



Government
Equalities Office

Putting equality at the heart of government

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

January 2010

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Foreword

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Parliamentary Secretary, Government Equalities Office



Equality matters to all – to individuals, to society and to the economy – and this Government has a proud history of pioneering legislation to tackle all forms of discrimination.

The Prime Minister set out in the recently published report ‘Putting the Frontline First: smarter government’ that “public services embody our deepest values of fairness and responsibility. They are the proud expression of the collective endeavour of the British people over many generations to secure for each other the foundations of a fair and decent society.”

The role of the public sector is central to our equality goals as public services are used by all, with many of the most vulnerable citizens dependent on them. This is why, in 2001, we introduced a race equality duty on public bodies to consider the need to eliminate discrimination, promote equality of opportunity and promote good race relations. Following the success of the race duty, similar duties on disability (2006) and gender (2007) were introduced. These duties have been powerful levers for achieving culture-change within the public sector and improving services, and now we want to build on their success, taking into account the changing demographics and the economic challenges we face.

We know older people and younger people, gay men and lesbians, transsexuals, people of different religions or beliefs and those of none – all have different needs and may face different levels of discrimination or barriers to accessing services. It is only right that we use the powerful tool of the public sector to help eliminate any discrimination they may face and to encourage public authorities to advance equality of opportunity.

The Equality Bill will therefore introduce a new integrated Equality Duty on all public bodies, and those discharging a public function, to consider how they can eliminate discrimination, advance equality of opportunity and foster good relations for people, irrespective of their race, their gender, their age, their sexual orientation, their religious beliefs or lack of, and for disabled people and transgender people. I firmly believe that this new Duty, properly implemented and supported by the Equality and Human Rights Commission, will be an invaluable tool in tackling discrimination and delivering fairer outcomes for those who are disadvantaged in our society.

The Equality Duty, by requiring public bodies to consider equality throughout all their functions, will play an important role in improving public services for everybody. They are services which are designed and delivered with people's needs in mind, by public bodies who have engaged constructively with front-line staff and their users. And of course public services which have been planned and delivered around people's needs represent best value for money, avoiding costly mistakes realised too late.

This document sets out our policy on the specific duties which will underpin the Equality Duty. It builds on the proposals we set out in our earlier document, The Equality Bill: making it work. Policy proposals for the specific equality duties, all of which received broad support, and is informed and enriched by the views many people offered us during the consultation period.

We want public bodies to use evidence to inform their objectives, to be transparent on progress, including their gender pay gap and their ethnic minority and disabled employment rate, to actively engage with frontline staff and service users, and to make the best possible use of their purchasing power to help drive up equality in the private sector.

We need to help public bodies deliver even better public services in times of economic constraints. We have, therefore, developed a set of specific duties that are flexible, proportionate and light touch so that public bodies are not constrained in taking action which is unnecessary.

We believe this package will lead to better policy, better public services, less bureaucracy and will be an asset for all in society.

A handwritten signature in black ink, appearing to be 'Phil Jones', written in a cursive style.

I. Introduction

- 1.1 The new single Equality Duty represents an exciting next step in equality legislation. The existing public sector equality duties for race, disability and gender were pioneering pieces of legislation which placed the public sector at the forefront of tackling discrimination and inequality. Many have seen the benefits the existing duties have delivered, but now is the time to go further. We want to extend the benefits of the equality duties to the other protected characteristics of age, sexual orientation, gender reassignment, and religion or belief. And we want to emphasise that equality should be at the heart of what the public sector does – not an ‘add on’ or an after thought. The Equality Duty will require public bodies to think about how they can eliminate discrimination, advance equality of opportunity and foster good relations for all the protected groups.
- 1.2 The public sector should lead the way in this area. Very often the most vulnerable people, who are most dependant on public services, are those from the protected groups whose needs will not be met by a one-size-fits-all approach. The Equality Duty will mean public bodies proactively thinking about how they can ensure that everybody has an equal opportunity to use and access public services.
- 1.3 And this will mean better, more responsive public services for everyone. Public services which are designed and built around the needs of the people who use them, and which are developed through constructively engaging with citizens and frontline staff, will benefit all. And in tough times, it will also mean a more effective use of public money.
- 1.4 The Duty will be firmly rooted in evidence, and engagement with service users and frontline staff. Our proposals for specific duties will mainstream equality whilst also ensuring public bodies are able to focus their resources where they will make most difference.

Consultation

- 1.5 On 11 June 2009, the Government published¹ its proposals for a set of specific duties to support better performance by public bodies of the new Equality Duty included in the Equality Bill. Consultation on the proposals closed on 30 September 2009. This document sets out the Government’s policy statement on the specific duties, in the light of the issues raised in consultation.

¹ *Equality Bill: Making it work. Policy proposals for specific duties: a consultation.* Government Equalities Office, 2009.

1.6 We are very grateful to those who took the time to respond and help us shape our thinking. We received 431 responses to our consultation from public bodies, lobby groups, stakeholders and individuals. We also arranged four consultation events and attended various meetings organised by stakeholders to explain our proposals.

Our Approach

1.7 We want a set of specific duties that are flexible, proportionate and non-bureaucratic. Above all, we want duties that are effective in helping public bodies meet their obligations under the Equality Duty and improve life chances and opportunities for everybody. Our proposals for the specific duties aimed to move away from a detailed legislative description of processes that public bodies should follow to take a more flexible approach which focuses on outcomes – the end, not the means. We believe that effective implementation of the Duty requires an approach that is not overly prescriptive on process, but which allows public bodies more autonomy to decide for themselves how best to deliver equality of opportunity for the population which they serve and employ. This is in line with the Government's overall strategy of:

- Streamlining government and providing responsive services which provide both quality service and value for money to citizens and taxpayers.
- Reducing administrative burdens on the frontline, with a focus on removing those burdens of least benefit to local people.
- Recasting the relationship between the centre and the frontline so that local areas have more control over setting priorities and guiding resources.

1.8 A less prescriptive, more outcome-focused approach to the Equality Duty will not only allow public bodies more freedom to genuinely mainstream equality and target their resources on the areas where they can make a difference; it should also result in smarter, more efficient and more effective public services for all.

