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Booklet 6

How is the disability equality duty different from the race equality duty?

Responding to the duty to promote disability equality in the post-school sector



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How is the disability equality duty different from the race equality duty?

Responding to the duty to promote disability equality in the post-school sector

Christine Rose

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This document is one of a suite of materials from the project, The Duty to Promote Disability Equality. The project ran from May 2005 to March 2006 and was managed by the Learning and Skills Development Agency (LSDA) in partnership with NIACE and Skill, and funded by the Learning and Skills Council (LSC). Individuals from more than 25 organisations were involved in the project as research sites, as advisory group members and as partners. I would like to extend my thanks to them all for their contributions and the insights they brought to the process of promoting disability equality. I would especially like to thank Christine Rose for her crucial role in leading the project and for writing these materials.

I hope you will find this suite of documents a valuable resource in helping you to produce your Disability Equality Scheme and action plan, and that the materials assist you to close the 'equality gap' experienced by so many disabled staff and learners.

Sally Faraday
Research Manager
Learning and Skills Network

This document is part of a suite of materials designed to assist post-16 education providers to respond positively to the duty to promote disability equality. These materials are derived from a research project which reports the experiences of organisations engaged in implementing the Disability Equality Duty (DED). This duty is part of the Disability Discrimination Act 2005 (DDA 2005), which comes into force on 4 December 2006. Readers should note that this was wrongly put in the Disability Rights Commission (DRC) code of practice as 5 December. The DRC has since issued an erratum saying that the correct date is 4 December 2006.

The Disability Equality Duty project

The aim of the project was to explore the implications of implementing the disability equality duty (DED) in the post-school sector, to respond positively to the new requirements. Over 25 organisations were involved, including:

- further education colleges
- sixth form colleges
- adult and community learning (ACL) providers
- higher education (HE) providers
- Adult Learning Inspectorate (ALI)
- Disability Rights Commission (DRC)
- Equality Challenge Unit (ECU)
- Learning and Skills Council (LSC)
- Learning and Skills Development Agency (LSDA)
- Higher Education Funding Council for England (HEFCE)
- National Disability Team
- National Institute of Adult Continuing Education (NIACE)
- Ofsted
- Skill.

The project ran from May 2005 to March 2006 and was managed by the Learning and Skills Development Agency (LSDA) in partnership with NIACE and Skill; it was funded by the Learning and Skills Council (LSC). The project outcomes were disseminated through three events called 'New legislation: new opportunities', which took place between March and May 2006. Issues from these events have been incorporated within the suite of materials.

Organisations in the project were at different points on their journey towards disability equality. Many recognised strengths but also accepted areas that had yet to be addressed. All started work to implement the requirements of the duty to promote disability equality and, within the context of their own organisation and timescale of the project, many identified a particular aspect of disability equality to improve. These focused on one or more of the following requirements of the duty:

- to carry out impact assessments
- to gather information to monitor progress
- to embed disability equality across the whole organisation
- to actively involve disabled people
- to work in partnership with other organisations
- to improve disability equality by tackling institutional barriers.

You can read the reports of the organisations involved in the research on the Learning and Skills Network (LSN) website (www.lsneducation.org.uk). The project was steered by an advisory group of disabled people, which provided an invaluable forum for the exchange of ideas and advice on the direction of the project.

Implementing the duty

Implementing the duty will help close the gap between the expectations, experiences, education, qualifications and employment of disabled and non-disabled people. It will enable you to:

- create a positive atmosphere where there is a shared commitment to value diversity and respect difference
- deliver a first class service; Ofsted, for example, has found that a common characteristic of the highest-performing organisations is that they have an inclusive ethos, and the best lessons take place where teaching and learning responds to the needs of individual learners

- achieve a more representative workforce, recruiting from a wider pool of applicants
- meet the requirements of funding, audit and inspection bodies better
- promote a greater knowledge and understanding of disability among all learners, which will benefit society at large.

