

A DUTY TO INNOVATE:

A Values-led Approach to Implementing the Public Sector Equality and Human Rights Duty

Values Lab 2019



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About Values Lab

We support and mentor organisations and networks to enhance their effectiveness by identifying, engaging, and giving expression to their core values. Values Lab serves as a hub to explore and expand knowledge, understanding and innovation in relation to values and their role in institutional development and social change.

We are particularly concerned to engage and embed values that motivate the promotion of equality, the prevention of discrimination, and respect for, and the protection and fulfilment of human rights.

We pioneer the development and application of tools and resources for: values-led communication strategies; values-led planning and evaluation; values auditing for organisations; and values-led employment and service provision, procedures and practices.

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Introduction

This publication aims to support public sector organisations to implement, and secure benefit from the statutory public sector equality and human rights duty using a values-led approach. It provides background information on the public sector duty and its potential. It sets out the gains from applying a values-led approach to the public sector duty, identifies the steps to be taken in such an approach, and presents the tools to support public bodies to implement a values-led approach.

The development of the publication draws on a body of work undertaken by Values Lab, with public sector bodies, to support their work to implement the public sector equality and human rights duty. To date we have supported the following public sector organisations and inter-agency initiatives to implement the public sector duty through a values lens: Galway City Local Community Development Committee; Wexford Children and Young People’s Services Committee; Longford County Local Community Development Committee; Waterford and Wexford Education and Training Board; Longford and Westmeath Education and Training Board; and Longford County Council.

This publication is aligned with the guidance developed by the Irish Human Rights and Equality Commission.[1]

About the Public Sector Equality and Human Rights Duty

The public sector equality and human rights duty (hereafter referred to as “the duty”), set out in Section 42 of the Irish Human Rights and Equality Commission Act 2014, requires public bodies to have regard to the need to eliminate discrimination, promote equality, and protect human rights in carrying out their functions.

Public bodies are defined in the Act to include: government departments,[2] local authorities, and state agencies. The Health Service Executive, education and training boards, and universities and institutes of technology are specifically mentioned. Also included are entities established: under an enactment (other than the Companies Acts) or charter; by any scheme administered by a government minister; or under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly by a government minister or the issue of shares held by or on behalf of a government minister.

1. Public Sector Equality and Human Rights Duty: Eliminating discrimination, promoting equality and protecting human rights, Irish Human Rights and Equality Commission, Dublin, November 2017.

2. The Department of Defence and the Defence forces are exempt from the Duty.

The duty applies to all of the functions of a public body: employment, service provision, policy-making, and procurement of goods and services. It is, therefore, focused on the policies, plans, procedures and practices of the public body and their impact.

42. (1) A public body shall, in the performance of its functions, have regard to the need to:

- a) Eliminate discrimination,
- b) Promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and
- c) Protect the human rights of its members, staff, and the persons to whom it provides services.[3]

The implementation of the duty is set out in broad terms in the 2014 Act. This is a process-based duty, in that it refers to the use of existing planning (specifically strategic planning) and reporting processes, within public bodies, as the means through which to mainstream their concern for non-discrimination, equality, and human rights. This leaves positive room for manoeuvre by public bodies, to find the best way to tailor and incorporate implementation of the public sector duty into their current work processes.

42. (2) For the purposes of giving effect to subsection (1), a public body shall, having regard to the functions and purpose of the body and to its size and the resources available to it:

- a) Set out in a manner that is accessible to the public in its strategic plan (howsoever described) an assessment of the human rights and equality issues it believes to be relevant to the functions and purpose of the body and the policies, plans and actions in place or proposed to be put in place to address those issues, and
- b) Report in a manner that is accessible to the public on developments and achievements in that regard in its annual report (howsoever described).[4]

3. Irish Human Rights and Equality Commission Act 2014, S42(1).

4. Irish Human Rights and Equality Commission Act 2014, S(42)2.

Whatever process of implementation of the duty is pursued, public bodies must ensure that:

- the equality and human rights issues relevant to their mandate and functions are assessed,
- the policies, plans, and actions to address these issues are included in their plan, and
- the progress made on foot of implementing these policies, plans, and actions is reported to the public.

Challenges

The duty poses two key challenges for public sector bodies. The breadth of the duty reflects a complexity in requiring a focus on discrimination, equality, and human rights, and corresponding legislation.[5] This demands some form of integrated approach to the duty, that attempts to marry two related, yet distinct, traditions: that of human rights, and of equality.

There is a further challenge for busy public bodies to establish an approach to implementation of the equality and human rights duty that is:

- simple without being tokenistic,
- planned and systematic, integral to the way business is done in the organisation, and
- adequate to realising the potential of the duty to secure new outcomes for groups experiencing inequality and human rights issues.

Potential of the Public Sector Duty

Typologies of Public Sector Duties

Public sector equality duties are increasingly common across Europe. Recent research indicates that fifteen jurisdictions have some form of statutory public sector equality duty.[6]

5. Employment Equality Acts (1998 to 2015), Equal Status Acts (2000 to 2015), the rights guaranteed in, and conferred by the Irish Constitution and the rights contained in the European Convention on Human Rights Act (2003).

