



Office of the Children's Commissioner:

Children and Equality- Equality evidence relating to children and young people in England

April 2012

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About the Office of the Children's Commissioner

The Office of the Children's Commissioner is a national organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. The post of Children's Commissioner for England was established by the Children Act 2004. The United Nations Convention on the Rights of the Child (UNCRC) underpins and frames all of our work.

The Children's Commissioner has a duty to promote the views and interests of all children in England, in particular those whose voices are least likely to be heard, to the people who make decisions about their lives. She also has a duty to speak on behalf of all children in the UK on non-devolved issues which include immigration, for the whole of the UK, and youth justice, for England and Wales. One of the Children's Commissioner's key functions is encouraging organisations that provide services for children always to operate from the child's perspective.

Under the Children Act 2004 the Children's Commissioner is required both to publish what she finds from talking and listening to children and young people, and to draw national policymakers' and agencies' attention to the particular circumstances of a child or small group of children which should inform both policy and practice.

As the Office of the Children's Commissioner, it is our statutory duty to highlight where we believe vulnerable children are not being treated appropriately and in line with duties established under international and domestic legislation.

Children and Equality

Equality evidence relating to children and young people in England

Summary

The Office of the Children's Commissioner (OCC) is using equality information and data outlined in this paper to:

- inform its projects
- establish objectives that seek to eliminate discrimination, advance equality and foster good relations
- help demonstrate our commitment to meeting the Public Sector Equality Duty (PSED) set out in the Equality Act 2010.¹

Our evidence relates to what is known about children and young people in relation to the protected characteristics set out in the 2010 Act (age; disability; race, gender; gender identity and transgender; marriage and civil partnership; pregnancy, maternity and breast feeding; religion and belief; and sexual identity and orientation).²

We are building equality objectives into all of the work of OCC. However the main objectives for 2012-2014 are:

- During 2012 we will undertake a number of Child Rights Impact Assessments (CRIAs) to ensure that legislation promotes children's rights as well as highlight the disproportionate impact proposed policies and legislation may have on children and young people in general or those from certain groups.
- Through our ongoing work following our Inquiry into school exclusions we will aim to understand why some children are more likely to be disproportionately excluded. Recommendations will focus on addressing equality issues.
- Through our Inquiry into Child Sexual Exploitation in Gangs and Groups (CSEGG) we will explore issues of gender, ethnicity, age, sexuality and disability in relation to experiences of exploitation. This information will be used to inform how agencies deliver effective services for victims.
- In 2012 we will explore disabled children's views and experiences of living in poverty and how this impacts on their enjoyment of rights as outlined in the United Nations Convention on the Rights of the Child (UNCRC). This information will be used to inform how policy and services can eliminate discrimination, advance equality of opportunity and help foster good relations
- Throughout all our child protection work we seek to understand and represent the views of older children and young people with child protection issues and concerns
- We will improve our recording and monitoring of the equality characteristics of the children and young people we work with and use this to inform our work.

Specific, measurable equality objectives will be included within project plans and terms of reference.

¹ Equality Act 2010 c. 17, ss149-157, <http://www.legislation.gov.uk/ukpga/2010/15/contents>

² This is the terminology used by the Equality Act 2010

Introduction

This report provides a summary of some of the key equality information that relates to children and young people living in England. The purpose of collating equality evidence is to:

- a) Inform the work of the Office of the Children's Commissioner
- b) Establish our overarching equality objectives for 2012-2014
- c) Help demonstrate compliance with the PSED

We are collating the evidence in relation to the protected characteristics set out in the Equality Act 2010. These are:

- Age
- Disability
- Race
- Gender
- Gender identity and transgender
- Marriage and civil partnership
- Pregnancy, maternity and breast feeding
- Religion and belief
- Sexual identity and orientation.

The Equality Act and the Public Sector Equality Duty (PSED)

Since 6 April 2011 all public bodies have been bound by what is known as the Public Sector Equality Duty. It has three components. Under s149 of the Equality Act 2010, public authorities must have 'due regard' for:

- a) Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- b) Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- c) Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.

The specific equality duties

The s.149 duty underpins two further, specific duties imposed on some public authorities by the Equality Act 2010 (specific duties) Regulations 2011. These are:

- **Publication of information:** each public authority must publish information to show that it is complying with the s.149 duty. This must include information about persons who share a protected characteristic who are its service users.
- **Equality objectives:** each public authority must prepare and publish one or more objectives it thinks it should achieve to have due regard to the need to eliminate discrimination and harassment, to advance equality of opportunity or to foster good relations.

The Office of the Children's Commissioner is bound by the PSED when exercising public functions. However, we are not subject to the legal duties under the 2011 regulations to publish equality information to show our compliance with the PSED, or to publish equality

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objectives. We are however, choosing to do this to help us demonstrate due regard to equality issues when exercising public functions.

The following information is a summary of the key evidence on children and young people's equality issues. It has been used to help us establish our equality objectives outlined at the beginning of this paper.

Links between the Equality Act and children's rights

Using our powers and independence, the Office of the Children's Commissioner's mission is to protect and promote children's rights under the United Nations Convention on the Rights of the Child (UNCRC). We champion children's and young people's roles as active, responsible citizens through our work and influence. Tackling inequality and discrimination and promoting equality both lie at the heart of the organisation's values and work.

These vital actions are also at the heart of the UK's fulfilment of its commitments under the UNCRC, signed and ratified in 1991. The Convention prohibits discrimination against children in relation to the Convention rights on the grounds of any status of the child or his or her parent/legal guardian (article 2 UNCRC). This obligation is not limited to the protected characteristics under the Equality Act 2010. It is one of the core principles of the Convention. In our work to promote and protect children's rights as defined by the UNCRC we consider both the protected characteristics outlined in the Equality Act and the additional characteristics of both all children, and particular vulnerable groups of children, all of whom are covered by the Convention.

It is vital that we acknowledge that children and young people often experience discrimination simply because they are children and young people, rather than adults with the power to change things for the better on their behalf. As well as the discrimination faced by specific groups of children and young people outlined below it is notable that general perceptions of children and young people, particularly adolescents, are often negative on slim or prejudicial grounds. Policy makers too often overlook the impact of their decisions on children and young people, both the general population of those aged 0 to 18, and the more vulnerable among them. As a result we have long held the view that, as the State Party whose responsibilities include delivering on the UNCRC, the Government should undertake Child Rights Impact Assessments (CRIAs) on draft legislation and policy, just as it is required to do on grounds of equality across the protected characteristics.

