

## Response Proforma

<p>RESPONDENT NAME:</p> <p><b>Gillian Fawcett: Head of Public Sector</b></p>	<p>ADDRESS:</p> <p>29 Linclon's Inn Fields London WC2 3EE</p>
<p>ORGANISATION</p> <p><b>ACCA (Association of Chartered Certified Accountants)</b></p>	<p>DATE: <b>30 September 2009</b></p> <p>EMAIL: <a href="mailto:Gillian.fawcett@accaglobal.com">Gillian.fawcett@accaglobal.com</a></p> <p>The Association of Chartered Certified Accountants (ACCA) is a global accountancy body with over 131,500 members and 362,000 students in 170 countries worldwide, whom we support through a network of 82 staffed offices and centres around the world.</p> <p>Throughout our 105 year history we have provided opportunity to people of talent and application regardless of background and have succeeded in making the accountancy profession accessible to those normally denied further or professional education. We support any initiatives which support equal opportunity for all and which remove unnecessary barriers to people qualifying as professional accountants. Our key values are opportunity, diversity, innovation and integrity.</p> <p>Our interests in the equalities bill not only derive from our commitment to promoting equality but also because of our expertise in the areas of public services, procurement and SMEs. Our knowledge and expertise in these areas could be helpful for informing the proposed Equality Bill.</p>

CONSULTATION QUESTIONS	RESPONSE
Q1: Do you think the criteria set out above are the right ones? Please give your reasons.	ACCA agrees with the criteria set out in 5.4, and believe that when deciding which public bodies should be subject to the specific duties outlined in the Bill that a proportionate approach is adopted so that they don't become burdensome to organisations. We agree that the size and resources of an organisation is a key determining factor for deciding upon whether it should or should not implement the duties.
Q2: Are there any other criteria we should use? If so, what do you suggest?	It might be helpful if the Government could provide a list of the types of public organisations that could be exempt from implementing the duties in full e.g. small parish councils.
Q3: Do you agree that public bodies should have a specific duty to publish equality objectives with reference to the relevant evidence and their wider general Equality Duty obligations?	Yes, for example, a number of local authorities already do this as part of their integrated equality and diversity strategies. All decisions about the redesign of services should be supported by evidence of how the general equality duty has been met.
Q4: Do you agree that public bodies should set out the steps they intend to take to achieve their equality objectives?	We would rather see that the emphasis is on delivering equality outcomes. We already know that the best public bodies set ambitious, but at the same time realistic outcome measures which seek to address inequalities.
Q5: Do you agree that public bodies should be required to implement the steps they have set out for themselves within the business cycle period unless it would be unreasonable or impractical to do so?	As above, the emphasis should be on monitoring the outcomes over the business cycle opposed to the steps taken to achieve the outcomes. Some of the criticism about existing equalities duties have been that they have been too process driven and not sufficiently outcome focused.

<p>Q6: Do you agree that public bodies should be required to review their objectives every three years? If not, what time-period do you suggest instead?</p>	<p>ACCA agrees that public authorities should review their equalities objectives as part of their on-going business cycle (3 years). This would complement the resource planning cycle and would allow public bodies to realign resources to equalities priorities.</p>
<p>Q7: Do you agree that public bodies should set equality objectives taking into account priority areas set by the relevant Secretary of State?</p>	<p>Yes, but subject to limits. Equality objectives should reflect the needs/ characteristics of the local area and service users.</p> <p>The nature of the inequality is important. If at a national or local level inequality is caused by one, or a few, high-level drivers, and there is limited regional or local variation then it may be appropriate to set a high-level target/priority. However if the root causes vary between locations or groups then it may be better to set specific local targets (NAO, Targeting inequalities, 2007, p2.</p> <p>There is a place for the SoS to work together with the EHRC to address 'wicked issues' and help to raise standards, but it also must be recognised that local public sector providers know their communities well and are often best placed to make local decisions about which equality objectives are priorities for their areas.</p>
<p>Q8: Do you agree that public bodies should not be required to set equality objectives in respect of each protected characteristic?</p>	<p>Yes, see our response above.</p>
<p>Q9: Do you agree that public bodies should be required to report annually on progress against their equality objectives, but that the means by which they do so should not be prescribed in legislation?</p>	<p>Yes, however, we think it should be left to the discretion of the public body on how they report progress against their equality objectives. This could be part of their performance management processes or integrated into their annual report.</p> <p>Whichever reporting method is adopted we believe that in the spirit openness and transparency it should be in the public domain.</p>