6. Austria, Belgium, Britain, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Hungary, Ireland, Lithuania, Northern Ireland, Portugal, Slovak Republic, and Sweden. Crowley N., Making Europe More Equal: A Legal Duty, Equinet, Brussels, 2016.

Three types of public sector duty are identified:

Preventive duties: requiring measures to prevent discrimination, harassment, and sexual harassment in employment, and the provision of goods and services.

Institutional duties: requiring employers and service providers to put systems in place to promote equality, accommodate diversity, and eliminate discrimination.

Mainstreaming duties: requiring public bodies to have regard to the need to promote equality in carrying out their functions.

These public sector duties are identified in the research as contributing to: institutional and cultural change in regard to the operation of public bodies; and societal change in regard to the equality outcomes achieved for employees, service users, and policy beneficiaries.

The Irish duty is a mainstreaming duty. Such mainstreaming duties are identified in ten EU jurisdictions.[7] Four different types of implementation for mainstreaming duties are identified. Those requiring:

- undertaking an equality impact assessment of draft policies and legislation,
- development of an equality action plan,
- coordination, where public bodies formally engage and coordinate with each other in promoting equality, and
- organisational processes that include a focus on equality and non-discrimination.

The Irish public sector duty is distinctive as the only combined equality and human rights duty and one of only three process-based duties in the EU.[8] Process-based duties are viewed positively in the research as offering a familiar and simple context for implementation.

Benefits of Public Sector Duties

The European Commission has identified a range of benefits stimulated by mainstreaming duties in that this process:

- “enables public policy to more effectively advance equality and eliminate discrimination in society, in organisations, and in public sector programmes;

7. Austria, Belgium, Britain, Estonia, Finland, Hungary, Ireland, Lithuania, Northern Ireland, Portugal. Crowley (2016) op cit

8. Lithuania and Austria are the other two such duties.

- supports better policy development and better policy responses by ensuring that policy meets the needs of people who experience inequality and has a positive impact on them;
- underpins coherence in the policy process by ensuring that all policies make their appropriate contribution to non-discrimination/equality objectives; and
- makes policy-making an open and transparent process which contributes to good governance and builds greater support for policies".[9]

The Irish public sector duty creates a valuable equivalence with the protection of rights in Northern Ireland, as required under the Good Friday/Belfast Agreement.[10] A public sector equality duty has been in place in Northern Ireland for over two decades.[11] This requires public bodies to have due regard to the need to promote equality, across the relevant protected grounds, in carrying out their functions.

Reviews of the effectiveness of the Northern Ireland duty indicate the following positive outcomes for public bodies:

- more informed, evidence-based, and inclusive policy-making,
- structural and cultural changes with "equality thinking" more commonplace and equality considerations brought into business plans and "cascaded down into associated objectives and tasks for all staff",
- enhanced engagement with civil society organisations, and
- greater coherence between public bodies.[12]

Investing in the Public Sector Duty

The public sector duty merits investment of scarce human and financial resources to ensure its full and effective implementation. The duty offers potential to: enhance policy-making, service provision, and employment processes and outcomes; and stimulate an equality and human rights dimension to the organisational culture across the public sector. This in turn is an important contributor to creating a more equal society, through the more effective distribution and delivery of key public goods and services.

10. O'Conneide, C. (2005). *Equivalence in Promoting Equality: The implications of the Multi-Party Agreement for the further development of equality measures for Northern Ireland and Ireland*. Equality Commission for Northern Ireland & the Irish Equality Authority.

11. S75 The Northern Ireland Act 1998.

12. Equality Commission for Northern Ireland (2008). *Section 75 – Keeping it Effective, Reviewing the Effectiveness of Section 75 of the Northern Ireland Act 1998*. Belfast, 2008.

Equality Commission for Northern Ireland (2007). *Section 75 of the Northern Ireland Act 1998, Report of Public Authority Five Year Reviews of Equality Schemes*. Belfast, 2007.

Values

Personal Values

Personal values are deeply held ideals that we deem to be important. Our values are key motivators: shaping our beliefs, attitudes, choices, and behaviours.[13] Although often difficult to define, our personal values are central to our self-concept.

Our personal values are best understood as part of an interactive system of motivation, rather than singular entities operating in isolation from one another.[14] While each of us holds the full range of values in this system, individually, we will rank our value priorities differently, depending on our experiences, environment, culture, education, and family influences.

Organisational Values

Similar to how a person's value priorities are expressed in their thinking and behaviour, the dominant values of an organisation are expressed in the culture of that organisation: what it stands for, its internal practice and processes, the actions it prioritises, and how it communicates with its stakeholders.[15]

Organisational values can be explicit or implicit. If the values of an organisation are operating explicitly, it would be expected to have: a named set of core values; a shared understanding of core values by all internal stakeholders; a prioritisation of core values across all functions and at all levels; and an ongoing process with staff to ensure a systematic approach to leading with core values.