In the absence of a Government commitment to undertake CRIAs, OCC intends to carry out a number of Child Rights Impact Assessments beginning in May 2012, as a means of highlighting the relevant issues as represented in draft legislation and/or other proposed policies/measures.

What this means for the work of the OCC:

The primary way in which we will tackle the issue during 2012/13 is by undertaking a number of Child Rights Impact Assessments to ensure that legislation, policies and other measures promote children's rights as we as highlight the disproportionate impact proposed policies and legislation may have on children on young people and/or children and young people from particular groups.

Equality evidence relating to the protected characteristics

Age

During the passage of the Equality Bill through Parliament OCC argued that children and young people should benefit from the same legal protections against unfair discrimination on the grounds of age as adults. However, the 2010 Act does not make this provision. As a concession, however, the Government provided assurances during debates on the Bill that guidance on the PSED will give practical assistance to public service providers on how they can implement the age provisions for children and young people. Our work demonstrates that some children are discriminated against on the grounds of age.

Research carried out by OCC cited that many 16 and 17 year olds find it difficult to access social services and mental health services, and experience difficulties with transition between provision for children and adults.³ Other research also documents the severe neglect of young people's mental health problems which lead to serious self harm; and of a lack of ongoing support to vulnerable teenagers who leave care.⁴

There are substantial doubts that the child protection system as currently structured is appropriate for and accessible to these older young people in the way it is for younger children. For example, the Children's Society found a tendency for children's social care professionals to assume greater 'resilience' on the part of older young people, concluding that they did not need support. The Children's Society study found that resource issues in many services also led to a lower priority being given to young people by a range of services, than was given to younger children.⁵

We also know that infants under the age of 1 are more likely to be victims of homicide than any other age group. While one child aged under 16 died as a result of cruelty or violence each week in England and Wales in 2008/09, two-thirds of them were aged under five.⁶

Evidence also shows that younger children (those under 8) are less likely to be consulted or involved in decision making.⁷ Anecdotal evidence indicates that some professionals consider young children incapable of engaging in discussions leading to decisions about their lives, an attitude which denies them their say when many of them are in fact able to do so.

Some welfare reforms introduced via the Welfare Reform Bill Act 2012 will also have a disproportionate effect on children and young people. Research produced by the Children's Society has shown that 75% of people affected by the benefit cap to be imposed under s96 of the Act will be children - 210,000 children in all – and that children are nine times more likely than adults to be affected.⁸

³ Office of the Children's Commissioner (2007) Pushed into the Shadows? Young Peoples experiences of adult mental health facilities

⁴ Stein, M. Rees, G. Hicks, L. and Gorin, S. (2009), Neglected Adolescents: Literature Review, DCSF

⁵ Rees, G., Gorin, S., Jobe, A., Stein, M., Medforth, R., and Goswami, H. (2010) Safeguarding young people: responding to young people aged 11 to 17 who are maltreated. The Children's Society, London

⁶ EHRC (2010) How fair is Britain? The first Triennial Review. London EHRC

<http://www.equalityhumanrights.com/key-projects/how-fair-is-britain/online-summary/legal-and-physical-security/>

⁷ Davey (2010) Children's participation in decision-making: a summary report on progress made up to 2010 (National Participation Forum, 2010)

http://www.childrenscommissioner.gov.uk/content/publications/content_412

⁸ The Children's Society (2011), The distributional impact of the benefit cap. London. The Children's Society

What this means for the work of the OCC:

- During 2012/13 the Office of the Children's Commissioner will undertake at least four Child Rights Impact Assessments on Government Bills/other proposed policies or measures that will highlight how they impact children and young people in relation to adults as well as specific groups of young people within our remit.
- OCC is currently considering how we support younger children's participation and involvement in decision making
- OCC will continue to advise the Government via consultation and select committees on the needs of older children and young people in relation to access to child protection, mental health services and experiencing difficult transitions from children's services to adult services. The issue of older young people will also be looked at within the Child Sexual Exploitation in Gang and Groups (CSEGG) Inquiry as older children are underrepresented in current data or not identified as readily by services.
- We will continue to monitor the disproportionate impact of welfare reforms on children and young people, highlighting the need to eliminate discrimination and advice quality in outcomes and share this with relevant agencies and organisations which are able to directly impact any form of discrimination.

Disability

The OCC Inquiry School Exclusions Inquiry found that pupils with Special Educational Needs (SEN) are eight times more likely to be permanently excluded than their peers who do not have these needs. The Inquiry also highlighted that when different characteristics are combined, figures show that a Black boy from an African Caribbean background, who has SEN and is also from a low income household, is 168 times more likely to be permanently excluded from the same school than a White female classmate, who does not have SEN and who comes from a more affluent household.⁹ In addition to poorer academic attainment, pupils with SEN who are also eligible for free school meals are almost twice as likely to be permanently excluded as pupils with SEN from wealthier backgrounds.¹⁰

We are also concerned about the bullying of disabled children and young people. In 2007, Mencap undertook a survey of 507 children and young people with a learning disability aged 8 to 19 years. The results showed that 8 out of 10 children with a learning disability had been bullied.¹¹

Literature also suggests that disabled children are afforded few opportunities to voice their views to those offering health and personal care services, and that health professionals often struggle to communicate effectively with them. Misdiagnosis and inappropriate treatment is an obvious and all too frequent result where a child has too little say or engagement in decision making.¹²

⁹ OCC (2012) They Never Give Up on You Office of the Children's Commissioners School Exclusions Inquiry. London. OCC

¹⁰ <http://media.education.gov.uk/assets/files/pdf/e/education%20bill%20%20%20equalities%20impact%20assessment%20equia.pdf>

¹¹ Mencap (2007) Bullying Wrecks Lives: the experiences of children and young people with a learning disability

¹² Every Disabled child matters Campaign (2009) Disabled children and health, accessed at http://www.edcm.org.uk/media/8101/edcm_disabled_children_and_health.pdf, April 2012

The Childcare Act 2006 imposes a duty on local authorities to secure provision for childcare sufficient to meet the requirements of all parents with disabled children up to the age of 18. However, despite this duty there is evidence that in 2009 almost half of local authorities reported insufficient childcare for disabled children (49%).¹³

We also know that there is a widespread lack of local and national data on disabled children subject to safeguarding children procedures in England. Part of the reason for lack of data is the way services are structured and delivered to disabled children. Working with children with disabilities is seen as a specialism and therefore in many localities remains something delivered separately from the work of child protection teams.