Overview

1.9 We intend to proceed with the specific duties as set out in the consultation document, with the following changes:

- making it explicit that setting equality objectives necessarily involves reviewing a public body's functions for relevance to equality, and gathering and analysing evidence across all the characteristics protected under the Equality Duty, and across all the limbs of the Equality Duty;
- setting out in codes of practice that the evidence that should be taken into account should include (but not be limited to) evidence gathered through engagement with people with relevant protected characteristics, frontline staff, voluntary bodies and trades unions;
- undertaking further work to clarify the practicalities of how national equality priorities would be set and taken account of by public bodies when setting equality objectives;
- to proceed with the proposal to deal with potential suppliers who have breached discrimination law as a non-legislative matter;
- proceeding with work on the feasibility of a National Equality Standard, which could be used to assist the procurement process, but outside the legislative context;
- taking forward the existing Secretary of State reporting duty for disability, rather than replacing this with a re-modelled Secretary of State reporting duty on equality.

1.10 We will also clarify in guidance a number of issues raised by respondents, including:

- equality impact assessments
- engaging with people with relevant protected characteristics and frontline staff and their representatives in setting and reviewing organisational equality objectives
- data publication on the gender pay gap and employment rates of disabled people and people from BME groups

1.11 The rest of this document sets out in relation to each specific duty our original proposals, the main issues raised in consultation, and what we intend to do.

2. Setting, consulting on and reviewing equality objectives

What we proposed

- 2.1 Our research² and consultation with stakeholders has suggested to us that equality schemes are of variable use and quality. For some organisations they have been beneficial in starting off a process of thinking about equality; but for other organisations they have tended to become an end in themselves – production of a scheme is a process requirement that is easily met in letter, but does not always follow through into action. The current arrangements of developing discrete and self-standing equality schemes risks divorcing equality from the core business planning process.
- 2.2 Rather than requiring separate equality schemes we proposed a specific duty on public bodies, as part of their core business planning and publication processes, to:
 - develop and publicly set out their equality objectives
 - set out the steps they will take to achieve these over the coming business cycle (likely to be three years)
 - implement these steps unless it would be unreasonable and impractical to do so
 - review, and update as necessary, the objectives every three years.
- 2.3 We also proposed a specific duty on public bodies – when setting their equality objectives, deciding what steps to take to achieve them and reviewing progress – to take reasonable steps to consult and involve:
 - employees, service users and others with an interest in how they carry out their functions (including voluntary groups and trades unions)
 - in particular, people from all the protected characteristics for whom the duty is designed to deliver benefits, i.e. those protected under the general Equality Duty.
- 2.4 We proposed that objective setting should be based on an evidence-based process of identifying the areas where organisations can have the most impact on equality, and so need not necessarily include an objective relating to each of the protected characteristics subject to the Equality Duty unless the evidence

² Schneider-Ross Report – Assessing the costs and cost-effectiveness of the specific Race, Disability and Gender Equality Duties, June 2009.

suggested otherwise. However, the objective-setting process should flow from the requirements of the general Equality Duty.

2.5 The objective setting process should therefore include:

- assessing which organisational functions are most relevant to the general Equality Duty
- evidence gathering
- consulting and involving as set out above
- making reference to
 - existing local, regional and national priorities such as Public Service Agreements (PSAs), Regional Strategies, Local Strategic Partnerships
 - national equality priorities set by Ministers using new powers under the Equality Bill.

2.6 As transparency underpins the general Equality Duty organisations will need to be able to explain, with reference to the evidence they have gathered and analysed, how they have had due regard to all the Duty's requirements.

What we asked

2.7 We asked whether the public bodies should

- have a specific duty to publish equality objectives with reference to the relevant evidence and their wider general Equality Duty obligations
- set out the steps they intend to take to achieve them
- be required to implement these steps within the business cycle period, unless it would be unreasonable or impractical to do so
- be required to review their objectives every three years
- set their objectives taking into account national equality priority areas set by Government
- not be required to set an objective in respect of each protected characteristic
- be required to report annually on progress against their objectives, without the means of reporting being prescribed by legislation

- have a specific duty – when setting their equality objectives, deciding on steps to achieve them and reviewing progress – to take reasonable steps to involve and consult employees, service users and other relevant groups with an interest in their functions (or where appropriate their representatives), and in particular people with the relevant protected characteristics, for whom the duty is designed to deliver benefits.

What respondents said

2.8 There was broad support for the shift from a process-based to an outcome-focused approach to the specific duties.

2.9 Many public bodies such as local councils, health sector bodies, fire and police services, and stakeholders such as a:gender and Stonewall supported the approach for public bodies to develop and publish equality objectives.

“Equality Objectives will provide a clear statement to stakeholders about work organisations are planning to undertake, and the areas they have prioritised. Involving both internal and external stakeholders in gathering evidence, developing priorities and reporting on progress will be key to their effectiveness”. (Independent Police Complaints Commission)

2.10 There was, however, also support for the current requirement for equality schemes from some stakeholders, for example; the Fawcett Society suggested that more prescription is required instead of less.

2.11 Some respondents, such as Stonewall, the Equality and Human Rights Commission (EHRC), and the Local Government Association (in association with IDeA and Local Government Employers), welcomed the framework of a targeted approach to achieve priority objectives identified through an evidence-based process, with bodies free to choose the objectives most important and relevant to their business based on the evidence. Others however, such as the Equality and Diversity Forum (EDF), Race on the Agenda (ROTA), and the Fawcett Society, preferred a requirement to set an objective for each protected characteristic under the Equality Duty, and/or felt that an approach focussed on priority objectives risked diluting the mainstreaming of equality across all constituent parts and functions of public bodies.

2.12 Many respondents strongly emphasised the importance of ensuring the equality objective setting process was evidence-based. Concerns were expressed that otherwise organisations might choose objectives according to how easy they were to achieve, avoiding setting aspirational objectives or tackling entrenched inequalities.

“Any equality or discrimination issue not covered by a ‘target’ will be ignored and the reach of the duty will be correspondingly curtailed. There is thus a likelihood that authorities will choose to set objectives that are easy to measure and achieve rather than targets that are more challenging.” (EDF)

The Disability Charities Consortium (DCC) said *“in order to maintain the broader mainstreaming approach, we suggest a duty to set objectives and take steps in order to give due regard to the General Duty in all the functions of an authority...it will be helpful to require objectives to be set (as in the Gender Equality Duty) but the key principle of mainstreaming must remain.”*

2.13 Strong concern was expressed by some respondents about the proposed duty to consult and involve when setting and reviewing equality objectives. Some respondents (including DCC, the Disabled Persons’ Transport Advisory Committee and the Employers’ Forum on Disability) emphasised the importance of not weakening the specific duty under the Disability Equality Duty to involve disabled people in how a public body responds to the General Equality Duty.

