



The role of Overview and Scrutiny in Assessing Equality Performance

February 2012

The aim of this guide is to demonstrate how Overview and Scrutiny Committees can help local authorities to meet the public sector equality duties arising from the Equality Act 2010. It is a reference resource.

Contact

Welsh Local Government Association

The WLGA's primary purposes are to promote a better local government, its reputation and to support authorities in the development of policies and priorities which will improve public service and democracy. It represents the 22 local authorities in Wales, with the 4 police authorities, 3 fire and rescue authorities and 3 national park authorities as associate members.

Welsh Local Government Association

Local Government House

Drake Walk

Cardiff

CF10 4LG

Tel: 029 2046 8600

Fax: 029 2046 8601

www.wlga.gov.uk

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How to use this guide

The aim of this guide is to demonstrate how Overview and Scrutiny Committees can help local authorities to meet the public sector equality duties arising from the Equality Act 2010. Section A describes the public sector duties and outlines some of the implications for Overview and Scrutiny Committees. Section B discusses the role of Overview and Scrutiny Committees in assessing equality performance and the appendix describes how equalities work can fit in with two of the approaches that inform overview and scrutiny practice more generally. Namely, the Centre for Public Scrutiny's *Four Principles of Good Scrutiny* and the *Seven Success Factors* model outlined in the Welsh Governments 2008 advice note on *Wider Scrutiny and Partnership Working*.

The guide is a reference resource. Section A should be used for gaining an understanding of the implications of the Public Sector Equality Duties for Overview and Scrutiny Committees.

Section B and the appendix provide examples of possible ways forward and should be used to help local authorities develop their own approach to scrutinising equality performance, which meets local needs and is suitably integrated into local practices and processes.

Finally, it is important to remember that although Strategic Equality Plans and Equality Objectives are a new innovation and will attract significant interest, the role of overview and scrutiny in helping local authorities to meet their duties extends beyond this. The equality agenda should be mainstream and embedded within service development and improvement processes. Overview and scrutiny should be flexible enough to pick up on issues of inequality, wherever they arise in the council work programme, and should not be restricted to a narrow focus on the Strategic Equality Plan document itself.

Section A: The Equality Act 2010 Public Sector Duties in Wales

Introduction

The Equality Act 2010 is a key piece of legislation that has been introduced by the UK government. It replaces the previous 116 different equality statutes in one all encompassing statute. It simplifies and clarifies the role of Public Authorities (including Local Authorities) as leaders in achieving equality improvements for their citizens and communities. Specific duties developed by the National Assembly for Wales provide detailed and challenging requirements for authorities but an overall emphasis on 'due regard' leaves authorities with greater freedom to produce distinctive local solutions and greater accountability to their communities.

The General Duty

Local Authorities and other public bodies are required to have due regard to the need to:

1. eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act
2. advance equality of opportunity between people who share a relevant protected characteristic and those who do not
3. foster good relations between people who share a protected characteristic and those who do not

These are essentially the aims of the Act. Having due regard for advancing these equality aims involves:

- removing or minimising disadvantages experienced by people due to their protected characteristics

- taking steps to meet the needs of people from protected groups where these are different from the needs of other people
- encouraging people with protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

The Act describes fostering good relations as tackling prejudice and promoting understanding between people who share a protected characteristic and those who do not.

Who is protected under the Act?

In actual fact everyone is. The Act sets out a new prescribed list of protected characteristics which replace what have traditionally been referred to as Equality Strands. These groups are protected through the general and specific duties of the Act.

The new general duty covers the following protected characteristics:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race – including ethnic or national origin, colour or nationality
- Religion or belief
- Sex
- Sexual orientation

It also applies to marriage and civil partnership, but only in respect of the requirement to have due regard to the need to eliminate discrimination.