It is reported that 25% of young people in the youth justice system have a learning disability and 30% have a physical disability.^{14 15} Research also demonstrates consistently high levels of complex developmental issues and unmet emotional and other mental health needs among children and young people in the youth justice system. Speech and language difficulties are also common. Approximately 60% of children and young people in the youth justice system have significant speech, language and communication needs, sometimes undiagnosed and therefore untreated.¹⁶ Between 46 and 67% of young people in the youth justice system, many of whom have these verbal communication difficulties, are also recognised as having poor or very poor literacy and numeracy skills.¹⁷ Up to one third of children with untreated speech and language difficulties develop subsequent mental health problems.¹⁸ Communication disability is strongly linked to deprivation and poverty in the early years. There is some evidence that children may be misdiagnosed as having a mental health problem or a conduct disorder when in fact they have an undiagnosed communication problem.¹⁹

Evidence shows that more disabled children live in poverty compared to their non-disabled peers. Over four in 10 of families with disabled children live in poverty. This compares to three in 10 of the general population.²⁰ This means that 320,000 disabled children are living in low-income families.²⁰ Our Child Rights Impact Assessment of the Welfare Reform Bill, published in January 2012 and quoted by members of both Houses during its passage through Parliament, highlighted the disproportionate impact of some of the Bill's provisions on disabled children.

What this means for the work of the OCC:

- The Office will work to eliminate bullying and advance good practice to tackle bullying in schools through the Anti-Bullying Alliance (ABA) and the work of the Director of Policy who is the current chair. One of ABA's

¹³ Daycare Trust (2010) Childcare Cost Survey. London. Daycare Trust

¹⁴ Department of Health. (2009). Healthy children, safer communities. London: Department of Health

¹⁵ Prison Reform Trust (2010) Children with learning disabilities more likely to go to prison. London. Prison Reform Trust

¹⁶ Bryan, K. Freer, J. and Furlong, C. (2007). Language and communication difficulties in juvenile offenders. International Journal of Language & Communication Disorders, 42, 505 -520

¹⁷ Bryan, K. Freer, J. and Furlong, J. (2004). Speech and language therapy provision for young people in prison. Third project report

¹⁸ Clegg, J. Hollis, C. and Rutter, M. (1999). Life sentence RCSLT Bulletin; 571, 16-18

¹⁹ Lens, R. (2009). Speech and language therapy within the Milton Keynes Youth Offending Team. A four-month pilot project

²⁰ The Children's Society (2011) 4 in every 10 Disabled Children are Living in Poverty. London: The Children's Society. http://www.childrensociety.org.uk/sites/default/files/tcs/4_in_10_summaryfinal.pdf

priorities over the coming year will be to raise the profile of SEN/disability bullying and seek to undertake new research on successful anti-bullying practice in this area. Within this work we also seek to foster better relations between groups of children, by supporting the development of a consensus around how to stop and prevent bullying.

- The Office will explicitly capture data on disability and work with organisations that specialise in disability to capture these issues properly when investigating the prevalence of CSEGG. The CSEGG Inquiry interim report will be published in 2012 with the final report due in 2013.
- We will explore the disproportionate impact of exclusion on children with SEN (both with and without statements) via the next stages of our School Exclusions Inquiry.
- We are concerned about the disproportionate number of disabled children living in poverty compared to their non-disabled peers. We will explore this issue with disabled children and young people and their families. The issues of the availability and cost of childcare will be an issue explored via this work.
- Following the publication of OCC's report "I think I must have been born bad"²¹ and our work on the mental health of young people in the youth justice system we will continue to monitor trends and report our findings and concerns to government and various UN committees.

Race

Her Majesty's Inspector of Prisons (HMIP) found that the proportion of Black and Minority Ethnic (BME) children, already hugely over-represented in youth justice settings, increased to 39% in 2010/11 from 33% in 2009/10. In addition, evidence shows that Black boys were disproportionately restrained by staff when compared to White boys.²² Rates of stop and search are higher for Black and Asian people than White people.²³ Black people are much less likely than White people to believe that their complaints about the police will be taken seriously, and are more likely to worry about police harassment.²⁴

School exclusion rates among some ethnic groups of children are much higher than those in others. Our 2011-12 School Exclusions Inquiry found that in 2009-10, exclusion categorised by the ethnic origin of those excluded showed the highest rate was among children from Gypsy and Roma Traveller backgrounds, those who were Irish Travellers, and Black Caribbean²⁵ children. Black Caribbean pupils were almost four times more likely to be permanently excluded from school in 2009-10 than the school population as a whole. The rate of fixed-term exclusion was also higher for these ethnic groups.

Seventeen per cent of Irish Traveller children, 15% of Gypsy and Roma Traveller children and 11% of Black Caribbean children received a permanent exclusion from school.

²² http://www.justice.gov.uk/inspectors/hmi-prisons/docs/Children_report_2010_rps.pdf

²³ EHRC (2010) Stop and think: A critical review of the use of stop and search powers in England and Wales. London: EHRC

http://www.equalityhumanrights.com/uploaded_files/raceinbritain/ehrc_stop_and_search_report.pdf

²⁴ EHRC (2010) How fair is Britain? The first Triennial Review. London: EHRC

<http://www.equalityhumanrights.com/key-projects/how-fair-is-britain/online-summary/legal-and-physical-security/>

²⁵ Terms consistent with descriptor used by DfE in its data collection

Differences in exclusion rates are particularly marked if excluded pupils' gender and ethnicity are examined together. In the statistics available for 2009-10, Black Caribbean boys were 11 times more likely to be permanently excluded than White girls of the same age in similar schools. The same boys were 37 times more likely to be permanently excluded than Indian girls, who had the lowest rate of exclusion in the entire system. In the same year, Gypsy and Roma Traveller and Irish Traveller children were four times more likely to be permanently excluded than was the school population as a whole.²⁶

We also know that Irish Travellers and Gypsy and Roma Travellers are the only groups whose test and examination performance has deteriorated sharply in recent years, dropping from 42% and 23% respectively obtaining 5 GCSEs A*-C in 2003 to just 16% and 14% in 2007.²⁷ However, the raw figures of these children in the school population are very low, meaning a very small number of children may substantially affect the percentages of those attaining particular levels of performance. These percentages may also mask differences in record-keeping rather than differences in performance, for the same reason.