Q10: Do you agree 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? We would welcome views on the benefits of these proposals in encouraging public authorities to be more transparent.

To allow for greater transparency we believe that public bodies should routinely report disaggregated HR data including gender, ethnic minority and disability employment rates. We acknowledge that in order to fully understand an organisation's pay landscape, it is important to know the nature of the business and the jobs that people do within it. It should be noted that the proposed cut-off point of 150 would mean that the majority of public bodies would have to publish this data.

In our view if both sexes are evenly represented at all levels in a business, one would expect there to be little or no overall differential in pay. But this may not be the case, and not necessarily for reasons of illegal discrimination, so a reader may need to be warned not to 'jump to conclusions'. Therefore, an appropriate way needs to be found to measure and publish pay differentials.

There will be issues about how to identify the gender pay gap which will need to be resolved. For example, local authority pay scales have quite a broad range of salary points for an employee grade - you could have a new female employee joining at the bottom of the scale and a male employee who is on the mid-point of the scale after performing well over a number of years. Clearly, the gap is not a gender pay gap, but could be misinterpreted and reported as one

Standards of reporting in this area will have to ensure, among other things, that employers exhibiting gender pay differentials are encouraged to improve, not branded as sexist. Government must resist using gender pay gaps to name and shame public bodies, as pay differentials, especially those resulting from simple calculations, can arise in many ways other than the poor treatment of employees. Interpretation is almost as important as measurement

In relation to employment rates, most public bodies collect this information as part of their normal performance and management information systems in accordance with existing equalities duties, so there should be little extra work and/or cost to publish the outcomes. This is borne out in a recent NAO report which stated:

	<p>“Collecting data to support this disclosure note may mean that it may not be cost-effective and will place unreasonable burdens on public bodies, drawing resources away from delivery. However, the NAO found in its work with local authorities on gathering data for PSA targets which address inequalities that this may not be the case. There was general consensus by the local authorities sampled that there was no additional burden on data collection and analysis as “authorities were doing this kind of performance measurement anyway.” (NAO targeting inequalities 2008, p24)</p> <p>However, ACCA is concerned that there appears to be no consideration about whether these additional disclosures should be audited and what the costs of audit would be. There is a danger that if disclosures are not audited stakeholders and citizens will have no confidence in the accuracy of the disclosure notes. Further work needs to be undertaken in this area.</p> <p>If disclosures on ethnic minority employment rates etc... are made then public bodies will need to be provided with clear guidance. Disclosures should also be put into context of the demographics of the local area. Ideally, the diversity of a public body’s workforce should be seen as a measure of its commitment to equality of opportunity.</p> <p>The positive side to making these disclosures are that, if a public body is performing well it will perhaps make it an employer of choice amongst ethnic groups and people with disabilities. The organisation will also benefit from drawing from a larger pool of people with relevant skills.</p>
<p>Q11: Do you agree with the proposal to use the overall median gender pay gap figure? Please give your reasons. If not, what other method would you suggest and why?</p>	<p>This seems sensible with the caveat outlined above and so long that there is an accompanying published note to show that the median gender pay gap is being used as the comparative figure.</p>