2.14 Some respondents pointed out the difference between consultation on the proposed policy (too often after the event) and the more active and earlier engagement in the development of policy options denoted by the term involvement. a:gender contrasted their experience of best practice organisations which have “early involvement before things get set in stone, sharing policy developments at the earliest stage to identify the ones that stakeholders might be interested in”, with organisations which practise “indiscriminate consultation, where a body sends out reams of documents without any indication what impact is required, without regard to the resources available to stakeholders”. MENCAP and MIND highlighted the pro-active steps which bodies need to take if they are meaningfully to involve people with learning disabilities and mental health issues respectively; while the British Humanist Society emphasised the need to ensure

that prominent and unrepresentative individuals do not get a disproportionate 'voice'.

- 2.15 Public bodies also raised the need to clarify the expected scope and depth of effective involvement and consultation, along with other points such as the need to recognise the broad range of public bodies and the different contexts within which they operate; and clarify how to balance competing priorities in a climate of reduced resources. Trades union respondents – TUC, CWU, UNISON – all urged that the specific requirement in the current Gender Equality Duty to consult trade unions be carried forward into the new legislation.
- 2.16 While the setting of national equality priorities by Secretaries of State was broadly welcomed, some respondents expressed concerns as to how they would be formulated in practice, for example the Employers' Forum on Disability warning against concentrating on 'quick wins' rather than systemic inequalities. Some public bodies expressed concern that the national priorities should not be too prescriptive and should not prevent bodies from having the freedom to focus on local priorities.
- 2.17 Women's groups, including the Women's National Commission (WNC) and the Fawcett Society, expressed concern that the proposed duty might be regressive in comparison to the existing gender specific duty to consider the need to have an objective which addresses the causes of any gender pay gap.

What we intend to do

Equality schemes

- 2.18 We remain of the view that production of an equality scheme is not necessarily the most effective way to integrate equality into the mainstream business planning cycle. It is essential to clearly tie processes such as reviewing functions and evidence gathering into the identification and delivery of clear equality objectives, to avoid them becoming marginal processes which tie up organisational time and resource with no clear benefit. We therefore do not propose to require public bodies to publish self-standing equality schemes, although there is nothing to prevent bodies from doing so if they wish.

Use of evidence in setting objectives

- 2.19 Given the concerns expressed by some respondents about the thoroughness of the objective setting process we will make explicit that the duty requires bodies, before setting their objectives, to have:
- considered the relevance of their functions to equality
 - gathered and analysed evidence relating to all the strands and across all the limbs of the general Duty, including (but not limited to) evidence gathered through consulting and involving people from the protected groups. We do not propose to prescribe in legislation exactly what evidence should be gathered and analysed, but the type and range of evidence expected for different types of public body will be covered in detail in guidance.
- 2.20 We want to make clear beyond doubt that, to comply with the duty, the objective setting process needs to be rigorous and comprehensive, including an assessment of all the protected groups of equality in relation to all the limbs of the general Duty. Such an assessment will necessarily involve considering evidence gathered through engaging with the protected groups.
- 2.21 The fact that organisations will still need to assess the relevance to equality of all their functions and gather and analyse a range of evidence means that equality will continue to be mainstreamed throughout an organisation. However, objective-setting will then allow public bodies to target their efforts and resources in particular to those areas of greatest need, as indeed in any other area of business. Equality objectives should be integrated into the mainstream business planning processes rather than treated as marginal and separate.

Setting equality objectives across protected characteristics

- 2.22 We do not propose to impose a requirement that each protected characteristic, or each organisational function, should have an equality objective, as suggested by some respondents.
- 2.23 Public bodies' assessment of priorities will need to be firmly based in the evidence as already set out above. So public bodies will need to consider evidence relating to each protected characteristic, and to set objectives accordingly. If there is no

evidence of need, then it would be odd and artificial to require an objective. In any case, the objectives set by a public body may well straddle a number, if not all, of the protected characteristics. Guidance will emphasise the importance of the four principles which should govern how a public authority fulfils the Equality Duty i.e. use of evidence, capability, consultation and involvement and transparency. This will mean public bodies should be able to demonstrate what evidence they have referred to in deciding on their objectives, and those whom they have consulted and involved. For example, public bodies will need to be able, if challenged for not having set an equality objective covering a particular protected characteristic(s), to set out the basis for having come to that decision.

National Equality Priorities

- 2.24 Guidance will make clear the process by which the national equality objectives will be agreed by Government and disseminated to public bodies. We will now undertake further work to develop the practical details of this process.
- 2.25 Without wishing to anticipate these decisions, we think it is highly likely that one of the national priorities will relate to the gender pay gap. Further, we anticipate that the duty requiring publication of their gender pay gap by every public body with 150 or more employees should ensure that bodies consider the implications of that data, including whether they need to set an equality objective to close gaps that data has identified. We therefore take the view that our proposed arrangements will in practice substantially transpose the requirement under the Gender Equality Duty to consider the need for an objective to address the causes of the gender pay gap.
- 2.26 The secondary legislation will specify that public bodies should take into account national equality priorities. Guidance will also make clear that public bodies should also take local and regional priorities into account. But whilst public bodies must be able to demonstrate that they have taken the national equality priorities into account, this does not mean that they are required to adopt these. This is consistent with the Government's overall aim that local areas should set more of their own priorities and decide for themselves more how resources are spent.

Consultation and Involvement

- 2.27 We believe the duty on public bodies to consult and involve people when setting and reviewing progress on their organisational equality objectives is of fundamental importance: not only to tackling inequality, but also our wider goal to build a stronger civic society by working collaboratively with communities to improve public services. We want to strengthen the role of citizens and civic society in government and ensure that citizens have a bigger say and more accountability in the decisions made by public services. Understanding the needs of the people who will use public services, and factoring these in at the outset, should result in better quality and more effective public services for all.
- 2.28 Given the concerns raised by respondents about the proposed duty to consult and involve, we will now undertake further work to ensure that the duty properly reflects our intention that public bodies should engage with people from the protected groups, service users, employees and their representatives. We will ensure that guidance on this duty is detailed, clear and based on best practice. The guidance will need to clarify the difference between consultation and involvement, the expected scope and depth of these processes, and how each fits into equality objective setting, action planning and review. This will include clarifying that people from protected groups, and frontline staff (or their representatives), will need to be actively and meaningfully involved in setting and reviewing equality objectives, and not just consulted on them after the event.