THE SPECIFIC DUTIES

Specific Duties for Local Authorities in Wales

Each of the specific duties outlined in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 applies to Local Authorities in Wales, with the exception of a specific duty for the Welsh Government to produce a Welsh Ministers' Report on how devolved public authorities in Wales are meeting their general duty. The requirements on Local Authorities and Schools are detailed below:

Objectives and Strategic Equality Plans

Local Authorities are required to develop and publish Equality Objectives and a Strategic Equality Plan by **2nd April 2012** and at least once every four years thereafter. Progress in delivering the plan and objectives must be reported on annually and amendments to the plan may be made at any time during the life of the plan provided they are published. The purpose of the objectives and plans is to enable the delivery of measurable equality outcomes which improve the lives of individuals and communities.

Equality Objectives should be mainstreamed so that all services and departments contribute to equality improvement and manage their equality commitments as part and parcel of their general improvement and customer service commitments.

If an authority chooses not to publish an equality objective covering each of the protected characteristics it is required to publish robust and justifiable reasons for this choice.

Implications for Overview and Scrutiny

Overview and Scrutiny Committees have a key role to play in providing 'critical friend' challenge to Strategic Equality Plans and scrutinising performance in delivering equality objectives. This role is described in the Section B.

Engagement

Understanding the complexity of the differing needs of the citizen enables an organisation to shape service provision in the best way. Not all needs can be met, but a good understanding means an organisation is better placed to divert valuable resources into the right places, at the right times, and in the right ways. The duties require meaningful engagement when developing objectives and in completing assessments of impact.

As part of gathering relevant information, an authority will need to engage appropriate people in assessing its work in relation to meeting the three aims of the general duty. Authorities must involve people who represent the interests of those who share one or more of the protected characteristics and have an interest in the way that the authority carries out its functions. Further guidance on engagement activity is available as part of the WLGA's revised Equality Improvement Framework which is

available at:

<http://www.wlga.gov.uk/english/equality-improvement-framework-for-wales/>

Implications for Overview and Scrutiny

Overview and Scrutiny Committees should question and consider whether appropriate people have been involved and engaged in developing equality objectives and plans and when assessing the impact of policies and proposals.

Assessing Impact

The role and scope of Equality Impact Assessments has been clarified in the new duties. Assessments need to be completed when a policy or practice is being proposed or reviewed. This will include policies, business planning, efficiency proposals and staff restructures. Authorities must publish a report where an assessment finds a substantial impact. Further guidance on how overview and scrutiny can use Equality Impact Assessments as part of its work is available from the Centre for Public Scrutiny.

<http://www.cfps.org.uk/publications?item=120andoffset=0>

Implications for Overview and Scrutiny

Whenever Overview and Scrutiny Committees are discussing proposals for new policies and future plans they should request information about the Equality Impact Assessments that have been conducted. This should help to inform their discussions and comments on proposals. From time to time Overview and Scrutiny Committees may also wish

to examine these assessments of impact in greater detail to check if they are robust and have been developed based on strong evidence and appropriate engagement.

Where committees are making recommendations for policy changes and improvements they will themselves need to consider potential impacts. An Equality Impact Assessment will need to be carried out (by the relevant service) as part of the development of any detailed proposal, to change policy or practice, arising from scrutiny recommendations, just as it would be required with any other proposal.

Equality Information

Objectives, assessments of impact and Strategic Equality Plans need to be based on solid evidence and analysis. For these reasons there is a duty to collect a range of equality information to contribute to this evidence base. Authorities are required to consider what information they hold, and what further information they would need to collect, in order to demonstrate compliance with the General Duty. The type of evidence which should be considered may include information from local sources such as; customer surveys, Equality Impact Assessments, community forums, as well as national resources such as the census or annual population survey and reports relating to issues affecting protected groups. Authorities should attempt to create a picture of the needs of local communities that can be broken down by the protected characteristics.

Implications for Overview and Scrutiny

The equality information which an authority collects should be used to inform its choice of equality objectives and strategic equality plans. Scrutiny's role in supporting strategic equality plans is outlined below.

