



promoting equality in housing
hybu cydraddoldeb ym maes tai

Tai Pawb

Response to:

A More Equal Wales – commencing the socio economic duty

Welsh Government

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Who we are

Tai Pawb (housing for all) is a registered charity and a company limited by guarantee. The organisation's purpose is, "To Inspire Wales to be a Fairer Place to Live" with a mission to promote equality and social justice in housing in Wales. It operates a membership system which is open to local authorities, registered social landlords, third (voluntary) sector organisations, other housing interests and individuals.

What we do

Tai Pawb works closely with the Welsh Government and other key partners on national housing strategies and key working groups, to ensure that equality is an inherent consideration in national strategic development and implementation. The organisation also provides practical advice and assistance to its members on a range of equality and diversity issues in housing and related services, including QED – the equality and diversity accreditation for the housing sector.

For further information visit: www.taipawb.org

Charity registration no. 1110078

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Introduction

Tai Pawb supports the Welsh Government's intention to introduce a socio-economic duty in line with its commitment to a more equal Wales and its ongoing programme of safeguarding and enhancing equality and human rights in Wales. We welcome Welsh Government's commitment to fully realising the Equality Act 2010, of which the socio-economic duty is an integral part.

Tai Pawb agrees that there is an *"indisputable link between inequality and socio-economic inequality"*. In its 2018 report - ['Is Wales Fairer?'](#) - the Equality and Human Rights Commission (EHRC) found that, while certain socio-economic factors had improved, inequality in Wales is worsening, with poverty *"leading to an even starker gap in the experiences and opportunities of people born into different backgrounds"*. Moreover, the report highlighted that the socio-economic gap was particularly stubborn for women, disabled people and ethnic minority groups. Figures for 2014-2017 suggest some 24 per cent of people in Wales are living in relative income poverty, higher than England (22) and Scotland and Northern Ireland (both 19).

More broadly across the equality spectrum, the report suggests gender stereotypes are continuing to limit life chances and progress for women; the number of recorded race hate crimes had increased by 57% between 2013 and 2017; and that certain communities were struggling to narrow the education attainment gap.

We also know that disabled people and those from a BAME background are more likely to be in lower paid work or unemployed; in receipt of benefits and therefore in relative or severe poverty; and in less favourable housing conditions. In addition, refugees and asylum seekers are more vulnerable to extreme poverty, more especially if they have been unsuccessful in their applications.

The report - alongside other extensive research and regularly updated statistical evidence - highlights a need to address more fundamentally the concept of socio-economic disadvantage in Wales. Though many programmes

exist through Welsh Government, local authority or other such funding streams to address it, a duty in legislation – by which public bodies are bound – will amplify a local, regional, national and body-specific response to better improve life chances.

Tai Pawb believes that in better understanding the root causes of socio-economic disadvantage and the gaps that exist – we are better equipped to address them. A socio-economic duty, together with its reporting mechanisms, will be a powerful tool to assist this.

Moreover, Tai Pawb recognises that the introduction of a socio-economic duty not only complements but works in conjunction with and strengthens the existing premise of the Wellbeing of Future Generations Act (WBFGA) (Wales) 2015. WBFGA requires public bodies to consider the long term impact of decisions and seek to prevent persistent problems such as poverty, ultimately enabling people to fulfil their potential, irrespective of their background (including their socio economic background or circumstances).

1. DEFINITION OF KEY TERMS

Decisions of a strategic nature

Tai Pawb agrees with Welsh Government's definition of decisions of a strategic nature:

"Decisions which set the organisations' overall priorities, strategies and key policies, targets, broad approaches and expenditure concerning the delivery of its business".

We broadly agree that there should be a focus on high-level decision making as the area which has the potential for the greatest positive impact. Recognising that the definition doesn't specifically take account of operational, or even day-to-day decision making within public bodies, policy decisions made by public bodies will, in the main, need to take account of wider plans and strategies. Therefore, for example, should a local authority proceed with a policy decision considered to be operational, it would very likely be in conjunction with a wider strategy through which the socio-economic duty will apply.

Granted, through a period of implementation and via guidance, it will likely become clearer which areas of business it should best apply to within public bodies in order to have the greatest impact; this evidence should be collated by Welsh Government with a view to redefining future guidance for public bodies.

Socio economic disadvantage

Tai Pawb broadly agrees with Welsh Government's proposed formal definition of socio-economic disadvantage:

"...living on a low income compared to others in Wales with little or no accumulated wealth, leading to greater material deprivation, restricting the ability to access basic goods and services. Socio-economic disadvantage can be

experienced in both places and communities of interest, leading to further negative outcomes such as social exclusion.”