If you are leading on the implementation of the DED, you are advised to familiarise yourself with the Code of Practice produced by the DRC, which is a statutory document. It is admissible as evidence in legal proceedings under DDA 2005, and courts and tribunals must take into account any part of the Code that appears to be relevant to issues arising in proceedings. The Code and other guidance materials provided by the DRC are available on the DRC website (www.dotheduty.org). Online guidance documents available on the DRC website (www.dotheduty.org) include:

- guidance for the further and higher education sectors (from August 2006)
- guidance on evidence gathering
- guidance for disabled people on the Disability Equality Duty (from July 2006).

Using the materials

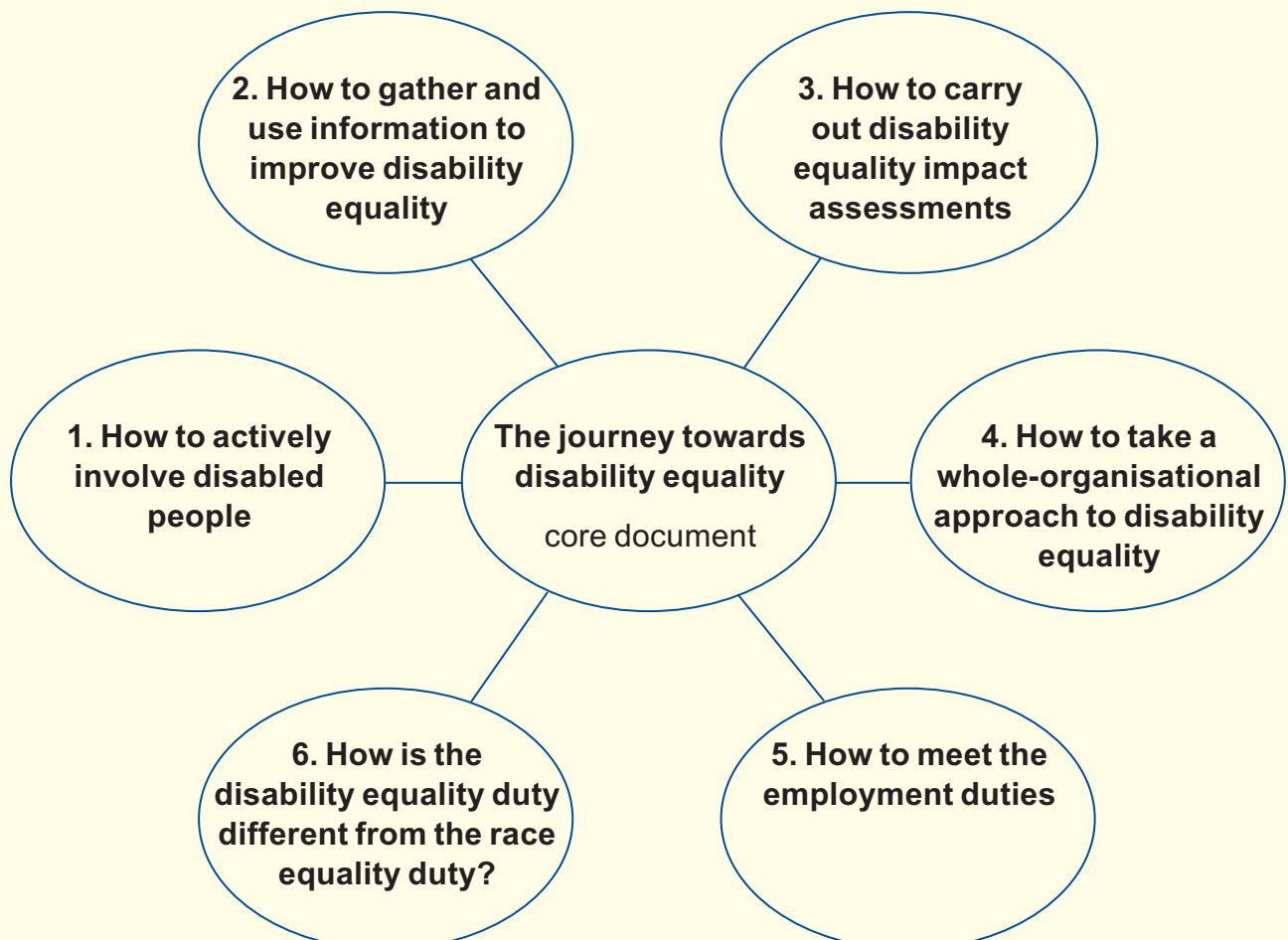
This suite of materials derived from the project is designed to provide practical advice, tools and examples drawn from practice, and offers key messages about implementing the duty. Throughout the materials you will find references to and quotes from the DRC's Code of Practice and other publications. It is advisable to read these materials alongside the Code of Practice.