As young as age five, pupils from African, African-Caribbean, Bangladeshi and Pakistani backgrounds perform less well in school than do other pupils.²⁸ The government's own Equality Impact Assessment notes that overall, 50% of all children achieve a good level of development, but for children of Pakistani and Bangladeshi backgrounds the proportion is around 38%, and for those of African and African-Caribbean backgrounds it is around 42%.²⁹

At age 16, there are significant differences in educational attainment according to ethnicity, and these vary significantly between England's nine regions. The two large communities in which attainment is substantially below the national average are the African-Caribbean community and the Pakistani community. Overall, the attainment gap for African-Caribbean pupils in comparison to the general population was about 11 percentage points in 2009. But in the East Midlands and in Yorkshire it was close to 20 points, and in the North East over 30.

Similarly in the Pakistani community in England, there are significant regional differences. Overall, the attainment gap in 2009 was almost eight percentage points, but once again this masked regional differences that cannot be fully explained by variables like funding levels.

The proportion of African-Caribbean and African students getting first or upper class second degrees remains only two-thirds of the level of white students. African, African-Caribbean, Bangladeshi, Indian and Pakistani communities all have at least 44% of their graduates coming from a former polytechnic University, whilst the average for other communities is around 34%. African-Caribbean and African students are least likely to attend a Russell Group university, with only eight per cent, compared with 24% of White students.³⁰

²⁶ Office of the Children's Commissioner (2012) They never give up on you: Office of the Children's Commissioner School Exclusions Inquiry

²⁷ <http://www.insted.co.uk/selection-of-key-facts.pdf>

²⁸ <http://www.insted.co.uk/selection-of-key-facts.pdf>

²⁹ DfE (2011) Equality Impact Assessment. London: DfE

www.education.gov.uk/consultations/downloadableDocs/Entitlement%20Equality%20IA.doc

³⁰ <http://www.insted.co.uk/selection-of-key-facts.pdf>

In 2009 a Teachers TV survey of 802 teachers found that nearly half of teachers say racist bullying is a problem in their schools. The survey also found that two thirds said their schools had no policy on such bullying, and many worried about religious intolerance.³¹

Infant mortality rates are higher among some ethnic groups than others. African-Caribbean and Pakistani babies are twice as likely to die in their first year than Bangladeshi or White British babies.³²

The 2010 Marmot review of health inequalities in England states that, amongst other social and demographic indicators, ethnicity is an important determinant of health inequalities in the UK. Some ethnic groups experience higher incidences of certain health conditions, but the link between ethnicity and low health outcomes needs to be seen in relation to other factors such as income, education, occupation, gender and living standards. However, the 2010 Marmot Review (except for data on childhood obesity) does not include data on health outcomes broken down by ethnicity, and since the 2004 report of the Health Survey for England focused on the health of ethnic minorities, the Government has published no new data on the health differences between ethnic groups.

The prevalence of obesity in children varies across different ethnic groups. Black or Black British children have the highest obesity rates at 25.3%, followed by Asian or Asian British children (21.6%) and children of a mixed background (21%). Obesity rates are lower for the White ethnic group (17.3%), and lower still for the Chinese group (16.1%).³³

One person in five lives in households with less than 60% median income (after housing costs). However, this rises to nearly one in three for Bangladeshi-headed households. Data suggests that as many as two thirds of Bangladeshi and Pakistani people live below the poverty line (compared to around a sixth of the general population). Nearly three-quarters of Bangladeshi children and half of Black African children in Britain grow up in poverty.³⁴ We have highlighted the likely disproportionate impact of the 2012 Welfare Reform Act's benefit cap on some BME communities with an average family size larger than the population as a whole.³⁵

What this means for the work of the OCC:

- Our second year of work in our School Exclusions Inquiry seeks to understand the over representation of certain minority groups of children excluded from school. We are particularly aware of the evidence concerning some groups who are more likely to be overrepresented in exclusions, including Irish Travellers, Gypsy and Roma Travellers, and pupils from African and African-Caribbean backgrounds, and will look to highlight relevant areas of discrimination in order to eliminate such behaviour and advance good practice in how to achieve this.

³¹ <http://news.bbc.co.uk/1/hi/education/8014880.stm>

³² EHRC (2010) How fair is Britain? The first Triennial Review. London EHRC

³³ Marmot, Michael, Allen, Jessica, Goldblatt, Peter, Boyce, Tammy, McNeish, Di, Grady, Mike, and Geddes, Ilaria, Fair Society, Healthy Lives: The Marmot Review, Strategic Review of Health inequalities in England post-2010 (The Marmot Review, 2010) p.147,

<http://www.marmotreview.org/AssetLibrary/pdfs/Reports/FairSocietyHealthyLives.pdf>

³⁴ Referenced in EHRC (2010) How fair is Britain? The first Triennial Review. London. EHRC Source document: The AA Motoring Trust(2003) AA Foundation for road safety research where term ethnic minority is not defined

³⁵ Office of the Children's Commissioner, Child Rights Impact Assessment of the Welfare Reform Bill, 11 January 2012

- We will explore the ethnicity of victims from BME backgrounds, and work with organisations which specialise on ethnicity to capture these issues properly with the CSEGG Inquiry.
- We will continue to monitor the disproportionate number of children from different ethnic groups living in poverty.
- In continuing to seek the implementation of recommendations from “I must have been born bad” we will continue to visit youth justice secure settings and monitor the proportion of black and minority ethnic (BME) children represented across areas that have been a concern to OCC – including incidence of strip searching and restraints. Where we are aware of any issues of discrimination we will contact the relevant institution and the YJB to seek its elimination.