3. Demonstrating how the impact on equality has been assessed

What we proposed

- 3.1 Our research³ told us that, at its best, equality impact assessment demonstrates transparency and accountability, informs policy-makers and the public alike, and results in better outcomes. At its worst, however, it can become a tick-box process, carried out after the decisions have been made and reinforcing an association between equality and costly and bureaucratic burdens. We proposed to build on these findings by moving away from an emphasis on describing process to requiring public bodies to demonstrate, in a transparent and accountable manner, outcomes and impact, while leaving it open to them as to the process they take to achieve this.
- 3.2 Our proposal was for public bodies to demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives, and what difference this has made. We envisaged public bodies taking evidence of impact on equality into account at a number of different stages, for example when:
 - Proposing or consulting on a policy or initiative
 - Putting forward proposals for legislation
 - Reporting at end of year
 - Requested to do so by members of the public.
- 3.3 Public bodies might wish to use the new guidance on impact assessment which the EHRC is to prepare and disseminate, setting out examples of good, effective, proportionate equality impact assessment.

What we asked

- 3.4 We asked consultees if they agreed with the move away from an emphasis on describing process, to requiring public bodies to demonstrate how they have taken evidence of the impact on equality into account in the design of their key policy and service delivery initiatives and the difference this has made.

³ Schneider Ross Report.

What respondents said

- 3.5 Most organisations such as NHS Employers, EHRC, Stonewall, along with most public bodies welcomed the move from process to outcomes, highlighting for example that this was in line with the development of outcome-based equalities frameworks and other assessment frameworks within the public sector. However concerns were raised that the gains in organisational flexibility might inadvertently lead to loss of consistency and transparency. Some respondents also argued that decisions such as those about business change, resource allocation and service prioritisation, and not just policy and service design, needed to be assessed for their potential or actual impact on equality. Others said that more clarity was needed as to how organisations should go about assessing impact.
- 3.6 Some respondents, such as Local Government Association (LGA), ROTA, and the DCC, raised concerns about moving away from the current arrangements, and in particular the risk of reversing the progress made by them, e.g. the effect of the impact assessment process on mainstreaming equality across organisational functions. Some feared that we were proposing making equality impact assessments discretionary; and that if they were discretionary then many organisations faced with competing priorities and limited resources would no longer undertake them. Others said that our proposals were still too process-bound, and were retrospective rather than prospective.

“Only requiring public bodies to demonstrate how they have taken evidence into account is the recounting of a process rather than the assessment of ‘likely’ outcome as is required under the present race duty.” (ROTA)

- 3.7 Some respondents wished to carry over into the new legislation the requirement under the current Race Equality Duty for public bodies to train their staff in equality awareness. The LGA suggested replacing this with a requirement for all public bodies to ensure that their staff have an understanding of key equality and diversity issues for their organisation and customer/service user base.

What we intend to do

3.8 We remain of the view that it is important to focus on requiring organisations to demonstrate the outcome of what they have done. It is therefore not appropriate to prescribe in legislation a particular set of steps – whether related to formal equality impact assessment processes or to staff training – which all bodies, whatever their size or nature of their business, need to take to achieve equality outcomes.

Assessing impact on equality

3.9 We are clear that under our proposals public bodies will continue to need to assess the impact on equality of what they do, and that this now needs to include the impact on all characteristics protected under the Equality Duty.

3.10 While we do not propose to prescribe in legislation how they should do this, the consultation responses made clear that there is an appetite for clear and detailed guidance about ways to assess impact. We will therefore now undertake work in co-operation with the EHRC to ensure that guidance addresses:

- how to assess impact across all protected characteristics
- when to do so i.e. the range of policies, services and decisions likely to be affected and at what point in the policy/decision making cycle
- how public bodies should demonstrate that they have taken evidence of the impact on equality into account, and what “key” policy and service delivery initiatives are suitable for such a full assessment
- issues relating to transparency and accountability
- how this links to the evidence gathering requirement under the equality objective setting duty.

3.11 EHRC will explore whether it is feasible to adapt the guidance so that a sector-based approach is taken, to make the guidance applicable to a public body’s business and promote good practice within its sector.

Equipping staff

3.12 We do not propose to place an explicit staff training requirement upon public bodies. However, guidance will highlight that capability is one of the key underlying principles of the general Equality Duty. Organisations should equip their staff to ensure that they are capable of meeting obligations such as gathering and analysing evidence, consulting and involving, and assessing impact, as with any other legal duties or business requirements.

4. Employment data

What we proposed

4.1 We proposed a specific duty requiring public bodies with 150 or more employees to publish annually their organisational employment data in relation to three areas, which are particularly stubborn and longstanding inequalities:

- Gender pay gap
 - defined as the overall median⁴ gender pay gap, i.e. the percentage difference between male and female permanent employees' median hourly pay – excluding overtime and including part-time workers (with no weighting of employees related to the number of hours worked)
- Percentage within their workforce of
 - people from ethnic minority groups
 - disabled people.

Publication of this data would enable

- public bodies to identify problem areas, track their progress and question the extent to which their objectives are delivering equality outcomes
- service users, stakeholders, employees and the public to benchmark public bodies against each other and hold poor performers to account.

What we asked

4.2 We asked consultees if they agreed with our proposal:

- that public bodies with 150 or more employees should be required to publish their gender pay gap, their ethnic minority employment rate and their disability employment rate
- to use the overall median gender pay gap figure
- not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty.

⁴ The median is the figure in the middle of a set of data and is the preferred earnings measure of the Office for National Statistics as it is less affected by a relatively small number of very high earners.

What respondents said

4.3 While some respondents supported the proposed arrangements, some preferred the more detailed monitoring requirements set out in current equality duties, or a different approach to gender pay gap reporting.