The suite of materials consists of seven documents (see figure 1).

- **Core document: The journey towards disability equality** is the starting point and needs to be read first. It provides an overview of the main requirements and key activities required when promoting disability equality. The core document also includes a self-evaluation tool to help develop a Disability Equality Scheme and improve disability equality. There are signposts in the core documents to the other booklets in the suite.

- There are five accompanying ‘how to’ booklets. Each provides more detailed information on the main themes of the duty:
 - **Booklet 1: How to actively involve disabled people**
 - **Booklet 2: How to gather and use information to improve disability equality**
 - **Booklet 3: How to carry out disability equality impact assessments**
 - **Booklet 4: How to take a whole-organisational approach to disability equality**
 - **Booklet 5: How to meet the employment duties.**
- The remaining booklet is **Booklet 6: How is the disability equality duty different from the race equality duty?** This analyses the similarities and differences between the duty to promote disability equality and the duty to promote race equality, carried out as part of the project.

Figure 1 The seven documents of the DED project



Booklet 6: How is the disability equality duty different from the race equality duty?

There are similarities between the disability equality duty and the race equality duty, which came into force with the Race Relations (Amendment) Act 2001. However, there are also significant differences, and it is important for you to appreciate them as you develop and implement your Disability Equality Scheme in response to the disability equality duty. This booklet will help you to:

- understand the background to the two sets of equality legislation – section 1
- appreciate the similarities between the two sets of equality legislation – section 2
- appreciate the differences between the two sets of equality legislation – section 3.

Abbreviations

A number of abbreviations are used in this report, including:

| | |
|--------|--|
| ACL | adult and community learning |
| BME | black and ethnic minority |
| CRE | Commission for Racial Equality |
| DDA | Disability Discrimination Act |
| DED | disability equality duty (duty to promote disability equality) |
| DRC | Disability Rights Commission |
| DWP | Department for Works and Pensions |
| HEFCE | Higher Education Funding Council for England |
| HEIs | higher education institutions |
| LSC | Learning and Skills Council |
| Ofsted | Office for Standards in Education |

The duty to promote race equality

The Race Relations (Amendment) Act 2000 places a duty, known as the general duty, on all public authorities to promote race equality. In addition, there are specific duties placed on listed public authorities, including education providers and education funding authorities. The general and specific duties came into force in 2001; public authorities were required to have timetabled and realistic plans for meeting these duties in place by 31 May 2002.

The general duty, also known as the race equality duty, has three inter-related parts and means that public authorities, in carrying out their functions, must have due regard to the need to:

- eliminate unlawful discrimination
- promote equality of opportunity
- promote good relations between people of different racial groups.

Following a discussion of the requirements of the general duty, the code of practice for the race equality duty is interestingly split into two sections. Chapters 4 and 5 deal with promoting race equality in authorities other than educational institutions, but including the LSC and HEFCE, while chapter 6 deals with promoting race equality in educational institutions, including schools, colleges, adult and community learning (ACL) providers and higher education institutions (HEIs). This split is significant, for it reflects different specific duties and it means, for example, that the LSC and HEFCE are required to produce a race equality scheme, but colleges, ACL providers and HEIs are required to produce a race equality policy. This is discussed further in section 3 of this report.

Organisations should have published their first race equality scheme or policy by 31 May 2002. This must be formally reviewed every three years. The deadline for this review was therefore 31 May 2005.

The duty to promote disability equality

The Disability Discrimination Act (DDA) 1995 has now been amended by the Disability Discrimination Act 2005, which places a duty to promote disability equality on education providers and other public sector bodies including the LSC, HEFCE, Ofsted and ALI. This legislation extends the current DDA 1995 requirements – to anticipate and respond to the individual needs of disabled people – to a duty under which organisations must become proactive agents of change.

