

Measuring Up?

Report 4: Performance

A report of public authorities performance
in meeting the Scottish Specific Equality
Duties

September 2015

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Introduction

Under the Equality Act 2006, the Equality and Human Rights Commission (“the Commission”) has a statutory remit to protect, enforce and promote equality across nine protected characteristics which are set out in the Equality Act 2010. This includes regulating the Public Sector Equality Duty (PSED).

The Public Sector Equality Duty is a positive duty on public authorities and others carrying out public functions. It requires that public authorities give proper consideration to equality in their day to day work in shaping policy, delivering services and in their employment practices. The PSED operates in two linked parts – the general equality duty and the specific duties.

The general equality duty is set out in s.149 of the Equality Act 2010 and requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not;
- Foster good relations between people who share a relevant protected characteristic and those who do not.

The specific duties are set out in The Equality Act 2010 (Specific Duties)

(Scotland) Regulations 2012. These came into force on 27 May 2012¹ and are intended to support listed authorities² in meeting the three needs of the general equality duty (see Appendix 1).

Between May and July 2015, the Commission monitored the performance of all Scottish listed authorities against the specific duties requirements to publish by 30 April 2015: a mainstreaming report which contains annualised employee information; a report on progress made to achieve equality outcomes; and for authorities with 150 or more staff, gender pay gap information.

This report considers how listed authorities have met the basic requirements of the duties. It does not consider the detail or the quality of listed authorities' publications – please see the accompanying *Measuring Up? Practice* report for a more qualitative analysis. www.equalityhumanrights.com/scotland_mu4practice

¹ Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012
<http://www.legislation.gov.uk/sdsi/2012/9780111016718/contents>

² Listed authorities are authorities in Scotland who are listed within the Specific Duties Regulations and must meet those Regulations <http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/public-authorities-in-scotland-who-is-covered-by-the-specific-duties/>

Part 1 - Publication Requirements

Methodology for review of the publication requirements

By monitoring the performance of listed authorities against the requirements to publish, the Commission aims to establish a robust baseline and performance measures against which future performance can be assessed.

Commission staff searched the websites of the 239 Scottish listed authorities between 1st May and 19th June, 2015. The search was restricted to a maximum of 15 minutes per authority, to test the accessibility and transparency of the information published. This mirrors the approach taken in our initial 'Measuring Up?' work in 2013.

Following this initial assessment, the Commission wrote to 60 listed authorities whose publications could not be found during the website checks. As a result:

- 34 authorities responded to the Commission's letter demonstrating that they had published as required;
- 13 authorities had published only some of the information required - the Commission agreed a timescale with these bodies in which to finalise publication;
- 1 authority had ceased to exist on 1st June 2015;
- 12 authorities failed to publish the information by 31st July – the deadline set by the Commission for inclusion in this report.

Our correspondence resulted in 47 of these bodies publishing by 31st July, enabling them to be included in the analysis of the employee information duties in Part 2 of this report.

All 239 listed authorities were subject to the requirements to publish mainstreaming reports and reports on the progress made to achieve their equality outcomes published in 2013.

150 of the listed authorities had at least 150 employees and were therefore subject to the requirement to publish gender pay gap information.

198 of the 239 listed authorities were subject to the requirement to publish a report which included details of progress that the authority has made in gathering and using employee information to better perform the equality duty.

41 listed authorities who had no employees were excluded from this part of the review.

179 of the 198 listed authorities were assessed for the publication of employee information. 19 authorities with fewer than 20 employees were excluded from this review. These 19 bodies did not provide detailed breakdowns of employee information due to data protection issues, which meant the Commission could not disaggregate this information for detailed analysis.

Findings - publication rates

Overall publication rates were relatively high, demonstrating that Scottish listed authorities responded to their duties to publish equality information in an accessible manner.

As of 31st July:

- 229 out of the 239 listed authorities (96%) published a mainstreaming report;
- 230 out of the 239 listed authorities (96%) reported on progress made to achieve their equality outcomes;
- 143 out of 150 listed authorities (95%) published gender pay gap information;
- 159 out of 179 (89%) published some employee information.