Employment Information

The new specific duties in Wales also require authorities to collect and publish an extensive list of employment information on an annual basis. The full range of employment information that an authority is obliged to collect is detailed in the non-statutory guidance and can be found at: <http://www.equalityhumanrights.com/wales/>

Employees can-not be compelled to provide this information, if they do not wish to, so it is important that authorities take steps to explain why they are collecting the equality information and how it will be used. They should also give appropriate reassurance on issues of confidentiality. The non-statutory guidance mentioned above explains why information is collected and recommends how it should be used.

Implications for Overview and Scrutiny

Overview and Scrutiny Committees may wish to examine whether collected information is appropriately used, if confidentiality issues are successfully addressed and if the authority effectively responds to the information and amends policy or practice accordingly, particularly if the information highlights differentials and other issues of concern.

Pay Differences

Local Authorities are required to identify, collect and publish information on pay differences between employees with **any** protected characteristic and those who do not share that characteristic. There is also a requirement to consider this information when drawing up Equality Objectives. Local authorities must also publish an Equality Objective and Action Plan in relation to addressing any **gender** pay difference identified or publish reasons why it has not done so. This can be encompassed in the Authorities Strategic Equality Plan.

Implications for Overview and Scrutiny

Overview and Scrutiny Committees may wish to examine evidence of any pay differences and the action plans in place to tackle these.

Staff Training and Awareness

This duty expresses the need to promote knowledge and understanding of the general and specific duties amongst employees including the use of performance assessment procedures, such as personal appraisals or personal development reviews, to identify and address training needs.

Implications for Overview and Scrutiny

Overview and Scrutiny Committees may wish to examine issues such as the take up and range of provision of training.

Procurement

The general duty described above applies to all procurement regardless of the value of the contract. Even where provision of a service is contracted out, the Local

Authority remains responsible for meeting the general duty. The specific duty applies when a Local Authority is procuring works, goods or services from other organisations on the basis of a 'relevant agreement'. Relevant agreements include the award of a 'public contract' or the conclusion of a 'framework agreement' which are regulated by Public Sector Directive (Directive 2004/18/EC) / Public Contracts Regulations (2006). The specific duty requires Local Authorities to consider whether it would be appropriate to include specific stipulations relating to the general duty, in the award criteria and / or in conditions relating to the performance of a contract of this type. Examples could be; requiring tenders to provide specific evidence of their organisation's own equality policies and procedures; or requiring commissioned care homes to demonstrate ongoing monitoring of service user satisfaction broken down by protected characteristics. Local Authorities wishing to adopt best practice should consider applying such stipulations, wherever relevant, regardless of the value of the contract.

Implications for Overview and Scrutiny

When award criteria and contracts are determined consideration will be given as to whether or not specific equality stipulations are required. Scrutiny may wish to examine these processes to ensure they are robust.

Reporting and Publishing

Local Authorities are required to publish an Annual Equality Report describing the steps taken by the authority to:

- identify and collect relevant information

- utilise this information in meeting the three aims of the general duty

Alongside this; the report should contain a statement on the effectiveness of the authority's arrangements for identifying and collecting information and reasons why any identified information has not been collected. It should also contain progress reports on the authority's Equality Objectives and may contain the employment information described above if this has not been published elsewhere. However, it should be noted that data protection legislation and guidance applies. Where a particular protected group has very low numbers then it may be necessary to suppress the information to prevent disclosure of personal identities.

Implications for Overview and Scrutiny

In some circumstances scrutiny may wish to examine draft reports prior to publication.

Accessibility

Local Authorities must ensure that any document or information published to meet its general or specific equality duties is in a form that is accessible to people from protected groups.

Implications for Overview and Scrutiny

Overview and Scrutiny Committees may wish to investigate the accessibility of equality and other published documents, reports and plans asking questions such as; what is done to promote these documents? What languages or formats is the information available in, and which are most regularly required? How aware are the public of the authority's equality plans and performance?

Review

Equality Objectives must be reviewed at least every 4 years. Local Authorities and schools are also required to keep under review other aspects of compliance with general and specific duties.