In addition, there are specific duties placed on listed public authorities, including education providers and education funding authorities. These organisations are all required to produce a Disability Equality Scheme.

The general duty, also known as the disability equality duty, has six inter-related parts and will mean that public authorities, in carrying out their functions, must have due regard to the need to:

- promote equality of opportunity between disabled people and other people
- eliminate unlawful discrimination
- eliminate disability-related harassment
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life
- take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.

The general duty comes into force on 4 December 2006. The specific duties regulations came into force on 5 December 2005. Organisations covered by the specific duties must publish their first Disability Equality Scheme no later than 4 December 2006.

2 Similarities between the duties to promote race and disability equality

Table 1 provides an overview of the key similarities between the codes of practice for the race equality duty and the disability equality duty. These are then discussed in detail.

Table 1 Key similarities between the codes of practice for the duty to promote race equality and the duty to promote disability equality

| Objective | How the legislation codes of practice compare |
|---|--|
| Overarching aim | Both expect organisations to promote equality of opportunity proactively , embedding equality across the whole organisation. |
| Specific duties | Both have specific duties whose general function is to help organisations to meet the general duty . |
| Identification of scheme or policy within equality strategies | Both require that the equality scheme or policy should be clearly identifiable and easily available if part of a more general equality strategy. |
| Target setting | Both recommend setting targets to narrow gaps in equality that are identified as a result of monitoring and other equality activities. |
| Working in partnership | Both highlight the need to take account of partnership working . |
| Contracted-out provision and procurement activities | Both state that public authorities are responsible for ensuring that contracted-out provision and procurement activities meet the duties. |
| Staff training | Both identify the need for staff training, although this is not specifically set out in the DED legislation . |
| Producing an action plan | Both expect the equality scheme or policy to have an accompanying action plan . |
| Enforcement powers | The Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC) have similar enforcement powers . |

The overarching aim to promote equality

The aim of both sets of legislation is to **promote equality of opportunity proactively**, eliminating discriminatory policies, procedures, plans and practice and focusing on improved outcomes for different groups of people. They both provide a framework to make equality central and integral to the way that public authorities work, 'mainstreaming' equality across the whole organisation.

'Mainstreaming' is open to misinterpretation, so it is useful to clarify its meaning. In this context, it is about taking an integrated and systematic approach to equality, embedding the elimination of discrimination, the promotion of equal opportunities and other aspects of equality legislation by making these requirements fundamental and central to the way organisations operate, rather than a 'bolt-on extra'. Equality becomes an integral part of all activities of an organisation; its strategic planning, policy-making, marketing, business development, service delivery, procurement and partnership arrangements, for example.

Specific duties

Both sets of legislation have specific duties whose general function is to help organisations meet the general duty. They set out what organisations should do to plan, deliver and evaluate action to eliminate discrimination and promote equality of opportunity. These include:

- preparing and maintaining an **equality scheme or policy** and developing and implementing an accompanying **action plan**
- **publishing** annually the results of assessments, monitoring and other activities to improve equality
- **reviewing** and making appropriate revisions to the scheme or policy at least every **three years**, to ensure that there are proper arrangements in place to implement it effectively, and the scheme or policy is kept up to date and relevant.

Identification of scheme or policy within equality strategies

Both codes of practice require that the **Race or Disability Equality Scheme or policy** should be **clearly identifiable** and easily available if organisations should choose to make this a part of a more general organisational approach and response to equality.

Target setting

Both codes of practice recommend setting targets to narrow gaps in equality that are identified as a result of monitoring processes and other equality activities. For example, the Disability Rights Commission makes the point in its Code of Practice for the Disability Equality Duty that 'Setting specific targets can play a useful role in ensuring that due regard is paid to disability equality in key employment or service delivery areas' (2005, p72).

Working in partnership

Both codes of practice highlight the need to take account of the duties when **working in partnership** with other organisations, identifying the need to work jointly in meeting the duties. However, partnership working is likely to be more extensive when delivering disability equality than race equality (DWP 2004, para 4.24).

