cycle periods unless it would be unreasonable or impractical to do so?**

It is important that public bodies implement the steps that they intend to take within the business cycle as is currently provided for in the gender and disability duties but they should not be able to pick and choose areas of equality that are “unreasonable or impractical”. In our experience

assessments of “reasonableness” on equalities do not fully count the cost of not acting to prevent discrimination or to promote equality.

**6. Do you agree that public bodies should be required to review their objectives every three years? If not what time-period do you suggest?**

We agree with this timescale, but we consider that it should be applied not just to a review of the objectives, but also to a review of the actions taken thus far and to future steps to be taken.

**7. Do you agree that public bodies should set equality objectives taking into account priority areas set by the relevant Secretary of State?**

We believe public bodies’ objectives should primarily be based on their local needs, although in assessing these, account could be taken of the Secretary of State’s priorities. There is a danger in the current proposal that the priority areas identified by the Secretary of State are simply adopted unquestionably by bodies without a proper consideration of local needs. This danger would be particularly prevalent in the absence of any duty to evidence-gather before setting objectives, as mentioned at the response to question 3 above. Evidence gathered at local level should serve to ensure that a balance can be struck between national and local equality objectives.

The Union agrees that the duty would be more effective if public authorities are required to prioritise equality outcomes, and that action should be proportionate to the degree of impact of the inequality identified. However, we are concerned that the priority equality objective approach will weaken the current position and give public bodies the scope to marginalise in a way that effectively ignores action much-needed for areas of equality not identified as a priority. For example, although lack of progression of black, Asian and ethnic minority (BAEM) workers may be identified as the major equalities issue requiring action this should not mean that no action is taken or considered in relation to disabled or women workers. This can and should be made clear in a statutory Code of Practice and guidance.

**8. Do you agree that public bodies should not be required to set equality objectives in respect of each protected characteristic?**

No. The government should continue with its aim to “build on the success of the existing duties and for the first time extend to cover the protected characteristics of age, religion or belief, sexual orientation and gender reassignment in full in the new Equality Duty”. Not setting equality objectives for all areas of equality will negate the effectiveness of this extension.

Not requiring equality objectives to be set in respect of each protected characteristic would cause confusion to arise given that the general duties will require bodies to pay due regard to discrimination/equality for each of the protected characteristics. In addition, we consider that an ability to “cherry pick” which protected characteristics will be the focus of equality objectives would foster an impression that there is a competing hierarchy of protected characteristics, with some being seen to be more important than others. This could in turn lead to an increase in concerns and complaints about whether a

body has acted in a discriminatory manner by setting equality objectives in relation to, for example, sex and race, but not, for example, religion and belief.

**If, notwithstanding our comments above, public bodies are not required to set objectives for each protected characteristic, then they should be required to explain why they have taken the decisions they have in relation to the protected characteristics they have chosen to consider/disregard.**

**9. Do you agree that public bodies should be required to report annually on progress against their equality objectives, but that the means by which they do so should not be prescribed in legislation?**

We agree with the TUC that there should be a requirement on public bodies to provide an annual report of progress on their equality objectives. This should be done through a statutory EHRC Code of Practice similar to the DRC Code of Practice. This will assist in ensuring that progress continues and that the salient issues are not “put on the backburner”.

**10. Do you agree that public bodies with more than 150 or more employees should be required to publish their gender pay gap, their ethnic minority employment rate and their disability employment rate? We would welcome views on the benefits of these proposals in encouraging public authorities to be more transparent.**

While strongly supporting all action that assists in tackling the gender pay gap and poor ethnic minority and disability employment rates, Unite considers that the proposed measures are wholly insufficient and will not assist in doing this.

In the first instance, publishing just three figures in this way would not give any meaningful indication of inequality or discrimination within a public body. Such figures obviously will give no information whatsoever in relation to the other protected characteristics. In addition, provision of such figures may lead to a completely distorted view of a body. Such figures may at first sight be reassuring, if, for example, they show a healthy ethnic minority or disability employment rate, but there is a real danger that such reassurance could be completely misplaced, if in fact the vast majority of those ethnic minority/disabled employees are employed in the lowest ranking and lowest paid parts of the organisation. As a result, we do not consider that publishing simply these three figures will assist at all in assessing levels of equality in an organisation.