Implications for Overview and Scrutiny

The evidence and recommendations from overview and scrutiny investigations should form part of this review process. Evidence from scrutiny committees will help the Local Authority to assess the progress towards achieving equality objectives and provide evidence as to the authority's general compliance with the Act.

Section B: The Roles of Scrutiny in Assessing Equality Performance

The role of Overview and Scrutiny Committees is set out in:

GUIDANCE FOR COUNTY AND COUNTY BOROUGH COUNCILS IN WALES ON EXECUTIVE AND ALTERNATIVE ARRANGEMENTS 2006

<http://wales.gov.uk/legislation/subordinate/nonsi/localgovwales/2006/CBCGuidance2006e?lang=en>

The guidance defines the role of overview and scrutiny as four key functions:

- to hold the executive to account for the efficient exercise of executive functions – especially the performance of the executive as measured against the standards, objectives and targets set out in the policies and plans which it is implementing;
- to assist in the improvement and development of the council's

policies by evaluating whether they are achieving their stated objectives, whether those policies and the way they are being implemented reflect the needs and priorities of local communities and by reporting and making recommendations to the executive or the full council;

- to review and make reports on issues which affect the authority's area or its residents; and
- to examine whether the systems the executive has in place to deliver its functions are robust and are being properly observed.

Overview and scrutiny can help to ensure that Local Authorities comply with their duties under the equality act by applying these functions to specific equality projects, such as the authority's Strategic Equality Plan, and equality practice in

mainstream service delivery and policy development. Overview and Scrutiny Committees should aim to be:

- A critical friend of Strategic Equality Plans
- A quality assurance for internal processes and service delivery
- An enabler and champion of citizens voice and public concerns

The critical friend of Strategic Equality Plans

Perhaps the key role of scrutiny is as a critical friend to Strategic Equality Plans. All four key functions may be applied so that the executive are held to account for the performance of their Strategic Equality Plan and Equality Objectives. A range of options and tools are available. Scrutiny can:

Challenge levels and quality of delivery

Conduct detailed investigations into the progress of specific objectives or projects.

Add value at various stages in the development of the Strategic Equality Plan including:

- Involvement in determining priorities and setting objectives,
- Ensuring appropriate links to other plans and processes are in place
- Contributing to the performance management of the plan

The quality assurance for internal processes and service delivery

The specific duties are quite prescriptive in relation to the tools and processes Local Authorities need to have in place to enable them to deliver on the general duties (listed on pages 4-9). From time to time Overview and Scrutiny Committees may wish to investigate the effectiveness of these processes.

Overview and scrutiny also have a role to play in ensuring that equality principles are mainstreamed and reflected in service delivery. This element of their role could involve reviewing equality commitments in individual service plans, considering trends within recorded complaints, if these have an equalities dimension, and ensuring Equality Impact Assessments are robust.

The enabler and champion of citizens' voice and public concerns

One of the key roles that overview and scrutiny members can undertake is to enable the voice of the public to be heard and have an impact on council policies and practices. Particularly the voice of those from disadvantaged communities and groups.

This role will include those activities listed above under **Engagement** but may also be extended. Scrutiny members need to be aware of community concerns and be in a position to determine whether some specific concerns are important enough to become items in the work programmes of Overview and Scrutiny Committees.

However, it is not just scrutiny reviews of specific equality issues which can help to advance equality. Scrutiny processes which enable members to articulate citizen's concerns will help to produce

Linking scrutiny of equality performance with general good practice principles.

Appendix

There are many various principles, guidelines and advice, which aim to guide the work of Overview and Scrutiny Committees in general. We have chosen two of these to illustrate how equalities work can be incorporated into general

approaches and principles. Thinking about equality work, in relation to your authority's general approach to good scrutiny practice, will ensure that it is conducted to the same high standard as other topics and areas of work.