4.4 For example, ROTA said *“By simplifying the requirement under the new specific duties and statutory instruments to employment rates in three strands, the level of monitoring data required for race is reduced.”*

4.5 On the question of what metric should be used to report on the gender pay gap, views were mixed. Some public bodies were supportive:

“The proposal to use the overall median figure for the gender analysis is a suitable measure. The LSC has experimented with other methods and found this to be the most helpful. It gives a clear picture of the situation and is easy to recognise anomalies for investigation.” (The Learning and Skills Council)

“Using the median gender pay gap would give a more balanced approach to the capturing of data and would also prove more realistic when setting targets or seeking to introduce interventions to address gaps”. (Sandwell Council)

4.6 Others, however, were not sure; and others wanted us to go even further. For instance, the Fawcett Society said *“Fawcett advocates introducing mandatory pay audits, as the quickest and most direct route to pay transparency and closing the gender pay gap. There is substantial support for equal pay audits as an effective means of tackling unequal pay.”*

4.7 Some respondents, such as EHRC and Stonewall, agreed that the time was not yet right to require bodies to publish data on all protected characteristics

“We recognise that some organisations need to undertake significant preparatory work before they are ready to begin monitoring on all equality grounds. An immediate legal requirement may not be the best way to achieve progress.” (Stonewall)

“The Commission has yet to be convinced that there is a demonstrable need for an extension of employment data collection (and associated actions) to the new mandate areas. There is currently insufficient, meaningful data upon which to make such a decision. The Commission would not want to see legal requirements introduced which ultimately could be met”. (EHRC)

4.8 A number of respondents noted that datasets on ‘newer’ areas were still incomplete and therefore relatively unreliable, and that staff would need further reassurance as to how such data would be used before it could be made a statutory reporting requirement.

“Collecting and reporting data on all characteristics should be the long-term aim, and should be promoted as best practice. However, we agree that it may not be feasible or appropriate for all public bodies in the short or medium term and therefore should not yet be a requirement”. (The Learning and Skills Council)

4.9 However, some respondents said that bodies should nonetheless be required to collect this data.

“Employment data must be reported for all protected strands, not just selected ones. We will be particularly keen to monitor the employment data of Christians in public bodies, for example, against the mounting evidence of discrimination against them.” (Evangelical Alliance)

What we intend to do

4.10 The Government is committed to providing data on frontline performance, while reducing unnecessary administrative burdens on public services which can prevent them from operating efficiently. We aim to harness the power of comparative data to drive up quality and value for money of services. We want to make this comparative data accessible and meaningful to citizens and frontline professionals alike, thus increasing the accountability of services for the standards and results they achieve.⁵

4.11 We remain of the view that transparency, accountability and, crucially, comparability will be most effectively promoted by requiring only one figure to be published for each of the three ‘headline’ areas. In relation to gender we remain of the view that the median is the most appropriate single figure. We would expect publication of these three headline figures to drive forward activity within and across organisations and sectors to close any gaps identified by the data.

⁵ Putting the Frontline First.

- 4.12 Guidance will however make clear that the figures are a statutory minimum – they represent a floor, not a ceiling. It will make clear that bodies, in order to fulfil the requirements of the general and specific duties, will need to gather and analyse a range of evidence in relation both to employment and services. This will include gathering data which will enable them to understand the narrative behind the ‘headline’ figures relating to ethnicity, disability and gender (for example by identifying patterns in representation/pay gaps at different levels and roles within the organisation, and/or benchmarking representation in the workforce against representation in the catchment population for recruitment); and in relation to other protected characteristics.
- 4.13 There is nothing to prevent public bodies from annually publishing such evidence, or evidence relating to particular organisational priorities, should they wish to do so in addition to the three ‘headline figures’.
- 4.14 We remain of the view that the time is not yet right to require public bodies to report employment rates for all protected characteristics under the Equality Duty. However guidance will make clear that in order to fulfil the requirements of the general and specific duties, public bodies should be seeking to improve the quality and comprehensiveness of their evidence base, across all characteristics protected under the Equality Duty and in relation to both service users and their workforce. The fact that this is not data which has to be annually published does not, therefore, mean that they should not be seeking to gather and analyse data on their workforce across the protected characteristics.
- 4.15 Guidance will highlight case studies of those who have achieved a culture where they have been able to gather comprehensive and accurate data from employees across the protected characteristics. This will enable others to learn from their good practice. Again, there is nothing to prevent such organisations from publishing this data, in addition to the three headline figures required by the duty.

5. Procurement

What we proposed

- 5.1 Although public bodies should already be taking equality into consideration as part of their procurement processes under the existing public sector equality duties, we do not believe this happens as frequently or consistently as it could. We therefore proposed that a legislative imperative was needed to drive up performance and consistency in the use by public bodies of their procurement activities to contribute to improved equality outcomes.
- 5.2 We proposed specific duties on public bodies that are also contracting authorities in relation to their public procurement activities (although these would not affect very small scale purchases falling below the thresholds set by the Public Sector Directives), by requiring them to:
- When setting out their equality objectives and the steps they intend to take to achieve them, how they will ensure that equality factors are considered as part of their public procurement activities to help contribute to the delivery of those objectives;
 - consider using equality-related award criteria, where they are relevant to the subject matter of the contract and are proportionate; and
 - consider incorporating equality-related contract conditions where they relate to the performance of the contract and are proportionate.

We also

- invited views on whether we should consider developing an explicit requirement for public bodies to deal with suppliers' breaches of discrimination law and
- whether a national equality standard would be useful to assist public bodies and their suppliers understand what is expected of them in relation to equality matters, for example in terms of demonstrating internal equality process and practice.

What we asked

- 5.3 We asked consultees whether they:
- thought that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way

to deliver equality objectives, and whether such an approach should be pursued at this time

- agreed that contracting authorities should be required to
 - when setting out their equality objectives and the steps they intend to take to achieve them, to include how they will ensure that equality factors are considered as part of their public procurement activities to help contribute to the delivery of those objectives
 - consider using equality-related award criteria where they are relevant to the subject matter of the contract and are proportionate
 - consider incorporating equality-related contract conditions where they relate to the performance of the contract

We also asked for respondents' views on

- the impact (including costs, benefits and risks) of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law
- the proposal to establish a national equality standard which could be used in the procurement process, and whether this was better achieved through a specific duty or through a non-legislative approach, as well as any practical issues that would need to be considered.