Publication rates across key sectors

Sector	% of listed authorities who met all of their publication requirements by 31st July (mainstreaming report, employee information, progress in equality outcomes and gender pay gap information)
Health Boards	95% (21 out of 22)
Local Authorities	100% (32 out of 32)
Education Authorities	94% (30 out of 32)
Further & Higher Education Bodies (with at least 150 staff)	89% (39 out of 43)
Community Justice Authorities	100% (8 out of 8)
Fire & Police Service	100% (4 out of 4)
Grant Aided Schools	62.5% (5 out of 8)
Valuation Joint Boards	83% (10 out of 12)
Transport Partnerships	100% (7 out of 7)
Licensing Boards	100% (40 out of 40)
Scottish Ministers	100% (1 out of 1)
Other	97% (29 out of 30)
Total	95% (226 out of 239)

12 listed authorities failed to meet all of their publication requirements within the designated timescale and were excluded from our analysis of performance in parts 2-4 of this report.

One authority which ceased to exist on 1st June 2015 was also excluded from the analysis in Parts 2-4 of this report.

Part 2 – Employment Duties

Methodology for review of employment duties

Having excluded 13 listed authorities who either failed to publish by the 31st July 2015 or ceased to exist from our analysis of the specific duties, the total number assessed and included in this report for each component part of the specific duties requirements to publish by 30 April 2015 was:

- 226 for the mainstreaming report and report on progress made to achieve their equality outcomes;
- 143 for gender pay gap information (only bodies with 150 or more staff are required to publish this information);
- 166 for employee information. (41 authorities who had no employees and 19 authorities with fewer than 20 employees were excluded from this review. These 19 bodies did not provide detailed breakdowns of employee information due to data protection issues, which meant the Commission could not disaggregate this information for detailed analysis.)

Findings - the employment duties

Employment is a key theme of the Scottish specific duties. All listed authorities are required to take steps to gather and use employee information on:

- the composition of its employees in relation to their relevant protected characteristics;
- the recruitment, development and retention of employees in relation to their relevant protected characteristics.

A listed authorities' mainstreaming report must include an annual breakdown of this information and detail the progress which the authority has made in gathering and using this information to better perform the general equality duty.

The assessment covered a check for the publication of any employee information in relation to composition, recruitment, development and retention. This meant that the authority was considered to have published even if it provided information for just one protected characteristic against each employment theme.

Findings – composition of workforce

All 166 listed authorities assessed published information on the composition of their workforce disaggregated by at least one protected characteristic. Sex, race, disability and age are the protected characteristics most frequently reported upon.

However, as in 2013, reporting rates for the protected characteristics of gender reassignment and pregnancy and maternity are significantly lower than for other protected characteristics.

Protected characteristics reported on by listed authorities in relation to staff composition

Protected Characteristic	Number	%
Age	146	88%
Disability	149	90%
Gender reassignment	70	42%
Race	155	93%
Religion or belief	115	69%
Sex	162	98%
Sexual orientation	114	69%
Pregnancy and maternity	59	36%

Findings - recruitment information

69% of the listed authorities reviewed published information on recruitment. As with composition, the three most common areas on which listed authorities provided a breakdown of characteristics for staff recruitment were disability, race and sex.

Publication of breakdown of staff recruitment, by sector

Sector	Bodies included in the review	Produced breakdown of staff recruitment	
		Number	%
Education Authorities	30	13	43%
Fire and Police Service	3	2	67%
Further and Higher Education	39	19	49%
Grant Aided Schools	5	5	100%
Health Boards	21	20	95%
Valuation Joint Boards	9	7	78%
Local Authorities	32	29	91%
Transport Partnerships	1	1	100%
Scottish Ministers	1	1	100%
Other	25	17	68%
Total	166	114	69%

Reporting rates for the protected characteristics of gender reassignment and pregnancy and maternity are again significantly lower than for other protected characteristics.

Protected characteristics reported on by listed authorities in relation to staff recruitment

Protected Characteristic	Number	%
Age	93	56%
Disability	104	63%
Gender reassignment	39	23%
Race	106	64%
Religion or belief	82	49%
Sex	111	67%
Sexual orientation	82	49%
Pregnancy and maternity	20	12%

Findings – staff development information

Less than half of all listed authorities reported on staff development. In one sector the figure was as low as 20%.