<p>Q12: Do you have any evidence of how much it would cost to produce and publish this information, and of what the benefits of producing and publishing this information might be?</p>	<p>There are undoubtedly hidden costs attached to making additional disclosures that relate to the collection and performance management of the data. However, this should not be a deterrent for publishing the data. See our answer to q10 above.</p> <p>Publishing the data may mean that the public and stakeholders would have more assurance that the public body is complying with the equality duty. It is also useful for capturing progress across the UK and identifying gaps that may require intervention/ support from a body such as the EHRC. It will also help to identify best practice which can be disseminated across the public sector.</p> <p>Other benefits have already been outlined in our response to question 10.</p>
<p>Q13: Do you agree with the proposal not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty? If not, what other data do you think should be reported on?</p>	<p>Yes, we agree that other characteristics protected under the equality duty such as trans gender and sexual orientation should not be a mandatory disclosure. This should be left the public body to decide.</p> <p>It should also be noted that a few public bodies already collect this data, but even in these cases it is still left to the discretion of the individual to make these types of personal disclosures.</p>
<p>Q14: Do you agree 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?</p>	<p>Yes, the emphasis should be on outcomes and the evidence which sits behind them. This was also stated in our response to questions 4 &amp; 5.</p>

<p>Q15: Do you agree that public bodies should have a specific duty - when setting their equality objectives, deciding on the steps towards their achievement and reviewing their progress in achieving them to take reasonable steps to involve and consult employees, service users and other relevant groups who have an interest in how it carries out its functions - or where appropriate their representatives; and in particular take reasonable steps to consult and involve the protected groups for whom the duty is designed to deliver benefits?</p>	<p>Yes, but this should be integrated into a public body's existing consultation processes for redesigning services or introducing new policies. Not only would this save on cost, but it would also mean that equality is fully integrated into decision-making processes. The best public bodies already are doing this.</p>
---	--

Q16: Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?

We think that it is important that public bodies address the individual needs of individuals with 'protected characteristics' but the Government should not allow the interests of economically vulnerable businesses to be neglected. The application of the specific duty must be proportionate and non - discriminatory to organisations such as SMEs.

The Government has already recognised that SMEs constitute a key economic force in terms of income and job generation and they must not be subjected to unreasonable restrictions on their ability to participate in public sector contracts. It should also be noted in this context that SMEs employ material numbers of people with the proposed protected characteristics. ONS figures suggest, for example, that higher proportions of women are employed in micro, small and medium sized companies than in large companies. The proposals need therefore to be considered and implemented carefully so as to avoid the risk of unintended consequences for the economic interests of the SME sector and for their staff.

	Micro	Small	Medium	Large
Male	52%	48%	53%	54%
Female	48%	52%	47%	46%

The Office for Fair Trading (OFT) has previously reported that 'excessive information requirements and overly-narrow pre-qualification criteria can distort competition in favour of large suppliers'. We need to be careful not to encourage public bodies, via the proposed statutory duty on public procurement (PP), to exacerbate this situation. Also, the Glover Report (November 2008) recommended that public sector tendering procedures should aim for simplicity and that qualification criteria that are not specific to a particular sector should be standardised so that businesses do not need to repeatedly submit the same core information in different formats.

We suggest that each individual public body should make its own decisions as to whether to adopt equality criteria in its tendering processes and contracts. The Office for Government Commerce provides guidance on pursuing non-commercial objectives through public procurement which could be used to guide implementation.

	<p>In our view any rules which are brought in must be consistent with the emphasis given by the EU - in its Code of Best Practice on Facilitating Access by SMEs to Public Procurement Contracts (2008) – to the need to allow SMEs to compete on a fair and open basis for public sector contracts.</p> <p>If you follow this guidance it would not necessarily exclude the application of equality-related criteria, but could be used in suitable individual cases, particularly, for example where the provider is contracting to provide services for vulnerable groups such as mental health services, care for the elderly, children, people with learning disabilities etc.</p> <p>We welcome that the consultation recognises that setting capacity requirements too high can effectively exclude a high proportion of SMEs from participating in tender procedures. We wish to reinforce the point that any selection criteria imposed must be clear, non-discriminatory and proportionate to the contract in question.</p> <p>If a specific duty is to be imposed in this area, we would suggest we argue that its terms must be precise. If it is left too general (along the lines discussed in paragraph 5.38), then both authorities and tenderers could interpret the criteria, and the equality duty, as widely as they wish and more widely than clause 145 of the Bill envisages. We would suggest there could be a specific reference to the provisions of that clause so that there is no allowance for individual check-lists.</p>
<p>Q17: Do you agree that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities?</p>	<p>Yes, subject to the caveats above.</p>