What respondents said

5.4 There was strong support for specific duties in relation to the public procurement activities of contracting authorities from organisations that would be required to meet the duties, trades unions and equalities stakeholders alike. Responses from industry representatives were not supportive of the need for regulation although there was acceptance of the inclusion of equality-related measures where they were relevant to the contract and proportionate. A small number of public bodies also did not support regulation, preferring the encouragement of performance through best practice and guidance.

5.5 We also received a significant number of responses from individuals with a particular religious viewpoint who did not support the proposals. More than 70 responses from both organisations and individuals supported the response submitted by a group called Christian Concern For Our Nation. They expressed

a strong view that the procurement proposals would be extremely detrimental to faith-based groups, resulting in their being “discriminated” against when competing for public funding.

- 5.6 On the question as to whether we should consider developing an explicit requirement for public authorities to deal with suppliers’ breaches of discrimination law, we received a wide variety of views, with some expressing an appetite for a regulatory approach, others were in favour “in principle,” but wanted to see further details and a third group of respondents expressed concern about its effectiveness and opposed the use of regulation. Generally all respondents provided extensive and thoughtful comments on potential benefits, costs and risks of such a proposal.
- 5.7 Benefits identified included a very strong sense that businesses which acted in discriminatory way should not benefit from public sector procurement; that such a requirement could both provide incentive and encouragement to suppliers to comply with discrimination law and encourage suppliers to take corrective action when needed. It also provides a very clear message about the promotion of equality.
- 5.8 Potential costs and risks were identified around the need to ensure proportionality of approach and the need to enable a dialogue between contracting authority and supplier, concern about contracting authorities acting in a quasi-judicial role in making judgements about breaches of discrimination law, and concern about creating a perverse incentive for poor equality performing companies to settle out of court and the possibility of a disproportionate impact a regulatory approach might have on SMEs who may be less able to settle out of court.
- 5.9 The establishment of a potential National Equality Standard to help organisations understand and progress their equality credentials and performance would stand on its own merits. Nevertheless, we raised the Standard in relation to specific duties connected to a contracting authority’s public procurement activities to seek views on whether a formal legislative link between a Standard and the public procurement process would be beneficial and increase take-up of a Standard.

5.10 Views were mixed. There was support for the concept of a Standard but less so for a regulatory link. Many respondents wanted more information about how it might work in practice and many highlighted specific difficulties such as access for small and medium enterprises (SMEs) and how to create a product which would be meaningful for a broad range of businesses

What we intend to do

5.11 We will proceed with the three specific duties proposed in the consultation paper in relation to procurement, which received general support.

5.12 One area which was raised many times was the need for clear guidance to enable procurement practitioners to understand the specific duties, what was required of them and how they may go about complying. We agree that concise and clear guidance will be essential to get the most out of these duties and we will ensure that procurement is covered effectively in the planned guidance. Some contracting authorities are already effectively connecting their equality objectives and public procurement policies and we are also working to identify these progressive organisations to help in sharing and spreading best practice.

5.13 Given the specific concerns raised by some respondents, we feel it is important to clarify the potential impact on faith-based service providers of these duties. Government fully realises the value third sector providers, including faith-based providers, bring to the provision of public services. Nothing in the general or proposed specific duties will undermine that valuable work, and nor will the Duty override or “trump” any existing exceptions elsewhere in discrimination law. A public body should award a contract to whomever is best able to deliver the requirements of the contract, and who can deliver best value for money (which encompasses a number of considerations including price). As with the current position, a public body will be free to award contracts to a faith-based provider if that provider is best placed to perform the contract.

5.14 The new specific duties will require public bodies to actively consider the equality requirements of every contract they tender and, if it is relevant and proportionate, to consider including equality-related award criteria or contract conditions. If a faith-based provider can meet the criteria or conditions

established by the contracting authority, then it is free to bid for the contract like any other organisation. If an equality-related award criterion cannot be justified as relevant and proportionate, then a contracting authority should not include it.

- 5.15 The Duty to set out how a public body intends to use public procurement to further its equality objectives should assist private and voluntary organisations wishing to bid for public contracts, since the public body's equality and procurement policy should be transparently available to all.
- 5.16 It is worth reiterating that these are specific duties on the public procurement function of a public body and have no connection to a public body's funding approach.
- 5.17 Given concerns raised by some stakeholders on possible unintended consequences, the Government has concluded that it would be better to tackle the proposal to deal with suppliers who have breached discrimination law as a non- legislative matter.
- 5.18 However we continue to believe that poor equality performers should not benefit from public sector procurement and that this explicit message should be made clear to public authorities when considering who to invite to bid for contracts and to potential suppliers when considering bidding.
- 5.19 Working with the Office of Government Commerce we intend to build on the current best practice guidance in order to provide clarity about the responsibilities of public authorities in this regard and to ensure that appropriate quality considerations, such as whether a potential contractor has breached discrimination legislation, are made at the earliest stage in the procurement process.
- 5.20 The Government Equalities Office and the EHRC continue to consider the feasibility of a National Equality Standard against the benefits that it could deliver. Given the views expressed by respondents about a formal legislative link to the procurement process and further feedback from stakeholders at a series of roundtables, we shall pursue consideration of the purpose and role of such a Standard in delivering benefits to organisations outside these specific duties and in the context of a non-legislative approach.

6. Reporting duty on central government

What we proposed

- 6.1 The existing disability specific duties require certain Secretaries of State to publish a report every three years showing progress made towards equality for disabled people across the whole relevant policy area, and to commit to coordinated actions for further improvement. Evaluation by the Office for Disability Issues (ODI) suggested that while this was a fairly resource-intensive exercise for some departments, it resulted in: better cross-government working and a greater understanding of other policy areas; senior staff and Ministerial engagement; involvement of disabled people in setting the priorities that should be included; highlighting of data gaps; and the creation of benchmarks for future performance measurement.
- 6.2 We proposed extending the duty to cover all characteristics protected by the Equality Duty. However, as simply carrying forward the existing model would impose unreasonable burdens on government departments, we proposed re-modelling it in a way which would encourage joined-up working and senior accountability across the protected characteristics.

We identified four models for doing this:

1. A requirement for relevant Secretaries of State to report every three years against the national equality priorities set for their policy areas.
2. A requirement for relevant Secretaries of State to include, in the third year of their departmental annual reporting cycle, an expanded reporting covering the policy areas for which they have the overview.
3. Rely on reporting procedures attached to the PSA covering equality.
4. A requirement for relevant Secretaries of State to report on how equality data is gathered and used across their relevant policy sectors.