Gender

There are many ways in which gender impacts on children and young people’s experiences. In 2011-12 our School Exclusions Inquiry found that the permanent exclusion rate for boys in 2009-10 was approximately four times higher than that for girls. Boys represented 78% of the total number of permanent exclusions from school. The fixed-term exclusion rate for boys was almost three times higher than that for girls. Boys accounted for 75% of all fixed-term exclusions.³⁶

By the age of five, girls’ development is measurably more advanced in 11 of the 13 assessment scales on the early years foundation stage (EYFS) profile, which covers social and emotional areas of development as well as cognitive. The gap is greatest in writing – nearly three quarters of girls (72%) reach the expected level, but barely more than half (53%) of boys. The two categories in which boys outperform girls are problem solving and knowledge of the world.

In the seven key scales of personal, social and emotional (PSE) development, and in communication, language and literacy (CLL) 61% of girls achieve Level 6 or more, compared with only 43% of boys.

In the second half of 2008, 91% of the sentenced population were boys and 9% girls.³⁷ A report published by the Office of the Children’s Commissioner, *Young People’s view on Restraint in the Secure Estate*,³⁸ demonstrates that the way the girls interviewed experienced restraint varied dramatically from the boys’ experiences. Many girls felt the procedure impacted negatively on their mental health and well-being. They disliked it intensely. Boys in contrast reported feelings of anger, indifference, or acceptance that it was a necessary part of the custodial regime.

Girls are also more likely to experience sexual violence. Data shows that almost one in three girls have experienced unwanted sexual touching at school.³⁹ In addition, 33% of girls in an

³⁶ Office of the Children’s Commissioner (2012) They never give up on you: Office of the Children’s Commissioner School Exclusions Inquiry

³⁷ Prison Reform Trust (2010) A Profile of Children in Custody. London. Prison Reform Trust.

³⁸ User Voice (2011) Young peoples views on restraints in the secure estate. London: Office of the Children’s Commissioner

³⁹ End Violence Against Women and YouGov, Sexual Harassment in UK Schools Poll (2010)

intimate relationship aged 13-17 have experienced some form of sexual violence from a partner.⁴⁰

What this means for the work of OCC:

- Boys and girls experience life differently and this is reflected in the numbers of children within youth justice settings, numbers of children excluded from school and in relation to the nature of offences committed by children and young people. We will continue to examine gender disproportionalities through our visits to the secure estate and through our work on school exclusions.
- Through our public inquiry into Child Sexual Exploitation in Gangs and Groups (CSEGG) we will explore issues of gender in relation to experiences of exploitation and use this to inform how agencies deliver effective services for victims. The CSEGG Inquiry interim report will be published in 2012 with the final report due in 2013.

Gender identity and transgender

Very little data is currently collected that relates to how gender identity and transgender issues impact on children and young people's equality of opportunities and outcomes. Some of what we do know around gender identity and transgender is researched alongside issues of sexual orientation. We also know more about these issues from studies within the adult population. Given how little we know about children's issues, we will use what is available to inform our work.

Adult Lesbian, Gay, Bisexual and Transgender (LGB and T) people complain of childhoods "tainted by patterns of worthlessness and shame and a chronic need to apologize for oneself".⁴¹

Bullying of LGB and T people is high and this puts their mental health and educational attainment at risk. The Skills Funding Agency recently reported that among LGB people 14% experienced bullying or harassment; among trans people 30% experienced bullying or harassment, and only 47% of LGB and T people felt able to go to tutors with any problems.⁴²

In the school setting 25% of transgender adults reported damaging memories of having been bullied by their teachers, in addition to the harassment they experienced from other pupils.⁴³ The associated internalised transphobia and homophobia⁴⁴ that resulted causes depression, low self-esteem, self-harm and suicidality which can carry over into adulthood and through these individuals' problems become a burden on the public purse, through pressures on services in the NHS. Adolescents are a particularly high risk group, and the figures for

⁴⁰ Barter et al, Partner exploitation and violence in teenage intimate relationships, NSPCC (2009)

⁴¹ Schaeffer, L and Wheeler, C. (2004) Guilt in cross-gender identity conditions: presentation and treatment. Journal of Gay and Lesbian Psychotherapy. 8(1/2):117--127

⁴² Skills Funding Agency (2011) Research into LGB & T experiences in Further Education http://readingroom.skillsfundingagency.bis.gov.uk/sfa/Sexual_Orientation_and_Gender_Identity_Equality_in_Adult_Learning_Published_August_2011.pdf

⁴³ Whittle, S, Turner, L, Al-Alami, M (2007) Engendered penalties: transgender and transsexual people's experiences of inequality and discrimination. Available at www.pfc.org.uk/files/EngenderedPenalties.pdf

⁴⁴ Reed, T (2011) Trans in the 21st Century, Supporting the families of those experiencing gender variance., Ed. Alice Purnell and Jed Bland, Beaumont Trust, London. 160- 173.

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suicide attempts generally in these groups, at all ages, continue to be well above the rest of the population.

In another study 22% of trans women and 20% of trans men reported a history of mental health hospitalization; 32% (both groups) reported prior suicide attempts.⁴⁵

What this means for the work of OCC:

- OCC will continue to support the work of the Anti-Bullying Alliance (ABA) via the Director of Policy who is the current chair. Within this capacity we support the development of a consensus around how to stop and prevent bullying on transgender, influence policy and we work to develop and disseminate best practice in reducing the bullying. We will support the work of ABA who are seeking to include transgender issues in the Government's Guidance on bullying; the Government's definition of bullying, and links to transgender support organisations on the Department of Education's website.

Marriage and civil partnership

Very little is currently known about children and young people's experience of discrimination based on the marriage or civil partnership status of the child or their parents.

What this means for the work of the OCC:

- There is very little known about the views and experience of children in relation to marriage and civil partnership. We will consider whether this is an issue to be included in our business plan for 2013/14 as we undertake our work and gather evidence through 2012/13.

Pregnancy, maternity and breast feeding

The evidence outlined in Taking Responsibility for Young Lives⁴⁶ shows that children born to teenage mothers are more likely to experience a range of negative outcomes in later life and are more likely, in time, to become teenage parents themselves – perpetuating the disadvantage that young parenthood brings from one generation to the next.