In addition, we are concerned that this proposal would be a regressive measure, given the existing specific duty in relation to the gender pay gap in the gender duty, which requires bodies to consider the need to have objectives to address the causes of the gender pay gap. We consider that it would be far preferable to strengthen and reinforce this duty rather than to require bodies to provide a single figure, which, as we have mentioned above, is likely to be of little use in assessing equality. We also consider that it would be more appropriate to consider extending this existing duty to at least some of the other protected characteristics, such as the pay gap between white

workers and BAEM workers. This should be in addition to the monitoring requirement in the Race Equality Duty and not a replacement. It is of little use either to the public body themselves, or to anyone else who might seek to rely upon and draw incorrect and artificial conclusions about a headline figure. Provision of a figure does not require a public body to turn its attention to the reasons for a gender pay gap, in the way that the existing duty does to some extent, and we consider this to be wholly regressive.

Unite is also concerned that the proposal is too general and will hide other forms of discrimination for example importantly part-time workers. Producing headline figures will also provide a skewed view of matters, such as extremes of earnings.

Notwithstanding our grave concerns about the use of headline figures, we would make the following comments about the 150 employee threshold. The provision requiring only those bodies with at least 150 employees to comply with these duties again gives the impression that equality is burdensome. It may well also undermine the whole purpose of these duties, since in one organisation BAEM or disabled workers could be the majority or could be under-represented, however no action is deemed necessary since the number of employees is below 150. This situation could arise in areas with a high proportion of BAEM communities or for example in Remploy factories. It is a Non-Departmental Public Body, funded by the Department for Work and Pensions. Exclusion of bodies with less than 150 employees from these requirements would have a significant impact within smaller but significant organisations such as schools. Unite would suggest that this proposal is reviewed in the light of the experience of the removal of the small employers exemption of the Disability Discrimination Act.

**11. Do you agree with the proposal to use the overall median gender pay gap figure? Please give your reasons. If not, what other method would you suggest and why.**

Unite believes that the gender pay gap needs to be broken down in a manner that looks at employees who may be segregated by pay grade and that can look at additional payments such as bonuses. This is critical information to make sense of a gender pay gap and also more importantly to develop strategies to tackle such gaps. The proposal to use a single figure - the overall median gender pay gap - will not provide a sensible use of the evidence, nor the transparency outlined in the four key principles of the paper and needs to be more comprehensive to be meaningful. Grouping the pay gap for full time workers together with those for part time workers will not assist in assessing how each of these groups is impacted by the gender pay gap, and any lessening of the gap in one group will mask any worsening in the other, and vice versa.

Importantly, the Equality and Human Rights Commission is currently responsible for preparing gender pay gap metrics for private and voluntary sector employers to report upon. Having different reporting requirements for the public and private sector appears to be inappropriate, makes it more difficult to make comparisons, and much harder to ensure consistency.

**12. Do you have any evidence of how much it would cost to produce and publish this information, and of what benefits of producing and publishing this information might be?**

We agree with the TUC response that although it might be more costly to provide more detailed evidence gathering and monitoring, the benefits are worth the initial set-up costs of the system. Also as we said earlier, some public authorities have already set up a system and have extended it to other areas of equality. We believe that it is clear that inaction on equal pay is ultimately far more costly to organisations than swift action to tackle any gender pay gap. Failing to tackle the problems head on now may also cause there to be extensive and costly litigation about these issues later.