Approach One	The Centre for Public Scrutiny: The Four Principles of Good Public Scrutiny
Approach Two	Welsh Government Advice Note Wider Scrutiny and Partnership Working. (2008): Seven factors for Successful Scrutiny

Approach One

The Centre for Public Scrutiny has set out Four Principles of Good Public Scrutiny which are used by many authorities to guide their work. These principles apply to the scrutiny of equality performance as much as they do to other scrutiny functions. Below we have re-examined each principle and provide questions for consideration when applying these principles to overview and scrutiny of equality performance.

The Four Principles of Good Public Scrutiny

1. Effective Scrutiny should be a 'critical friend' to executives, external authorities and agencies.

- Has the committee had a role in the development of the local authority's Strategic Equality Plan and Equality Objectives?
- Is the committee aware of the Strategic Equality Plans and

Equality Objectives of other public authorities in the area? (this may include Schools, Health Boards, Police Authorities, Fire-and Rescue, authorities and National Park Authorities)

- Will the committee scrutinise Strategic Equality Plan performance and progress towards Equality Objectives?

2. Effective Scrutiny should reflect the voice and concerns of the public and its communities.

- Has the committee taken steps to involve community groups or experts who represent the views of people with particular characteristics?
- Do people from relevant outside agencies engage with scrutiny committees by attending meetings or providing information?

- Has the committee taken steps to gather evidence from the general public in the course of its work? (This could include information from complaints records, customer satisfaction measures, surveys or focus groups)

3. Effective Scrutiny should take the lead and own the Scrutiny process on behalf of the public.

- Have steps been taken to involve or engage with a range of protected characteristics through the scrutiny process? (Men, women, a variety of ages, disabled people, people with different religions and beliefs, people with differing sexual

orientations, people with differing nationalities or ethnic backgrounds etc.)

4. Effective Scrutiny should make an impact on the delivery of public services.

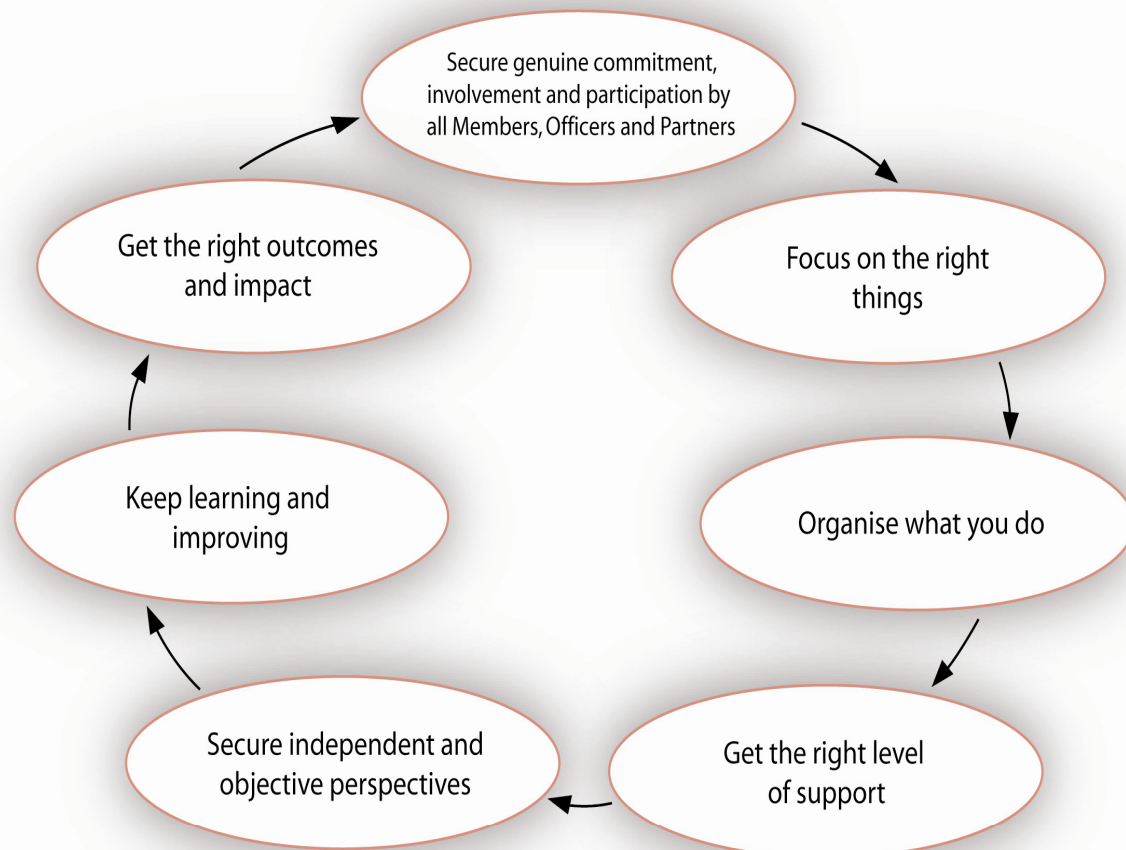
- Does the committee review the performance of services in light of the priorities of the authority's Strategic Equality Plan and Equality Objectives?
- Does the committee consider any impacts of policy and other proposals (identified in Equality Impact Assessments) and does it recommend changes accordingly?