Each year, around 40,000 young women under 18 become pregnant in England (around four in every 100 young women). The majority of under-18 conceptions are unintended and around half lead to an abortion. Where young women choose to go ahead with the pregnancy, although it is difficult to quantify the exact extent to which teenage pregnancy exacerbates existing problems, they are at greater risk of experiencing a range of poor outcomes. For example:

- Teenage mothers are less likely to finish their education, and more likely to bring up their child alone and in poverty;
- The infant mortality rate for babies born to teenage mothers is 60% higher than for babies born to older mothers;

⁴⁵ Clements-Nolle, Katz, & Marx, "Attempted suicide among transgender persons: The influence of gender-based discrimination and victimization," *Journal of Homosexuality* 2006; 51(3):53-69

⁴⁶ Straight Talking (2010) Taking Responsibility for Young Lives: A policy Report on Teenage Pregnancy and Young Parenthood. London

- Teenage mothers have three times the rate of post-natal depression of older mothers and a higher risk of poor mental health for three years after the birth;
- Children of teenage mothers are generally at increased risk of poverty, low educational attainment, poor housing and poor health, and have lower rates of economic activity in adult life.

The UK Government published its 10 year Teenage Pregnancy Strategy in 1999. Its primary targets were to halve the under-18 conception rate and increase the proportion of teenage parents in education, employment or training (EET) to 60% by 2010. In 2007, the UK Office for National Statistics (ONS) reported that the under-18 conception rate in England had fallen by less than 11% to 4.17% between 1998 and 2007. In addition, only 31.5% of teenage mothers were engaged in EET between 2005 and 2007. This represents only a 10% increase on the 1998 baseline figure.

What this means for the work of OCC:

- We will work with the NHS and Department of Health to ensure that the views, concerns, experiences and needs of those under 18 who become pregnant are considered in the development of the children and young people's health outcomes forum. We will do this directly through the Children's Commissioner's participation in the group tasked with developing the framework.
- We will seek the implementation of any relevant recommendations from our research on complaints systems for young people's in sexual health care services in order to ensure that equality is fostered and advanced with regard to this protected characteristic.

Religion or belief

Very little is known about the impact of religion and belief. In relation to education and health for example, very little data correlates experiences with religious affiliations.

What this means for the work of the OCC:

- As part of the Office for National Statistics' steering group and working group on a children and young people's well-being measure we will seek ways of measuring this issue. We will also meet with the EHRC to agree any further (and possibly joint) work on this matter.
- We will capture data via the CESGG Inquiry on the impact of religion and belief in relation to experiences of exploitation and use this to inform how agencies deliver effective services for victims. The CSEGG Inquiry interim report will be published in 2012 with the final report due in 2013.

Sexual identity and orientation

No surveys have yet collected data from a large enough sample to provide precise information on the LGB population and related outcomes. Between 2006 and 2009, the ONS' Sexual Identity Project developed a question on sexual identity for use on social surveys and for equality monitoring. However, despite extensive lobbying the ONS refused to include a question on sexual orientation in the 2011 Census.

Stonewall does collate a lot of information around the views and experiences of Lesbian, Gay and Bisexual children's and young people's experience. For example, in 2007, Stonewall conducted research with 1,145 young LGB pupils across Britain about their

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current experiences in school, the largest survey of young LGB people ever conducted in Great Britain. This research⁴⁷ revealed the alarming extent and nature of homophobic bullying currently faced by young Gay people in school. Almost two thirds of young LGB people have experienced direct homophobic bullying. Children also reported that teachers think the word 'gay' is a bit like swear word and they don't respond to anti-gay language in the same way they respond to racist language.

Stonewall has also looked at the issues relating to Lesbian and Gay people seeking asylum. This work has documented the specific disadvantages faced by Lesbian and Gay people seeking asylum as a direct consequence of their sexual orientation. However, this research relates to adult asylum seekers.

What this means for the work of the OCC:

- We will explicitly capture data on LGB and T children who are sexually exploited and work with agencies which specialise in sexual identity and orientation to better understand and reflect these issues.
- The Office will continue to support the work of the Anti-Bullying Alliance via the Director of Policy who is the current chair. Within this capacity we support the development highlighting the prevalence and impact of homophobic bullying in schools, and seek further guidelines and support from the voluntary sector in order to support schools' activity to tackle this issue.

Additional information on equality issues not covered by provisions of the Equality Act 2010

The UN Convention on the Rights of the Child prohibits discrimination against children in relation to the Convention rights on the grounds of any status of the child or his or her family (Article 2 UNCRC). This obligation is not limited to the protected characteristics under the Equality Act 2010. It is one of the core principles of the Convention. In our work OCC therefore aims to eliminate discrimination against children in the enjoyment of their rights on the grounds of any status.

Socio-economic disadvantage

We have found young people associate stigma with being poor and are reluctant to tell others about their circumstances. They are embarrassed to ask for help and can be unwilling to accept support when it is offered. Young people felt pressure to own certain material items such as branded clothing, mobile phones and personal computers (PCs). Young people believe that there is an expectation from their teachers and schools that they will have access to a PC and the internet at home. They also think that limited access to technology, particularly mobile phones and the internet, also means that young people can feel socially isolated.⁴⁸

Only 35% of pupils eligible for free school meals reach the expected level of development at age five, compared with 55% of those who are not eligible.⁴⁹

⁴⁷ Stonewall (2007) The School Report: The experiences of young gay people in Britain's schools: London. Stonewall

⁴⁸ Office of the Children's Commissioner (2011) Trying to get by: Consulting with children and young people. London: OCC

⁴⁹ Department for Children, Schools and Families (DCSF) 2010a. Early Years Foundation Stage Profile Achievement by Pupil Characteristics, England 2008/09. Statistical First Release 03/10

Boys eligible for free school meals have lower attainment than girls who are also eligible, and this is the case whatever their ethnicity. Also, only 25% of White British boys eligible for free school meals attain a good level of development at age five, compared with 42% who are not eligible.

On the basis of the income deprivation affecting children indices (IDACI), only 39% of pupils aged five in the most deprived ten per cent of areas achieve a good level of development, compared with 67% in the least deprived ten per cent of areas.

It is also reported that we have one of the most stratified and segregated school systems in the world, with a gap between our private schools and the state system wider than in almost any other developed country. In 2006, England came near the bottom of a list of 57 countries for educational equality in an OECD report, and the gap is still vast. The most recent year for which we have data, of the 80,000 students in one year eligible for free school meals, just 40 went on to Oxford or Cambridge universities – fewer than some private schools manage to send by themselves.⁵⁰

Comparing across parental social backgrounds, 44% of children from professional family backgrounds attend a Russell Group University, compared with 23% of those from an unskilled family background.