Contracted-out provision and procurement activities

Both codes of practice state that public authorities are responsible for ensuring that **contracted-out** provision and **procurement activities** meet the duties.

Staff training

Both codes of practice identify the requirement for **training, although this is not specifically set out in the disability equality legislation as it is in the race equality legislation**. Staff need to be aware of the new duties and understand why they are necessary; they should also be equipped with the necessary skills to implement the new duties.

Producing an action plan

Both codes of practice expect that an organisation's equality scheme or policy will have an **accompanying action plan** that sets out the steps and key actions that the organisation proposes to take to fulfil the requirements of legislation within the period of time covered by the scheme or policy.

Enforcement powers

The CRE and DRC have **similar enforcement powers** and the Commission for Equality and Human Rights (CEHR) will take over these enforcement powers by 2008–09. If a public authority does not meet its **general** duty, it can be challenged by a claim to the High Court, made by a person or group of people with an interest in the matter, or by the CRE or DRC.

If a public authority does not meet its **specific** duties, it could face enforcement action by the CRE or DRC, who can serve a 'compliance notice', stating that the authority must meet its duty and explain, within 28 days, what it has done or is doing to meet the duty. If, three months after the compliance notice has been served, the CRE or DRC considers the authority has still not met one or more of its specific duties referred to in the notice, it can apply to the county court (England) or sheriff court (Scotland) for an order to obey the notice. If the court makes an order and the authority does not keep to it, the authority may face legal action for contempt of court. The CRE and DRC do not need an individual to make a complaint before issuing a compliance notice.

3 Differences between the duties to promote race and disability equality

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Table 2 provides an overview of the key differences between the codes of practice for the race equality duty and the disability equality duty. These are then discussed in detail.

Table 2. Key differences between the codes of practice for the race equality duty and the disability equality duty

| | Duty to promote race equality | Duty to promote disability equality |
|--|---|---|
| General duty | <p>Has three inter-related parts. Public authorities must give due regard to the need to:</p> <ul style="list-style-type: none"> ■ eliminate unlawful discrimination ■ promote equality of opportunity ■ promote good relations between people of different racial groups. | <p>Has six inter-related parts. Public authorities must have due regard to the need to:</p> <ul style="list-style-type: none"> ■ promote equality of opportunity between disabled people and other people ■ eliminate unlawful discrimination harassment ■ eliminate disability-related ■ promote positive attitudes towards disabled people ■ encourage participation by disabled people in public life ■ take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people. |
| Producing an equality scheme or policy | <p>LSC, HEFCE, Ofsted and ALI are required to produce a race equality scheme, whereas colleges, ACL providers and HEIs are required to produce a race equality policy. There are differences between the two.</p> | <p>No difference in requirement – LSC, HEFCE, Ofsted, ALI, colleges, ACL providers and HEIs are all required to produce a Disability Equality Scheme.</p> |
| Consulting and or actively involving different racial groups | <p>The need to consult learners and staff of different racial groups is implicit rather than explicit.</p> | <p>The involvement of disabled people is an explicit requirement. This involvement must extend beyond consultation and be active and meaningful.</p> |
| Employment duties | <p>LSC and HEFCE have separate and more stringent employment duties, compared with colleges, ACL providers and HEIs, particularly for monitoring.</p> | <p>No difference in employment duties. – they are equally stringent.</p> |

| | Duty to promote race equality | Duty to promote disability equality |
|--|---|--|
| Achieving outcomes | The need to achieve improved outcomes for people from different racial groups is implicit rather than explicit. | There is a clear requirement to achieve improved outcomes for disabled people. |
| Taking positive action or treating more favourably | Permits action to be taken to address under-representation of specific racial groups but positive discrimination is unlawful save in narrowly prescribed situations. | Explicitly requires more favourable treatment for disabled people where this is needed. Positive discrimination is not prohibited or restricted in any way. |
| Carrying out impact assessments | Requires organisations to carry out a full impact assessment of policies, procedures, plans and practice in response to the legislation. | Also requires organisations to carry out a full impact assessment of policies, procedures, plans and practice, but this is likely to be a much broader process for disability equality. |
| Gathering and using information | Code of practice provides structured lists of aspects to monitor Race is usually fixed, defined and known to a person. | Aspects to monitor are set out in the code of practice for the disability equality duty but are less structured when compared to the code of practice for the race equality duty. Flexible systems are preferred, to allow monitoring to be tailored to individual context. Disability is dynamic – people may become disabled at any stage in their life. People may not appreciate that they are covered by the DDA definition of disability . People may choose not to disclose their impairment. |
| Inspection and audit bodies | Identified as having a role to play in the promotion of race equality. | Strengthens statements on role and responsibilities of these organisations, making more explicit the requirement to build disability equality into inspection regimes. |