**13. Do you agree with the proposal not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty? If not, what other data do you think should be reported on?**

We do not agree. As stated before any exclusion is contrary to the spirit and purpose of extending the duty to all areas of equality, and potentially gives the impression that there is a hierarchy of strands of equality

**14. Do you agree with the move away from an emphasis on describing process, to requiring public bodies to demonstrate how they have taken evidence into account in the design of their key policy and service delivery initiatives and the difference this has made?**

We do not agree. In Chapter 4, the Government Equality Office notes that there is widespread acceptance that equality impact assessments are in principle valuable. However, the reference to some respondents reporting that it had become an inflexible “tick box” approach would suggest to Unite that these organisations are not undertaking the equality impact assessment in a data led, robust way. We are concerned that, despite the value of equality impact assessments, the conclusions are to move away from requiring public bodies to demonstrate outcomes and impacts. This is very likely to lead to situations where the impact assessment is in practice only considered once decisions have been made about policy and service delivery initiatives, and is then slotted in to fit with those decisions, rather than the other way around. Describing process was seen to be extremely important in the case of *R (on the application of Kaur and Shah) v London Borough of Ealing*, the case concerning the Southall Black Sisters organisation.

We support the strengthening of the equality duty for implementation, including monitoring action holding the authority to account, and requiring a written equality scheme and the measurement of outcomes through equality impact assessments as the way forward. As mentioned, we also share the TUC’s concern that changing the nature of equality impact assessments makes them an after-the-event procedure instead of a preventative measure. We strongly oppose the proposals on equality impact assessments as it is often only when they are carried out that the equality dimensions are made clearer. In local government, there is a joint union/employer commitment/agreement on how to carry out equality impact assessment which illustrates the importance of this area. A good example is the initiatives

of the Scottish government around equalities. For example to highlight the needs of transgender men and women in the provision of services, the Scottish government is working with the public sector and supports the Inclusion Project as part of its work to improve NHS Scotland.

We would suggest that given the clear recognition of the value of the equality impact assessments and monitoring as in the current Race Equality Duty should result in a requirement to produce these as part of this process. We believe any measures other than strengthening the current monitoring process is regression.

**15. Do you agree that public bodies should have a specific duty, when setting their equality objectives, deciding on the steps towards their achievement and reviewing their progress in achieving them to take reasonable steps to involve and consult employees, service users, and other relevant groups who have an interest in how the body carries out its functions – or where appropriate their representatives; and in particular take reasonable steps to consult and involve protected groups for whom the duty is designed to deliver benefits?**

Yes. However, we are seriously concerned that proposal in 2.3 is a step backwards in the involvement of trade unions which must be addressed. The existing gender duty specifically mentions trade unions as stakeholders to be involved and consulted in matters relating to the gender duty. This is not mirrored in the current proposals, which, as mentioned, is a regressive step. As mentioned above, consultation with and involvement of trade unions (and other interested parties) should be a requirement of these provisions in relation to all aspects of the specific duties at all stages, including at the stage of setting objectives, identifying the steps towards achieving those objectives, and reviewing progress. Without such input, all of these stages will be of less value and will also not have the “buy in” of all interested parties. Trade union shop stewards, safety reps, union learning reps and union equality representatives can all put to use their experience of tackling discrimination and promoting equality and involvement of under-represented sections of the workforce, which is essential if the duty is to be effective, is to make a difference, and is to win support across all in the workplace. We stress the vital role of union equality reps which is now strongly encouraged by ACAS in its revised code of practice on time off for trade union duties. We would also refer to the important recommendation of the Women and Work Commission (WWC) that public sector employers be accountable on the establishment of time-off and facilities for a network of union equality reps.

Unite supports the four key principals outlined in this consultation: the use of evidence, consultation and involvement, transparency and capability, and the reference to public authorities taking reasonable and proportionate steps to consult and involve representatives of employees, but we would like to see a specific reference to trade unions who are the prime employee representatives of employees across public authorities. Whilst there is reference to trade unions later in the text Unite believes that the integral role of unions should be included at the outset. In addition, consultation with

unions should be with a view to reaching agreement, to avoid consultation simply becoming a “tick box” exercise for public bodies.