Tai Pawb recognises that the definition of the duty cannot be too wide so as to dilute its focus and impede its impact. We also recognise that defining deprivation is inherently difficult and, therefore, a definition that is too prescriptive could be counterproductive. We believe that there is scope for each public body, dependent on what services they deliver, to use Welsh Government’s broad definition and adapt it to work positively towards addressing socio-economic disadvantage. To this end, we believe that the interim two-year period should be used by Welsh Government to capture instances of good practice with a view to their inclusion in future definitive guidance post-2022.

We believe there is, however, scope in which a reference to *“limiting life chances”* could be added. As per its Scottish counterpart, we suggest that the duty is referred to – perhaps informally – as the Fairer Wales Duty in order that the understanding of it is more widely accepted.

In conversation with our members, we recognise that language is too often a barrier when communicating and engaging, in particular with members of the public and not least on issues of legislation. To that end, we suggest that when guidance is developed for public bodies, a more user-friendly and positive approach to language is adopted to aid said public bodies when they are engaging on the duty.

Inequalities of outcome

Tai Pawb broadly agrees with the proposed approach to help define inequalities of outcome:

“Help public bodies in determining which socio-economic inequalities are important to Wales by linking this to existing measures of inequality. This can be through public bodies giving regard to the National Well-being Indicators laid by Welsh Ministers under the Well-being of Future Generations (Wales) Act

2015 which are relevant to inequalities. Secondly the Well-being of Wales report provides an update on well-being in Wales and insight into the progress we are making against the seven well-being goals analysing the 46 national indicators alongside a range of other statistical information.”

We believe that it is broadly prudent to link inequalities of outcome with the 46 national wellbeing indicators as an existing, tried-and-tested method of measurement. It should be noted, however, that some public bodies to which the duty will apply will not necessarily be working towards each of the indicators in the nature of the services they deliver; in cases, there may be additional or alternative indicators for which they should be able to monitor against inequalities of outcome. Again, a ‘blanket’ approach would likely impede the desired positive impact and therefore the interim guidance should reference the 46 wellbeing indicators as a template, as well as encouraging additional/alternative methods in line with their service provision and delivery.

Due regard

Throughout our engagement with our members and stakeholders (including the seminar referenced below), views were expressed as to the negative implications of the wording of the duty under Section 1 of the Equality Act 2010.¹ The consultation document states that Section 1 of the Equality Act 2010 *“requires key public bodies, when taking strategic decisions, **to have due regard to the need to reduce the inequalities of outcome that result from socio-economic disadvantage.**”*

We note that the actual wording in Section 1 does not require authorities to have due regard to the need to reduce (...), instead, it requires local authorities to **have due regard to the desirability of** exercising them in a way that is designed to reduce.

¹ An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

We agree with our members that this wording is significantly weaker than in the general Equality Duty and may not carry as much legal weight; as a result, any application of enforcement could be problematic. This is despite the consultation stating that the public sector has a good understanding of what due regard means. It is difficult to picture what a due regard to the desirability means or looks like in practice.

2. PUBLIC BODIES COVERED BY THE DUTY

Tai Pawb agrees that the socio-economic duty should apply to those public bodies referred to under Section 2(6).

However we would like to strongly suggest that the duty should also apply to other organisations performing public functions, in similar vein to the general equality duty in the Equality Act 2010. The general Equality Duty applies to listed public authorities as well as organisations which exercise public functions. This includes registered social landlords in Wales, i.e. housing associations.²

The Equality Act 2010 defines a public function as a function of a public nature for the purposes of the Human Rights Act 1998.³

In 2009, the Supreme Court ruled that housing associations perform functions of public nature for the purposes of Human Rights Act 1998 and therefore the Equality Act 2010.

The Supreme Court justified its decision in the following way:

- there is a “substantial public subsidy
- there is a statutory duty to cooperate with local authorities and RSL lettings help the authority to achieve its objectives

² R (on the application of Weaver) v London & Quadrant Housing Trust and Equality and Human Rights Commissioner (Intervenor) [2009] EWCA Civ 587; Poplar HARCA v Donoghue [2001] EWCA Civ 595.

³ [16] s.150(5) Equality Act 2010.

- the provision of subsidised housing is a function that can be described as governmental, and RSLs “makes a valuable contribution to the government’s objectives of providing subsidised housing”
- the regulation applying to associations is not simply about ensuring better performance, but “regulations over such matters as rent and eviction are designed, at least in part, to ensure that the objectives of government policy are achieved”

The majority of social housing in Wales is provided by RSLs. We know that social housing tenants are more likely to be in lower paid work and/or in receipt of benefits or unemployed. The communities in which they live are also more likely to be disadvantaged in relation to Welsh Government LSOA data.