What we asked

6.3 We asked which of these four models respondents considered would achieve the best balance between joined-up working and senior accountability for equality outcomes, while avoiding unnecessary burdens; and for any other suggestions of how this duty could be remodelled to achieve this.

What respondents said

6.4 While options 1 and 2 received a slightly more favourable response compared to the other two options, no one model achieved clear support.

6.5 Respondents, such as Chief Fire Officers Association, Independent Police Complaints Commission, UNISON, and the Higher Education Funding Council for England, preferred option 1 as they considered it to represent a meaningful, proportionate approach. At the same time, option 2 was preferred by some local councils and police authorities as they believe it to dovetail, with the least burden, alongside existing policies and procedures. There was also some appetite for options 3 and 4. For instance, some public bodies said that provided adequate reporting procedures are in place, option 3 could provide the best balance possible. Similarly, option 4 was considered by some bodies as Evangelical Alliance, as the best option to keep the public informed of the progress and ensure all protected characteristics are treated fairly by public bodies.

6.6 The DCC suggested that “the three-yearly reporting duty be carried out on a rotating basis, namely to focus on a limited number of equality characteristics each year, so for example one year disability and age, the second year race, religion or belief, and sexual orientation and so on.”

What we intend to do

6.7 None of the cross-characteristic models suggested in consultation achieved enough support for us to consider them a better alternative to the existing disability Secretary of State reporting duty. We believe that the benefits of extending the disability Secretary of State reporting duty to all eight protected characteristics would not justify the extra burden that this would place on central

departments and, by extension, the bodies from whom they would require the necessary data and information; especially given that there would be considerable overlap with the statutory EHRC triennial report. We are not attracted by rotating the reporting duty so that different protected characteristics are covered each year within a three year cycle, as suggested by the DCC: we think this would be cumbersome and relatively burdensome while only delivering limited benefits in terms of tracking data.

- 6.8 Given this, and the fact that a number of other mechanisms to ensure senior accountability for equality already exist, for example the annual departmental reporting cycle, reporting on the equality PSA and the triennial statutory report submitted by the EHRC, we therefore intend to carry over unchanged the Secretary of State reporting duty under the Disability Equality Duty.
- 6.9 This duty has already had benefits in terms of improvements to policy and increased transparency and accountability. Carrying it forward will enable the benefits already achieved to be built on and maximised. For example, the benchmarks created by the first set of reports will be used to measure subsequent progress made by central departments towards achieving equality for disabled people.

7. Impact Assessment

- 7.1 In June 2008, along with the consultation document, a comprehensive impact assessment of the proposals was published based on the data from the research that was commissioned from Schneider-Ross and our ongoing discussions with key stakeholders. The assessment showed that there will be a small additional cost to the public sector, in the region of around £2m (at the lower end) to £17m (at the higher end), within the first year of introduction of the new duties. However, these additional costs will be recovered within the first two years with a net benefit, compared against current ongoing costs, in the second year expected to be in the region of £14m (at the lower end) to £17m (at the higher end).
- 7.2 Following the consultation, as captured above, we are not making any major changes to our original proposals. Most of the changes are to help clarify things and dispel any myths. We have therefore considered and decided that our original impact assessment, which shows a cost benefit from year two onwards, is still relevant. We will undertake further impact and burdens assessment at the time we consult on draft regulation for the specific duties.
- 7.3 The original impact assessment can be found at Annex C to the consultation document 'Equality Bill: Making it work – Policy Proposals for specific duties'. The document is available online at:
http://www.equalities.gov.uk/news/specific_public_sector_equalit.aspx.

8. Conclusion

- 8.1 Our aim is to improve transparency within the public sector, to provide more efficient and effective public services, tailored to the needs of the community. We believe the new public sector Equality Duty, supported by the specific duties outlined above, is one of the key levers to achieve this by putting the public sector at the forefront of tackling discrimination and inequality.

9. Next steps

- 9.1 This policy statement will be followed by a consultation on the draft regulations for the specific duties. We intend to consult on the draft regulations as soon as possible following Royal Assent to the Equality Bill. The EHRC are drafting the statutory code of practice to accompany the Equality Duty. They will also consult publicly on the draft. Our aim is for the general and specific Equality Duties to come into force in April 2011.

Annex A

Organisations who responded

a:gender

AI Housing (Bassetlaw) Ltd

Aberdeen City Council

Association of Chartered Certified Accountants (ACCA)

Alliance for Inclusive Education

An Employers' Forum on Disability

Apostolic Churches Alliance

Association for Consultancy and Engineering (ACE)

Association of Chief Police Officers (ACPO)

Association of Police Authorities

Association of School and College Leaders

The Audit Commission

Barnsley Metropolitan Borough Council

Basingstoke and Deane Borough Council

British Chambers of Commerce

Beachcroft Ltd

Bedford Borough Council

Blackburn with Darwin Borough Council

BME Alliance for the East Midlands

Bristol City Council

British Humanist Association

Buckinghamshire County Council

Buckinghamshire New University

Building Societies Association

BUPA Ltd

Bury Council

Capacity Builders

Christian Action Research and Education (CARE)

Catholic Bishops' Conference of England and Wales

Catholic Education Service for England and Wales

Cayman Ministers' Association

CBI

CCPR (Sports and Recreation)

Centre for Local Policy Studies

Centre for Studies on Inclusive Education
Charis Technology Ltd
Chartered Institute of Public Relations
Chief Fire Officers Association
Christian Concern for our Nation
Christian Legal Centre
Church Of England – Archbishop’s council
Citizens Advice Bureau
City & County of Swansea
Cleveland Fire Brigade
Cloisters (Disc Law Association)
Child Maintenance and Enforcement Commission (CMEC)
Colchester Borough Homes
Commission for Rural Communities
Committed to Equality
Communication Workers Union (CWU)
Cornwall’s Community Standards Association
Coventry City Council
Creation Resources Trust
Criminal Justice Inspectorates
Crossroads Church York
Crown Prosecution Service
Dartford and Gravesham NHS Trust
Derby and East Midland Racial Equality Consortium
Derby City Council
Derbyshire Constabulary
Devon County Council,
Disability Law Service
Disability Action in Islington
Disability Charities Consortium
Disability Forward Ltd
Disabled Person’s Transport Advisory Committee
Doncaster NHS
Dorset Community Health Services
Dorset Fire and Rescue Service