Men and women in the highest socio-economic group can expect to live up to seven years longer than those in the lower socio-economic groups.⁵¹

What this means for the work of the OCC:

- In 2012 we will explore disabled children's views and experiences of living in poverty and how this impacts on their enjoyment of rights as outlined in the UNCRC. This information will be used to inform how policy and services can eliminate discrimination, advance equality of opportunity and help foster good relations. Where we believe low income leads to children and young people not being able to realise and enjoy their rights we will bring this to the attention of the Government and CRC with an aim of such violations being eliminated.

Looked after children and care leavers

There were 64,400 children looked after by local authorities in England as at 31 March 2010. As referenced in the Government's consultation on preventing suicide,⁵² children who have been in care are between four and five times more likely to attempt suicide in adulthood, have a fivefold increased risk of all childhood mental, emotional and behavioural problems and a six to sevenfold increased risk of conduct disorders. Around 60% of Looked After Young People have some level of mental health problem (NICE).

In 2009 just 15% of children who had been in care for at least a year left school with five GCSEs at grades A*-C, or the equivalent alternative qualification, compared with 70% of all

http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000911/SFR03_2010v2.pdf Accessed 4/08/2010

⁵⁰ <http://media.education.gov.uk/assets/files/pdf/e/education%20bill%20%20%20equalities%20impact%20assessment%20equia.pdf>

⁵¹ EHRC (2010) How fair is Britain? The first Triennial Review. London EHRC

⁵² http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_128065

children. Nearly one in three Looked After Children (32%) got no GCSEs or equivalent last year, compared with one in a hundred (1%) of all children, and these children are more than three times more likely to end up unemployed when they leave school: last year 14% of children in care who left school had no job to go to, compared with just 4% of all children.⁵³

What this means for the work of OCC:

- We will explicitly capture data on the looked after status of children who are sexually exploited as part of the CSEGG Inquiry, and children who go missing from care. The CSEGG Inquiry interim report will be published in 2012 with the final report due in 2013.
- We will complete our co-ordinated work with the Office of the Children's Rights Director to study the complaints systems available to children and young people, and support their work on looked after children's ability to make a complaint regarding the social care they have received. We will do this with the aim of advancing better practice at local authority level.
- We will continue to support work on advocacy for young people, especially those who are looked after, in order to promote and foster a better understanding of their needs.

Asylum seeking children

Asylum seeking children and young people face inequality in experience in many aspects of their lives. Our report *Landing in Dover*⁵⁴ documents the experiences of a very small group of children and young people arriving as unaccompanied illegal entrants to the port. They recount their experiences of the journeys they made to get here, many of them harrowing. They have then been held, questioned, medically assessed and their cases reviewed in terms of a need for social welfare and safeguarding services. Their experiences vary from being treated with the greatest care, to being questioned whilst still tired, hungry, thirsty and frightened, and sometimes sick. The worst cases we found were those who, without benefit of a translator, a health or welfare assessment, were between 1995 and 2011 returned to their port of embarkation in France or Belgium under what was termed the Gentleman's Agreement between the governments concerned.

Children and young people who are refugees or seeking asylum are frequently at a disadvantage educationally, since it can take weeks or even months after their arrival to find a school place.

Research also shows that levels of support available to asylum seekers and their families are extremely low and this is forcing around 10,000 children to live far below the poverty level. Many families cannot even afford the basics, including clothing and powdered milk or nappies for their babies.⁵⁵

⁵³ <http://www.thewhocarestrust.org.uk/pages/educational-outcomes-for-children-in-care.html>

⁵⁴ Office of the Children's Commissioner (2011) *Landing in Dover. The Immigration Process Undergone by Unaccompanied Children Arriving in Kent*. London. OCC

⁵⁵ The Children's Society (2012) *A briefing from The Children's Society Highlighting the gap between asylum support and mainstream benefits*

What this means for the work of OCC:

- Children entering the country as either an accompanied or unaccompanied child seeking asylum encounter inequality in their experience and access to services. The challenge for OCC is understanding and ensuring governments and services meet the needs of these children, and so we will establish a group of young people who have direct experience of the immigration system to advise and inform our work.

Children sentenced to custody

A large proportion of children who offend have been taken into care at some point in their lives. Research by Arnall et al (2007) found 24% had been accommodated by the local authority via voluntary agreements with parents, 10% had been subject to a care order and 20% had been on the child protection register. A survey of children in the secure estate (15-18 years) conducted by HM Inspectorate of Prisons (HMIP), consistently show the high proportions who have care histories. In the most recent survey of 1,046 boys and 54 girls, 24% of boys and 49% of girls said they had been in care (Tye, 2009). A study by the Youth Justice Board for England and Wales (YJB) in 2007 showed that 40% had been homeless in the six months before entering custody.

Eighty eight percent of young men and 89% of young women in youth offending institutions (YOIs) had been excluded from school at some point and more than a third were younger than 14 when they last attended mainstream school.⁵⁶ Literacy and numeracy levels of children admitted to custody are also low: 38% of boys had numeracy levels of a seven year old and 31% had literacy levels at the same stage.⁵⁷ Some evidence indicates that young people who are out of education, training or employment for more than six months are more likely to have a criminal record by the age of 21.⁵⁸

It is widely recognised that abuse and neglect in the general population is under recorded, making it difficult to make accurate comparisons with the youth justice system. However, evidence suggests that children and young people in the youth justice system are more likely to have experienced abuse and neglect. A report by the NSPCC (2000) indicated that at least 16% of the population had experienced some form of abuse or neglect, whereas studies on the prevalence of previous abuse and neglect among children and young people in custody estimate that anywhere between 33% and 92% have experienced some sort of maltreatment.⁵⁹ In 2008, a YJB report into accommodation needs said that two out of five boys and one out of five girls in custody had experienced violence in the home; the same report showed one in twenty boys and one in three girls reporting sexual abuse.⁶⁰ A study by Oxford University based on Asset returns showed high rates of previous abuse for children