**16. Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?**

We strongly support the use of public sector procurement to achieve equality outcomes as recognised under 5.34. We believe that procurement is key to ensuring that poor practice in the private sector cannot be used to undermine good practice introduced in the public sector in response to the equality duty, particularly given the large number of UK companies now undertaking work for the public sector. Various pieces of guidance introduced thus far for public bodies in relation to procurement have not been effective and we therefore consider that specific duties in this area are long overdue and are to be welcomed. It is important that public sector procurement is used as a lever to promote equality in the private, not-for-profit and voluntary sectors as recommended in the Equalities Review. Public authorities spend £176 billion annually on contracts for goods, facilities and services from organisations which employ many workers in this country. It cannot be right that public money should be spent on organisations which have discriminatory policies and practices. Embedding equality in public procurement would have the advantage of ensuring high quality services, allow all businesses to compete on an equal footing, spread best practice on equality and avoid the race to the bottom.

We do, however, note with concern that there is no provision for equality impact assessing procurement policies in the proposals. We believe that this should be embedded in the procurement process as it should be a factor in decision-making

The importance of addressing the equalities responsibilities in the private sector is clearly stated in the government’s pamphlet “Buy and make a difference”. This includes the opportunity to ensure private and voluntary sector organisations adhere to and promote equality when they are carrying out public functions, as well as to award a contract specifically to for example a women’s project or black business in a way that is not in conflict with the requirements of EU law.

We have experience of the impact of privatisation when equalities considerations were specifically excluded from the tendering process under compulsory competitive tendering. This showed that disproportionately it was low paid women, black women and disabled workers (formerly green card holders) that were negatively affected. This has led to an increase in the number of equal pay complaints and a serious decline in the employment of disabled workers, clearly demonstrating the grave consequences of not considering the impact of policies on equality issues. There are also obvious consequences for social cohesion. Transport for London’s procurement practices are a good example of how early engagement and communication

with all stakeholders, clear presentation of business case and reporting of successes and benefits provides positive outcomes for BAEM, women and other under-represented groups in its supply base.

Additionally, it is very important not to underestimate the financial cost of discrimination to individual employers and to the whole economy, as well as the savings from promoting equality, together with the consequential impact on motivation, job satisfaction etc. The Women and Work Commission calculated the cost to the economy of the women's work being undervalued. We have been consistently calling for the duty on the public sector to be extended to the private sector. The government should recognise the importance of using the Equality Bill as an opportunity to extend to the private sector the requirement to promote equality and prevent discrimination. We have a great deal of experience promoting equality in the private sector with employers of a range of sizes, including British Airways, Ford Motor Company, J Sainsbury, BAA, London Buses, English Church Housing Group, Ineos, TNT, Happy Computers, Associated British Ports, Cadbury, Stagecoach. Our experience is that a clear commitment to promoting equality and to establishing procedures for implementing this commitment is beneficial to all aspects of the workplace. The specific example of win-win-win agreements on equality and flexible working that meet workers' caring and other commitments outside work, as well as the employers' need for flexibility in order to meet varying customer demand demonstrates this.

For the same reasons the single equality duty should also apply to the private, not-for-profit and voluntary sectors. 80% of workers are employed in the private sector<sup>2</sup> and equality cannot be achieved without more effective legislation that will compel employers to take action in this area. The positive duties are important because they require employers to take action on equality in contrast to discrimination legislation which confers the right to take an employment tribunal claim after the discrimination has taken place. We are concerned that the interface between the public and private has not ensured that accountability has been a requirement for private companies who benefit from public contracts. We therefore welcome the inclusion in the Equality Bill of a clause allowing specific equality duties in relation to procurement activities. There is also a blurring between the public and the private/voluntary sectors with the contracting out of public sector jobs which has had a disproportionate impact on women and black and ethnic minorities.<sup>3</sup>

We believe that there should be an explicit requirement for public authorities to take account of supplier's breaches of discrimination law, rather than there simply being provision for them to do this through best practice guidance as some authorities have already done.<sup>4</sup> Public authorities must ensure that those who supply services are not discriminating and this is consistent with the whole Equality Duty ethos. Minimum equality standards are necessary which should be properly enforced and organisations should be banned from

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<sup>2</sup> ONS Statistics website on Public and Private Sector employment

<sup>3</sup> Poor Returns: Winners and Losers in the Job Market, 2007, Warwick Institute for Employment Research and Procurement and Fair Employment Report 2003, Mayor of London

<sup>4</sup> Local Government Information Unit Briefing, Discrimination Law Review, 2007

tendering for public contracts if they are in serious or repeated breach of discrimination law.