General duty

The general duty to promote race equality has **three** inter-related parts. Public authorities, in carrying out their functions, must have due regard to the need to:

- eliminate unlawful discrimination
- promote equality of opportunity
- promote good relations between people of different racial groups.

The general duty to promote disability equality has **six** inter-related parts. Public authorities, in carrying out their functions, must have due regard to the need to:

- promote equality of opportunity between disabled people and other people
- eliminate unlawful discrimination
- eliminate disability-related harassment
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life
- take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.

Producing an equality scheme or policy

All public bodies listed in the code of practice for disability equality are subject to the same specific duties, in contrast to the specific duties of the race equality duty, which has different requirements depending on the nature of the public authority. This means that public bodies such as LSC, HEFCE, colleges, ACL and higher education (HE) organisations are **all** required to produce a Disability Equality Scheme. However, while government departments, funding and regulatory bodies, including LSC, HEFCE and Ofsted/ALI, are required to produce a race equality **scheme**, colleges, ACL providers and HEIs are required to produce a race equality **policy**. There are differences between the two, for example there is not the same requirement on colleges, ACL providers and HEIs to include in their policy:

- arrangements for **partnership work**
- arrangements for **staff training**

- **a listing of all policies and functions** and the **assessment** of the **relevance** of these in promoting race equality and in meeting each part of the general duty.

There are also less stringent employment duties on colleges, ACL providers and HEIs (see below).

Consulting or actively involving different groups

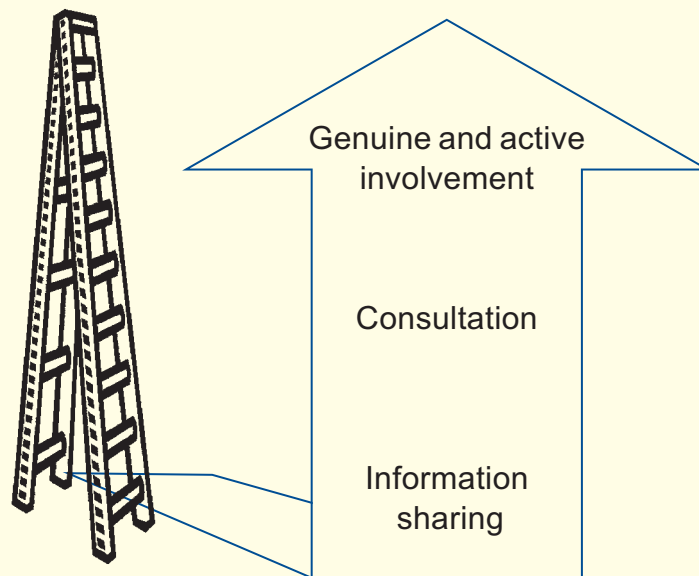
The need to **consult** people from different racial groups is an implicit, rather than explicit requirement in the race equality duty. For example, the CRE guide on race equality (2002b, p14) states 'we suggest that you consult and involve the people who will be affected by it' [the race equality policy].

However, the involvement of disabled people is a specific duty requirement of the disability equality duty. Disabled people should be involved from the start in designing the framework for impact assessments, identifying the nature of data collected and prioritising relevant functions. The involvement of disabled people throughout the process of producing and developing a scheme must be clearly demonstrated in the scheme and subsequent reporting processes.

The code of practice for disability equality makes clear that disabled people should be involved in these processes in an active and meaningful way. Consultation is not enough. One way of seeing the difference between consultation and active involvement is to consider a model of participation developed by Sherry Arnstein (figure 1).