Indeed, RSLs are viewed widely as anchor institutions both within their respective communities and on a national level and play a significant role in addressing social and economic disadvantage. Therefore it is our belief that without the duty’s impact will be severely limited if it only applies to listed local authorities and not all bodies performing public functions which can/are directly/indirectly reducing the impact of socio-economic disadvantage.

Notwithstanding the above issues, we believe that there is a need for clarification of the extent to which the duty will apply to organisations and services which are commissioned or procured. From our experience, the opportunity to use current equality duties to advance equality through procurement are severely underused (considering the Welsh public sector’s substantial procurement spending). This is sometimes explained by a lack of understanding of how equality duties apply through procurement and who is responsible for certain parts of compliance.

In our opinion, clarifying this from the beginning (whether through legislation or statutory guidance) offers an opportunity to make sure that Welsh Government and the wider public sector use all possible levers to reduce socio-economic inequality.

3. MEETING THE REQUIREMENTS OF THE DUTY

Tai Pawb agrees with Welsh Government’s proposal to issue interim guidance on 1 April 2020 to the public bodies to which the duty applies. We also agree that the timeframe of two years is sufficient for public bodies to consider the implications of the duty and to embed it into working practices.

The re-issued and final guidance in April 2022 should take account of the experiences (and any issues) of those public bodies with a view to re-purposing the guidance and taking account of emerging best practice across the board.

It will be important to provide clear measures and mechanisms for embedding the duty after the two-year initial period. To that end, we believe it unhelpful to suggest in any guidance that it will be “difficult to collect data”. It is crucial in our view that data is collected and monitored in order that the duty is properly exercised among the applicable public bodies and that compliance can be assessed. Granted, we accept that the data may focus on singular or plural elements of the duty – for example, income or educational attainment – and not necessarily the entire scope of the duty. We argue that a significant portion of such data is already collected and therefore the duty should reinforce its use.

Tai Pawb supports the idea of free online training or resources that will help public bodies implement the duty to best effect. As a Wales-wide membership body focused on equality in housing, we welcome the opportunity of liaising with Welsh Government as a conduit to disseminate information or acting as a point of contact to support the concept of the duty as best practice.

4. LINKS BETWEEN THIS AND OTHER DUTIES

Examples of good practice

In recognising the significance of the duty and its alignment with our core aims, we arranged a [full-day seminar](#) on 14 November 2019 which enabled a wide

variety of stakeholders – local authorities, registered social landlords and third sector organisations – to understand both the premise and the implications of the duty in their work. This included an initial presentation from Welsh Government followed by an overview of best practice from Scotland and further augmented by discussions on the foundational economy and existing best practice (see Section 4 of this response).

We were also pleased to have the opportunity of attending an EHRC-organised workshop (Swansea) to feed into initial conversations with Welsh Government on the specifics of the duty and to exchange ideas with other organisations on addressing socio economic inequality.

In conversation with our members – and with specific reference to the housing sector - we are able to highlight the following areas of good practice where an integrated approach is taken issues such as poverty, equality and human rights:

- Swansea Council: introduction of ‘socio economic’ status as a characteristic on equality impact assessment (EIA) forms
- Many housing associations have outreach teams which deliver financial inclusion services to tenants (money advice), helping with issues such as budgeting and rent arrears
- We’re aware that some RSLs have introduced new ‘void standards’ which provide additional features
- Grub Hub – Rhondda Housing Association’s flagship project that provides food parcels and other essentials to residents

ADDITIONAL COMMENTS

Tai Pawb roundly welcomes the implementation of a socio-economic duty for Wales, both in its premise and in its desired impact. As mentioned above and in the introduction of other duties, the socio-economic duty and its associated guidance should be positively viewed and, therefore, communicated externally, as best practice in helping to alleviate the negative effects of social and economic disadvantage on a journey of continual improvement.

Moreover, though the consultation and other associated documentation briefly references the links with other existing legislation and policies, it would be beneficial to amplify this aspect in order to ensure that it is viewed as complementary (a) to existing work that is ongoing within the applicable public bodies (b) to strategies that already exist that will likely be addressing social and economic disadvantage but perhaps not so specifically as this duty would require. Any move to shine the spotlight on poverty and inequality and improve decision-making processes is to be welcomed, more so if it works systematically.

Tai Pawb also recommends that Welsh Government continues to monitor the implementation of the similar such duty in Scotland ('A Fairer Scotland') in order that any lessons learnt or ongoing, positive developments are shared with those Welsh public bodies to which the duty applies.

We recognise that the Equality and Human Rights Commission (EHRC) can and should have a significant role to play in all parts of delivering the socio-economic duty. We suggest that Welsh Government continues to work closely with EHRC, in particular to strengthen elements of monitoring and regulation, as well as enforcement. We believe that an opportunity exists pre-formal commencement in 2022 to outline this clearly.