Publication of breakdown of staff development, by sector

Sector	Bodies included in the review	Produced breakdown of staff development	
		Number	%
Education Authorities	30	10	33%
Fire and Police Service	3	2	67%
Further and Higher Education	39	11	28%
Grant Aided Schools	5	1	20%
Health Boards	21	15	71%
Vauation Joint Boards	9	4	44%
Local Authorities	32	21	66%
Transport Partnerships	1	1	100%
Scottish Ministers	1	1	100%
Other	25	13	52%
Total	166	79	48%

The reports included different interpretations as to what constitutes staff development. Some reports included training, others promotions, appraisal results or vertical occupational segregation by protected characteristic. Irrespective of how this employment area is interpreted the same trend continues with the ‘newer’ protected characteristics being reported against significantly less often than other protected characteristics.

Protected characteristics reported on by listed authorities in relation to staff development

Protected Characteristic	Number	%
Age	61	37%
Disability	63	38%
Gender reassignment	20	12%
Race	71	43%
Religion or belief	43	26%
Sex	70	42%
Sexual orientation	40	24%
Pregnancy and maternity	10	6%

Findings – staff retention information

The figures for retention show significant variance by sector.

Publication of breakdown of staff retention, by sector

Sector	Bodies included in the review	Produced breakdown of staff retention	
		Number	%
Education Authorities	30	14	47%
Fire and Police Service	3	2	67%
Further and Higher Education	39	16	41%
Grant Aided Schools	5	4	80%
Health Boards	21	13	62%
Valuation Joint Boards	9	2	22%
Local Authorities	32	26	81%
Transport Partnerships	1	1	100%
Scottish Ministers	1	1	100%
Other	25	13	52%
Total	166	92	55%

Age, disability, race and sex are all reported on by 45-50% of listed authorities, with 'newer' protected characteristics again being reported against significantly less often.

Protected characteristics reported on by listed authorities in relation to staff retention

Protected Characteristic	Number	%
Age	79	48%
Disability	75	45%
Gender reassignment	26	16%
Race	77	46%
Religion or belief	53	32%
Sex	83	50%
Sexual orientation	52	31%
Pregnancy and maternity	17	10%

Findings – duty to use employment information

122 of the 166 (73%) authorities examined were assessed as having some information on how they were using their employment information to better perform the general equality duty.

This was the most subjective area of the assessment exercise and is covered in some more detail in the *Measuring Up? Practice* report

www.equalityhumanrights.com/scotland_mu4practice

Overall Summary: employee Information

Of the 166 public authorities assessed:

- All had produced a breakdown of their staff composition by any or all protected characteristics.
- 69% had produced a breakdown of staff recruitment by any or all protected characteristics;
- 48% had produced a breakdown of staff development by any or all protected characteristics; and
- 55% had produced a breakdown of staff retention information by any or all protected characteristics.

As was the case in 2013 reporting rates against some protected characteristics remain very low.

Part 3 - Publication of gender pay gap information

Those listed authorities with 150 or more employees were also required to publish data on the percentage difference among its employees between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime). 150 listed authorities have at least 150 employees, but 7 published too late to be included in our analysis. On that basis, 143 listed authorities were assessed for gender pay gap publication. All of these bodies published gender pay gap information.

Sector	Authorities with at least 150 staff in each sector	Authorities which published gender pay gap information.
Education Authorities	32	30
Fire and Police Service	2	2
Further and Higher Education	37	33
Health Boards	22	21
Local Authorities	32	32
Transport Partnerships	1	1
Scottish Ministers	1	1
Other	23	23
Total	150	143

Part 4 - report on progress made towards achieving equality outcomes

230 out of the 239 public bodies required to report on progress made towards achieving their equality outcomes did so. For some examples of elements of practice in this area, please refer to *Measuring Up? Practice*

www.equalityhumanrights.com/scotland_mu4practice

Part 5 - Conclusions and next steps

Overall the findings of this phase have been:

- 96% of listed authorities published a mainstreaming report;
- 96% of listed authorities reported on progress made to achieve their equality outcomes;
- 95% of required listed authorities published gender pay gap information;
- 89% of assessed listed authorities published some employee information.

A small minority of listed authorities will be subject to further examination by the Commission.

There are improvements to be made in collecting information on all protected characteristics and in all areas of employment monitoring.

The Commission will use the evidence collected during this monitoring programme to develop guidance and support to ensure that public authorities continue to meet the requirements of the Public Sector Equality Duty, and we will monitor the performance of listed authorities against reporting requirements in 2017.

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