**17. Do you agree that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities to help contribute to the delivery of those objectives?**

Yes, equality for workers and service users should be taken into account at each stage of procurement process through equality impact assessment and monitoring the performance of contractors.

**18. Do you agree that contracting authorities should be required to consider incorporating equality-related award criteria where they relate to the subject matter of the contract and are proportionate?**

Equality awarding criteria have been used for many years by a number of local authorities and need to be clear, transparent and part of every stage of the procurement process. Equality criteria need to be clearly drawn up and objective so that all those bidding for work are clear about the requirements and about the monitoring of the outcomes of any commitments or undertakings given as part of the procurement process. There should be two separate awards for achieving or promoting equality in employment and for service users. We consider that the requirement should be more far-reaching, in that authorities should be required to incorporate such criteria, rather than simply consider their incorporation, in appropriate circumstances.

**19. Do you agree that contracting authorities should be required to consider incorporating equality-related contract conditions where they relate to the performance of the contract?**

In our experience incorporating the caveat that equality-related contract conditions should only be required when they relate to performance provides employers with an easy opt-out from these provisions. We believe that equality should be included in the specifications of a contract at the start of the process which enables public authorities to hold contractors to account by using equality-related contract conditions. These conditions should apply to both workers and service users and be monitored for effectiveness. Consideration also needs to be given to adequate enforcement provisions.

**20. What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?**

Unite agrees with the TUC that organisations who have breached discrimination law and have not put in measures to address it, should not receive public money. For this reason a duty should be placed on public authorities to ask suppliers about breaches of discrimination law. Additionally they should ask for information on steps taken by suppliers to change their policies and practices.

**21. Do you support the proposal to establish a national equality standard which could be used in the procurement process? If so, do you**

**believe this is achievable through a specific duty or is this better tackled through a non-legislative approach? Are there any practical issues that would need to be considered?**

Unite supports the proposal to establish a national equality standard for procurement process achieved by a specific duty on public bodies to meet the standard. It would however be important to ensure that the standard was robust and sufficiently distinct to apply to the wide range of differing organisations within the public sector and contracts regularly monitored.

**22. Which of the above four models do you consider achieves the best balance between joined-up working and senior accountability for equality outcomes, while avoiding unnecessary burdens? Please explain why.**

Unite believes the first model is the most appropriate.

**23. Do you have any other suggestions how this duty could be remodelled to retain the valuable features of senior accountability and joined-up working, whilst avoiding unnecessary burdens?**

Whilst we would obviously not encourage unnecessary burdens, promoting equality and removing or reducing discrimination is an extremely important goal, the benefits of which should not be underestimated.

**24. Are there any other specific requirements, other than those that we have proposed, which you think are essential to ensure that public bodies deliver equality outcomes in an effective and proportionate manner?**

- a) We stress that all areas of equality should be as strong as the current gender, race and disability duties and be improved upon. There should also be a requirement to carry out an equal pay audit as recommended by Women and Work Commission. We believe that it is fundamental to stress the importance of promotion of equality, rather than just addressing discrimination after it has occurred, through evidence gathering, taking action and monitoring. It is for this reason that a clear statutory duty to promote equality and a right to bargaining will be a way forward.
- b) We also believe discrimination, harassment and victimisation stems from prejudice towards people and their effects have a human cost. Therefore workplace homophobic discrimination is not because of the person's "characteristic" but because that worker is gay, lesbian or bisexual. Just as a disabled service user facing barriers to access public services is not due to his/her "characteristic", it is because of his/her disability. There is inequality as a result of discrimination in all **areas of equality** and not because people belong to a "strand" or "characteristic", but because they are women, black, Asian, disabled, LGBT, young, old, believe or do not believe in a religion, ex-offender or working class. For this reason we recommend a changed terminology to "areas of equality" rather than "characteristic" or "strand".
- c) Unite supports the emphasis on promotion of equality as stated in 3.1 but we have major concerns about the "light touch" approach and "reasonable