⁵⁶ HM Inspectorate of Prisons/YJB. (2009). Children and young people in custody 2008-2009. London: HMPI

⁵⁷ HM Inspectorate of Prisons. (2002). A second chance: a review of education and supporting arrangements within units for juveniles managed by HM Prison Service. A thematic review carried out jointly with the Office for Standards in Education. London: HMIP

⁵⁸ Employ ability Framework for Scotland: Report of the NEET Work stream - June 2005; <http://www.scotland.gov.uk/Publications/2005/08/30111605/16069> [accessed 9 June 2011]

⁵⁹ Cadman, S; Day, C and Hibbert, P. (2008). A literature review into children abused and/or neglected prior to custody. London: Youth Justice Board

⁶⁰ Youth Justice Board, Accommodation needs and experiences, 2007, as cited in Legal Action, February 2008

and young people on YOT caseloads, with a significantly higher rate for those in custody – 50% higher than others on the YOT caseload.⁶¹

It is estimated that 25% to 30% of children and young people in the youth justice system are learning disabled and that around 50% of those in custody have a learning difficulty.⁶² Around 6% of children and young people aged five to 16 experience some form of conduct disorder⁶³ and 50% of these will develop anti social personalities where such disorders manifest themselves before the age of 10.⁶⁴

Research shows that children and young people in the youth justice system have higher than normal levels of depression (18%), anxiety disorders (10%) and psychotic-like symptoms (5%). Additionally, one in 10 boys and one in five girls in young offender institutions (YOIs) have attention deficit hyperactivity disorder. (ADHD).⁶⁵ Research commissioned by the YJB found that 19% of 13-18 year olds in custody had depression, 11% anxiety and 11% post traumatic stress disorder. A further study found that 85% of young people aged 16 to 20 in custody showed signs of a personality disorder 30 as compared with 10 to 13% of the general population.

Research shows that young people in prison are 18 times more likely to take their own lives than others of the same age. In 2008, there were 686 recorded incidents of self harm by girls in custody and 743 by boys, although it is likely that this is an underrepresentation. Girls in custody are twice as likely to injure themselves as adult women: in 2007, 89% of girls in custody had self harmed. In a review of the ASSET assessments⁶⁶ of 214 children aged 12, 13 and 14, Barnardo's found that 8% had attempted suicide at some stage in their short lives.

What this means for the work of the OCC:

- We will be speaking to children in the secure estate as part of the CSEGG Inquiry, and working with youth justice agencies to identify sexually exploited children within the system. The CSEGG Inquiry interim report will be published in 2012 with the final report due in 2013.
- Children entering custody are some of England's most vulnerable children and young people. That is why we will continue to visit and speak to children and young people in the secure estate. We will do so using our

⁶¹ Baker, K, et al (2004). The evaluation of the validity and reliability of the Youth Justice Board's assessment for young offenders. London: Youth Justice Board

⁶² Department of Health. (2009). Healthy children, safer communities. London: Department of Health

⁶³ Sainsbury Centre for Mental Health. (2009). Chance of a lifetime: preventing early conduct disorders and reducing crime. London: Sainsbury Centre for Mental Health

⁶⁴ Green, H. M. (2005). Mental health needs and effectiveness of provision for young offenders in custody and the community. London: Youth Justice Board

⁶⁵ Fazell, D. A. (2008). Mental disorders among adolescents in juvenile detention and correctional facilities: a systematic review and metaregression analysis of 25 surveys. Journal of American Academy

⁶⁶ ASSET is the primary assessment tool used by Youth Offending Teams in relation to children under 18 in the youth justice system

⁶⁷ The UK's National Preventive Mechanism (NPM) was established in March 2009 under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). A United Nations (UN) treaty, OPCAT was ratified by the UK in 2003. OPCAT requires the UK to have in place a 'national preventive mechanism' to visit all places of detention and monitor the treatment of and conditions for detainees. The NPM consists of 18 existing bodies throughout the UK, which are independent and have the right regularly to inspect all places of detention. It is coordinated by HM Inspectorate of Prisons and reports to the UN treaty body

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powers of entry outlined in the Children Act 2004 and as part of our responsibility to the National Preventative Mechanism.⁶⁷ This will enable OCC to make recommendations that are sensitive to the inequalities faced by children and young people and ensure that prevention aims to reduce inequalities in outcomes.

Conclusion

This paper has outlined the evidence that the Office of the Children's Commissioner has collected and considered in the development of its Business Plan for 2012/13, its Strategic Plan for 2012-14 and Equality objectives stated above. OCC is a small organisation with a limited budget. We cannot therefore address all the issues of discrimination faced by children and young people in England. Neither can we undertake large scale work to promote equality and rights. Both are the responsibility of the Government and other agencies that have a statutory responsibility in this respect.

We are able to have a great deal of impact, disproportionate to our size and budget, through working in partnership with others and influencing key decision makers and those delivering services. This strategy is outlined in our Strategic Plan, and we will use the powers and means available to us to undertake the broad range of work outlined in the boxed sections throughout this document and the objectives set out at the start. In doing so we hope to make a real difference to the lives of children and young people by playing a role in eliminating discrimination, advancing equality of opportunity and fostering good relations between different groups.

Lisa Davis
Office of the Children's Commissioner
April 2012

Appendix A

The concept of due regard

Case law has established that having due regard to the three aims of the general duty involves compliance with the following six principles (sometimes known as ‘the Brown principles’, after the specific case which generated them):

- A decision-maker who has to take decisions which do or might affect an equality group (for example, disabled people, or persons of a particular ethnic background or gender) must be made aware of their duty to have due regard to the three aims of the Act.
- Due regard must be fulfilled before and at the time that a particular decision is being considered. Attempts to justify a decision as being consistent with the exercise of the duty when it was not, in fact, considered before the decision, are not sufficient to discharge the duty.
- The duty must be exercised in substance, with rigour and with an open mind and with conscious and deliberate attention to relevant evidence, including evidence derived from consultation with staff and service-users.
- The duty cannot be delegated.
- The duty is a continuing one – namely, it cannot be exercised once and for all, but on the contrary must continually be revisited and borne in mind.
- It is good practice to keep an adequate record showing that the equality duties have been actually considered and pondered. This disciplines decision-makers to undertake their equality duties conscientiously.

Further information is available via Equality and Human Rights Commission's website: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

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