<p>Q18: Do you agree that contracting authorities should be required to consider using equality-related award criteria where they relate to the subject matter of the contract and are proportionate?</p>	<p>Subject to the caveats in our response to Q16 this would be considered good practice and is already undertaken by some of the better local authorities.</p>
<p>Q19: Do you agree that contracting authorities should be required to consider incorporating equality-related contract conditions where they relate to the performance of the contract?</p>	<p>Yes, when dealing with vulnerable groups of people. Some of the best local authorities already do this in relation to commissioning services for vulnerable groups of people e.g. London borough of Camden.</p>
<p>Q20: What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?</p>	<p>ACCA believes that there should be an explicit requirement for public bodies to deal with suppliers of services for vulnerable people and considers the current OGC guidance to be a positive step forward.</p>
<p>Q21: Do you support the proposal to establish a national equality standard which could be used in the procurement process? If so, do you believe this is achievable through a specific duty or is this better tackled through a non-legislative approach? Are there any practical issues that would need to be considered?</p>	<p>There are lots of equality standards e.g. local government equality standard etc. but no obligation to comply and they tend to be weak on contracting. One standard would help but because of the diversity of the sector the reality is that it would have to be adapted to meet sector needs. We are supportive of a single equality standard.</p>

<p>Q22: Which of the above four models do you consider achieves the best balance between joined-up working and senior accountability for equality outcomes, while avoiding unnecessary burdens? Please explain why.</p>	<p>ACCA believes that model (1) would be the most efficient and cost effective approach – a report should be made every three years against the national equality priorities. Not least because this would fit the business resource cycle, but it improves Parliamentary accountability and scrutiny of the equality outcomes.</p> <p>Model (3) is a possible alternative, but considerable improvements would have to be made to the current reporting arrangements for PSA targets. Reporting against these targets has been reported by the Scrutiny Unit Parliament (2008) as “patchy” across government departments. In particular, the way information is collected and the quality of information presented. Although some improvements were reported in 2008, for almost departmental reports there was still sufficient uncertainty about the progress reported.</p>
<p>Q23: Do you have any other suggestions how this duty could be remodelled to retain the valuable features of senior accountability and joined-up working, whilst avoiding unnecessary burdens?</p>	<p>See Q22.</p>
<p>Q24: Are there any specific requirements, other than those that we have proposed, which you think are essential to ensure that public bodies deliver equality outcomes in an effective and proportionate manner?</p>	<p>The specific requirements appear comprehensive, but we urge that some measures such as the inclusion of equalities criteria in contracts to be proportionate, so that they do not become overly burdensome to the public body as a commissioner of services and/or the contracted body.</p>

Q25: What role do you think the guidance from EHRC should play in helping public bodies implement the specific duties in a sensible and proportionate manner? What do you think it would be helpful for such guidance to cover?

The EHRC has a critical role in providing a bank of guidance and case studies of good practice to support public bodies fulfil their statutory duties. In the first instance it could provide a user friendly guide to the proposed Equalities Act together with training materials for employees working within public bodies which can be tailored to local needs. The latter will save on the cost of each public body re-inventing the wheel by developing their own expensive training programmes. It should also sign post good practice 'exemplar authorities' as well the weaknesses so that lessons can be learnt.

The EHRC also needs to work closely with the regulators to ensure a proportionate approach is taken for regulating and auditing equalities. A protocol setting out responsibilities in relation to promoting good practice and non – compliance interventions should be developed to avoid duplication whilst at the same time 'reducing the burden of regulation'.