and proportionate” steps in the proposals that can lead to a more limited duty. We also support the aim in 3.3 but believe the mechanisms proposed will not bring about this culture change since public bodies are being asked to do less and will be subject to less requirements at a time when there will be budget constraints. **This would be a regressive measure** – all elements of the existing duties must be maintained and we oppose any reduction in their scope. They are a means of tackling institutional racism for example, as identified in the MacPherson Report following the inquiry into the murder of Stephen Lawrence which led to the introduction of the race equality duty. In our experience the voluntary approach does not work. For example, age discrimination legislation made employers take action, whereas the previous guidance did not; the tragedy at Morecambe Bay showed that employers will not voluntarily treat agency workers fairly and so the Gangmasters Licensing legislation needed to be introduced.

- d) Specific duties have been effective for the majority of public sector employees and so has producing and publicising equality schemes as stated in the findings of Schneider Ross<sup>5</sup>. Therefore a requirement to publish equality schemes and involve trade unions and those affected by the inequality when developing equality schemes in employment issues is essential.
- e) The monitoring requirement in the Race Equality Duty, the consultation with disabled workers and service users in the Disability Equality Duty and the equality schemes and consultation with trade unions in the Gender Equality Duty linked with gathering evidence has been essential in taking equality forward on these grounds. We strongly oppose the regressive proposal to remove this requirement and would instead, expect this to be extended to cover all equality areas.

There should be a requirement to carry out Equality Impact Assessments as a vital tool in ensuring measured public sector policies and decisions prior to implementation. For example the well reported case of services provided by Southall Black Sisters shows that equality impact assessments at an early stage could indeed protect service users from disproportionate impact. On a positive note the London Equalities Commission’s<sup>6</sup> impact assessment helped identify equality indicators. They then assessed whether there has been measurable progress to improve equality in London and reported on their findings.

- f) There should be a requirement for equality training at all levels. This will ensure a fairer environment and helps with understanding of issues leading to better industrial relations.
- g) There should also be a much greater emphasis on employment and the involvement of and consultation with trade unions particularly union

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<sup>5</sup> Equality Duties - Assessing the Cost & Cost Effectiveness of the Specific Race, Disability & Gender Equality Duties - 2009 – Government Equalities Office & Schneider Ross Not for Profit organisation

<sup>6</sup> [The State of Equality in London](#) report January 2007

equality reps as in the Women and Work Commission's recommendations. These state that public sector employers should account to a Ministerial Committee and report to a Cabinet Office Steering Group, with representatives from UK-wide public service employers and trade unions, on how they have put the recommendations in this report into practice, in particular on the results arising from their establishment of:

- equal pay reviews;
- time off and facilities for a network of equality reps;
- job share registers for high-quality occupations and e-networks for senior and professional women;
- a network of senior part-time role models to champion quality part-time work;
- career development pathways for low paid part-time workers;
- continuous training for all line managers on flexible working and diversity issues;
- a coherent approach to schools' World of Work Programme, offering work experience and taster days and encouraging girls and boys to experience non-traditional occupations.

**25. What role do you think the guidance from EHRC should play in helping public bodies implement the specific duties in a sensible and proportionate manner? What do you think it would be helpful for such guidance to cover?**

The EHRC should be provided with sufficient resources to ensure effective guidance and also to ensure effective enforcement. There should be EHRC guidance and a statutory Code of Practice. Specific guidance on procurement, evidence-gathering, reviews, consultation and setting equality objectives should be provided.

We also consider that it is necessary to have proper enforcement mechanisms if the single equality duty is to be carried out properly by authorities in practice. The suggestion that the EHRC should be the sole body responsible for enforcement is unworkable, as it simply will not have the resources to carry out this role efficiently and effectively. Multiple enforcement mechanisms are required. Public sector inspectorates should be required to monitor compliance in addition to the EHRC as part of their routine performance assessments, as there should be at least two discrete means of enforcement available. We believe the current proposal, which would leave no alternative means of enforcement whatsoever in the event that the EHRC are unable or unwilling to enforce in a particular situation, is too limited and narrow.

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