Figure 1 Model of participation developed by Sherry Arnstein

Ladder of participation



The model uses the rungs of a ladder to depict varying degrees of participation and involvement. At the bottom of the ladder is information sharing, which often involves 'rubber stamping' pre-determined decisions. As such, this level is better regarded as 'non-participation' or 'zero involvement'. Higher up the ladder is consultation, which is the first step to participation but this is often superficial. Consultation may allow choice between limited, predetermined options, but participants have few or no opportunities to propose alternatives, or to take part in putting plans into action. Consultation may be used in an attempt to fulfil participating responsibilities while maintaining the power structure. Participants have a voice, but no power to ensure that their voice has influence.

Active and genuine involvement, at the top of the ladder, empowers and enables participants to create a vision of their own future and to actively become involved in making it happen. Participants not only have a voice but also have power to ensure that their voice has influence.

Despite its simplistic approach, this is a helpful model to describe the difference between consultation and active involvement.

For further information, see the accompanying booklet 'How to actively involve disabled people'.

Employment duties

Organisations that are required to produce a race equality scheme have separate and more extensive employment duties compared with organisations that are required to produce a race equality policy.

Those that must produce a **scheme**, including Local Education Authorities (LEAs), LSC and HEFCE, have to collect ethnic monitoring data, analyse it to see if there are any patterns of inequality, take steps to remove barriers, promote equality and publish the results of monitoring each year.

Those that must produce a **policy**, including schools, colleges, ACL providers and HEIs, have different requirements, as the main responsibility for monitoring employment rests with the LEAs, LSC and HEFCE. However, there are monitoring and reporting requirements for colleges, ACL providers and HEIs in order to permit LEAs, LSC and HEFCE to carry out their employment duties under race equality legislation.

Under disability equality legislation, there are no apparent differences in the employment duties between public authorities such as the LSC and HEFCE, and colleges, ACL providers and HEIs. They are equally stringent.

For further information, see the accompanying booklet 'How to meet the employment duties'.

Achieving outcomes

There is an implicit expectation, under race equality legislation, that promoting equality of opportunity will result in improved outcomes for people of different racial groups. However, **there is a clear requirement, under the disability equality duty, to achieve improved outcomes for disabled people**. A Disability Equality Scheme should identify, within the three-year life span of the scheme, the specific outcomes that the organisation intends to achieve in order to improve disability equality.

Taking positive action or treating more favourably

The duty to promote race equality allows an organisation to take action to meet the particular needs of people from specific racial groups in relation to their training, education or welfare. For example, positive action permits targeted job training for people from racial groups that are under-represented in a particular area of work. The duty to promote disability equality also allows an organisation to provide facilities and offer additional services as a choice alongside other services, to meet the particular needs of disabled people, in recognition that in order to take account of a person's disability it may be necessary to treat a disabled person more favourably than other people.

At first glance, these aspects may look similar. However, under race equality legislation, positive discrimination is unlawful save in narrowly prescribed situations. Disability equality legislation, in comparison, **does not prohibit or restrict positive discrimination** in favour of disabled people in any way, underlining the fact that equality of opportunity cannot be achieved by simply treating disabled people and non-disabled people alike. The duty to promote disability equality reflects this difference by explicitly requiring more favourable treatment for disabled people where this is needed.

Carrying out impact assessments

Both sets of equality legislation require organisations to carry out equality impact assessments of policy and practice. An impact assessment is a thorough and systematic determination of whether an existing policy, procedure, plan or practice, or a proposed policy, procedure, plan or practice, has or will have an adverse impact on a particular group. The purpose of impact assessment is both to ensure that decisions do not disadvantage particular groups, and to identify where equality of opportunity might be promoted better, including all parts of the general duty. However, impact assessment for disability is likely to be a **much broader process** as many aspects of an organisation that are race-neutral, such as the choice of paintwork in a staff room, will have an impact on disabled people.