Approach Two

In an advice note in 2008 the Welsh Government outlined seven factors which are required to achieve successful scrutiny. Each factor applies to the scrutiny of equality performance as much as it does to other scrutiny functions. Below we have re-examined each factor and provide questions for consideration when implementing successful scrutiny of equality performance.

The Seven Success Factors

'The effectiveness of each factor depends on the effectiveness of the previous factor. Effective scrutiny is achieved only when all seven factors are effective. But this cycle is fragile and could easily break without appropriate reinforcement and commitment to making it work'
Welsh Government 2008



Success Factor 1: Secure genuine commitment, involvement and participation by all Members, Officers and Partners

Just as the scrutiny process itself requires the commitment of members, officers and partners, so too does the equality agenda.

- Are officers and executive board / cabinet members receptive to concerns raised by scrutiny about inequalities?
- Is the committee able to influence policy proposals where concerns about inequalities have been identified?

Success Factor 2: Focus on the right things

- Do equality considerations form part of the committee's general inquiries across other topic areas, which it examines during the year?
- Does scrutiny spend time reviewing progress of the council's Strategic Equality Plan and Equality Objectives?
- Is there a clear route by which specific residents' concerns about unequal treatment or practices can get on to the scrutiny agenda?

Success Factor 3: Organise what you do

- Is background information about the make up of local communities and their various needs available to scrutiny members?

- Are assessments of equality impacts presented to scrutiny alongside policy proposals?
- Can activities and datasets from the council's Strategic Equality Plan be monitored alongside and as part of the council's other performance management frameworks?

Success Factor 4: Get the right level of support

- Are scrutiny support officers and scrutiny committee members trained in equality issues?
- Do scrutiny committees consult corporate equality officers when appropriate?

Success Factor 5: Secure independent and objective perspectives

- Do scrutiny committees gather information from community groups or experts who represent the views of people with particular characteristics?
- Do people from relevant outside agencies engage with scrutiny committees by attending meetings or providing information?

Success Factor 6: Keep learning and improving

- Do scrutiny members have access to specific equalities training?
- When scrutiny reviews have identified and overcome inequalities are these lessons re-applied in future reviews?

Success Factor 7: Get the right outcomes and impact

1 The right outcomes and impacts are those that enable the local authority to demonstrate that it is taking the necessary steps to achieving the aims of the public sector equality duty.

1. eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act
2. advance equality of opportunity between people who share a relevant protected characteristic and those who do not
3. foster good relations between people who share a protected characteristic and those who do not.

The contribution that scrutiny can make to ensuring that the Authority's Strategic Equality Plan is delivered successfully is vital. Scrutiny committee's ability to ensure that other policies and plans have a positive rather than a negative impact, in equality terms, is equally important.

Consider:

- Are you happy that the council is achieving the aims of the duty?
- Are you happy that the policies you have considered throughout the year contribute to, or at least, do not harm these aims?

Notes

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