Dover District Council
Durham Police Authority
East Dunbartonshire Council
East Sussex County Council
ECAS Edinburgh
Edge Hill University
Equality and Human Rights Commission
The Employers Forum on Age
The Employers Forum on Belief
Employment Lawyers Association
Equality and Diversity Committee of the Bar Council
Equality and Diversity Forum
Equality Challenge Unit
Equality in Service Provision Group
Equanomics UK
Erewash Borough Council
Ethnic Minority Advisory Group
Ethnic Minority Foundation
European Supplier Diversity Forum
Evangelical Alliance
Fair Play Partnership CIC
Fair Play South West
Family Education Trust
Fawcett Society
FDA (Union)
Federation of Small Businesses
Fife Council
Forestry Commission
The Foundation for Women's Health, Research and Development (FORWARD)
Gateshead Council
Gay and Lesbian Youth in Calderdale (GALYIC)
General Medical Council
General Teaching Council for England
Greater London Authority
Glasgow City Council

Greater Manchester Police Authority
Greater Manchester Standard for Voluntary Organisations & Greater Manchester
Equalities and Human Rights Parliament
Guide Dogs for the Blind Association
Hackney Women's Forum
Harrow Association of Disabled people
Hertfordshire Fire and Rescue Service
Higher Education Funding Council for England
Highfields Community Association
HM Revenue and Customs
House of Ishmael Ministries
Housing Law Practitioners Association
Hull Primary Care Trust
Implementation Review Unit (IRU)
Inclusion London
Independent Disability Council
Independent Disability Council Leeds
Independent Police Complaints Commission
Institute of Equality and Diversity Practitioners
Intellect
International Christians Gospel Ministries
International School for Community Rights and Inclusion
Ipswich and Suffolk Council for Racial Equality
Islington Council
James Watt College
Judicial Appointments Commission
Just West Yorkshire
Justice for Paps
King's College London
Lambeth Borough Council
Lancashire County Council
Lancashire Fire and Rescue Service
Law Society
Learning and Skills Council
Leeds City Council

Leeds Housing Concern
Leeds Involvement Project
Leeds Voice
Legal Services Commission
Leicester City Council
Leicestershire County Council
Leicestershire Fire and Rescue
Lesbian and Gay Foundation
Local Government Association (LGA)
LGBT Consortium
Lincoln Council
Litchfield District Council
London Borough of Camden
London Borough of Lambeth
London Borough of Tower Hamlets
London Fire Brigade
Manchester City Council
Medway Family Church
MENCAP
MENTER
Middlesbrough Council
MIND
National Aids Trust (NAT)
National Assembly for Wales
National Children and Young People's Services Equality Network
National Housing Federation
Neurodiversity International
Newcastle City Council
Newcastle College Corporation
NHS East of England
NHS Employers
NHS Somerset
NHS South West Essex
NHS Westminster
NI Fire and Rescue Service

Noah'Ark Zoo Farm
Norfolk County Strategic Partnership
North East Chamber of Commerce
North East Fire and Rescue Services
North East London NHS Trusts
North West Leicestershire District Council
North Yorkshire County Council
Northamptonshire Rights and Equality Council (NREC)
Northern Inter Schools Christian Union
Northumbria Council
Norwich City Council
Nottingham Council for Voluntary Service (NCVS)
OFGEM
Older People's Commissioner for Wales
One North West
Parish Churches
Parkstone Evangelical Free Church
Participation Works
Public and Commercial Services Union (PCS)
Peterborough Racial equality Council
Parliamentary and Health Service Ombudsman
Police Superintendents' Association of England and Wales
PPMA Diversity Network
Primary Care Trusts
Prospect
Scarborough and Ryedale Carers Resource
Recruitment and Employment Confederations
Research Councils UK
RNID
Race on the Agenda (ROTA)
Royal College of Midwives
Royal College of Nursing
Royal College of Physicians
Royal Mail Group


Sandwell Council
Schools Out
Scottish Disability Equality Forum
Scottish Parliamentary Corporate Body
Sheffield City Council
Shree Prajapati Association
Single Parent Action Network
Sixth Form College Colchester
SKILL: National Bureau for Students with Disabilities
Somerset City Council
South East Employers
South Liverpool Personnel Ltd
South Yorkshire Police Authority
Southampton City Council
St Edmundsbury Borough Council
Staffordshire County Council
Staffordshire Fire and Rescue Service
Staffordshire Police Authority
Steve Biko Housing Association
Stockport Council
Stonewall
Stonewall Housing
Suffolk Fire and Rescue Services
Sunbridge Road Mission Bradford
Surrey Chapel Free Church
Swale Access Group
Tameside Metropolitan Borough Council
The Christian Institute
The Church of England Parishes of Tollard Royal; Farnham;
Chettle; Gussage St Michael; Gussage All Saints; Tarrant Gunville;
Tarrant Hinton; Tarrant Monkton, Tarrant Rushton & Tarrant
Keynston.
Thompsons Solicitors

Thurrock Racial Unity Support Task Group.
Trafford Council
TUC
Tunbridge Wells Borough Council
UK Accreditation Service
UK Film Council
UNISON
Unison NPS WM
UNITE
United Kingdom Council for Access and Equality (UKCAE).
University and College Union
University Hospital Coventry
University of Aberdeen
University of Edinburgh
University of Hertfordshire
University of Lancashire
Various Voices London, London Gay Men's Chorus
Voice East Midlands
Wakefield Council
Waltham Forest Council
Wandsworth Council
Warwickshire County Council
West Midlands Police Authority
West Sussex Equality Forum
West Wales General Hospital
West Yorkshire Fire and Rescue Service
West Yorkshire Police
Westminster City Council
White Ribbon Campaign
Wirral Council
Wolverton Evangelical Church
Women in Science, Engineering and Technology (SET)
Women's National Commission
Women's Support and Fitness Foundation

Woodley Airfield Church
Working Families
York Council for Voluntary Service
Yorkshire and Humber Regional Forum
Young Equals Coalition

* List excludes organisations that asked for their names to be kept confidential.

**In addition to the above list there were also a number of responses from individuals.



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