Both sets of legislation require organisations not only to have due regard to equality when making decisions about the future but also to take action to tackle the consequences of decisions in the past which failed to give due regard to equality. Given that there will be a significant ‘back catalogue’ of existing policies and activities that will need to be assessed, it will be helpful for an organisation’s action plan to set out a timetable for assessing the impact of policy and practice over the three-year life span of the equality scheme or policy. However, while the LSC and HEFCE were required to publish information on impact assessments within their race equality scheme, there was no **requirement for colleges, ACL providers or HEIs to publish** this within their race equality policy. With the disability equality duty, **all will be required to publish information** on impact assessment within their Disability Equality Scheme.

For further information, see the accompanying booklet ‘How to carry out disability equality impact assessments’.

Gathering and using information

Both sets of legislation require organisations to gather and use information in order to assess the impact of their activities on particular groups of people and to measure progress towards equality. This includes monitoring:

- the recruitment, retention and career development of staff
- the extent to which services provided and other functions performed take account of the needs of particular groups of people (LSC and HEFCE)
- the educational opportunities available to and the achievements of learners (education providers).

People from different black and minority ethnic (BME) groups or with different impairments can have different experiences, and it may therefore be necessary to monitor according to BME group or by impairment type. Monitoring is not an end in itself, and differences highlighted as a result of monitoring processes should be used to improve planning and performance of equality.

The code of practice for race equality provides structured lists of areas and aspects to monitor. While aspects to monitor are set out in the code of practice for disability equality, these are less structured when compared to the code or practice for the race equality duty. **A more flexible approach** is preferred, allowing individual authorities and organisations to tailor their monitoring activities to their particular circumstances. Disabled people should be involved in deciding what monitoring should take place, both in terms of the performance indicators chosen and the methodology selected to assess those indicators.

In addition, there are a couple of issues to consider when gathering and using information on disability equality. First, while **a person's ethnicity is usually defined, fixed and known** to them, there are **varying degrees of understanding of the term 'disability'**. A significant proportion of disabled people, for example, do not realise that they are covered by the DDA definition of disability. (One in five to one in six people of working age are likely to be covered by the DDA definition of disability.) It is worth noting that people who meet the DDA definition are protected whether or not they themselves might consider themselves disabled. Even when people are aware that they meet the definition, they **may choose not to disclose**, which is particularly pertinent given that a significant number of impairments are not immediately obvious, such as a mental health difficulty or a medical condition such as cancer. It is important, therefore, to have effective mechanisms to encourage people to disclose a disability. This means that organisations must have robust procedures and processes for encouraging:

- learners to disclose a disability, not just during the admissions process but also by providing ongoing opportunities for this once they have been accepted on a course, in recognition that they may choose not to disclose at admissions but be happier to disclose when on a programme
- staff to disclose, not just during the recruitment process but also by providing ongoing opportunities for this once they have been recruited, in recognition that they may be happier to disclose once in post, or may become disabled at a stage later than when data was originally collected.

Second, **disability is 'dynamic'** and therefore data will need to be collected at regular intervals as people may become disabled at a stage later than when the data was originally collected. This is particularly relevant for staff monitoring, as staff are likely to stay with an organisation or authority for a longer time than learners.

For further information, see the accompanying booklets 'How to gather and use information to improve disability equality' and 'How to meet the employment duties'.

Inspection and audit bodies

Both codes of practice recognise that audit and inspection bodies are covered by the duty, as a public body. However, the code of practice for disability equality **strengthens the statements on the roles and responsibilities** of these bodies. It makes more explicit the requirement to build disability equality into inspection regimes and highlights the need to outline the action that audit and inspection bodies intend to take to report on the extent to which organisations are meeting the requirements of the duty to promote disability equality.

There are significant differences between the duty to promote disability equality and the duty to promote race equality. It is important that you appreciate these differences as you respond to the new duty. Perhaps the most important of them is the requirement to actively and meaningfully involve disabled people in all aspects of the development and implementation of your Disability Equality Scheme.

Much has already been achieved by organisations responding to current DDA requirements. However, we still have a long way to go on our journey towards disability equality. The new legislation provides a fresh impetus for moving forward, an important lever to accelerate the change necessary for greater inclusion and equality for disabled people and, by so doing, to improve the service and experience for **all** staff and learners in education.

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