More often, however, organisational values are implicit: assumed to be in place and engaged, and assumed to have shared meaning. Where organisational values are operating implicitly, it is likely that a range of value influences is at play beyond those deemed as core desired values. Where organisational values are operating implicitly, it is often not immediately clear or predictable which values are actually prioritised in shaping the work and approach of the organisation.

The impact of public sector duties that has been identified, on organisational culture, focuses attention on the importance of values. The systemic and systematic implementation of an equality and human rights duty has the potential to re-prioritise and re-balance organisational values, through an enhanced priority focus on equality and human rights values. This is a key foundation for enabling the organisation to

13. Maio G., (2017). *The Psychology of Human Values*. Routledge, London.

14. Schwartz, S. H. (1992). Universals in the content and structure of values: Theory and empirical tests in 20 countries. In M. Zanna (Ed.), *Advances in experimental social psychology* (Vol. 25, pp. 1-65). New York: Academic Press.

15. Mullen, R. (2018). *Values-Led Organisations: Releasing the Potential of Values*. Values Lab, Ireland. www.values-lab.ie

achieve equality and human rights outcomes in line with the objectives of the duty.

Values Lab works with public bodies to implement the public sector equality and human rights duty by focusing on, and re-balancing their organisational values. Organisational culture is the starting point, with a focus on the values that drive equality and human rights outcomes from the work of the bodies, on foot of implementation of the duty. This has proven to be an accessible and effective approach that is clearly attuned to existing organisational culture in a sector that is deeply values-based.

Public Sector Values

A 2008 Institute of Public Administration Discussion Paper explored the value base associated with public service in Ireland.[16] It noted that: “values are essential components of organisational culture and instrumental in determining, guiding and informing behaviour”. It suggested that “whatever values are deemed to be appropriate for the public service, the evidence suggests that performance will be enhanced through their meaningful integration into all aspects of the work of the service.” The public service values identified were: honesty, impartiality, integrity, accountability, loyalty, efficiency, fairness, hierarchy, risk-aversion, and equity.[17]

The paper noted the emergence, at that time, of new non-traditional values, identified by public-sector officials, including: 'flexibility', 'value-for-money', and 'effectiveness'. It suggested that the pecking order of values was shifting. Specifically, public service modernisation had stimulated accountability and efficiency as emerging priorities. More recent public sector reform approaches suggest a further re-balancing, with 'value-for-money', 'efficiency', and 'effectiveness' emerging as priority values.[18]

Equality and Human Rights Values

Public service values include a concern for equality and human rights, despite those values appearing to lose some priority across the public sector over recent years. A set of five values has been identified as underpinning, connecting and motivating a concern for equality and human rights:[19]

16. Mac Carthaigh M. (2008). Public Sector Values. Dublin: CPMR Discussion Paper No. 39, Institute of Public Administration.

17. Ibid.

18. For example, in the most recent public sector strategy document, the values of: efficiency, effectiveness, and value-for-money, are cited 15 times, 20 times and 16 times respectively, in regard to how public services will be delivered. Full reference: Our Public Service 2020: Development and Innovation. Department of Public Expenditure and Reform. Government of Ireland, 2017.

19. Crowley, N. (2015). Equality and Human Rights- an Integrated Approach: setting standards for the Irish equality and human rights infrastructure. The Equality and Rights Alliance, Dublin.

Autonomy: with a concern for choice, personal agency, and freedom and capacity for making decisions.

Democracy: with a concern for participation, having a say, empowerment, and accountability from those in positions of power.

Dignity: with a concern for respect, human worth, and access to relationships of care and love.

Inclusion: with a concern for belonging and community, and the positive recognition of diversity.

Social Justice: with a concern for the balanced distribution of income and jobs, and social goods such as education, accommodation, and health.

Re-balancing Public Sector Values

The full and effective implementation of the public sector equality and human rights duty offers the possibility to re-balance the values prioritised in public sector planning and operations. Values of autonomy, democracy, dignity, inclusion, and social justice, however labelled, could be re-positioned as priority values, alongside values of efficiency and effectiveness. This can be achieved through a values-led approach to implementing the duty.

Potential in a Values-Led Approach

Values-led Institutions

The public sector duty can enable a more explicit prioritisation of equality and human rights values in the planning and operations of public bodies. It enables the public sector to be values-led in this regard, and creates a context where a commitment to addressing equality and human rights concerns is mainstreamed across the sector. This reflects the requirement, in the duty, for public bodies to have regard to the need to eliminate discrimination, promote equality, and protect human rights in carrying out all of their functions.

Values-led institutions are characterised as being:

Explicit: in collectively naming, defining, and communicating the values that motivate their purpose and work;

Coherent: in giving expression to their core values in carrying out all of their functions, and bringing their values into all areas of their operations; and

Consistent: in applying their values at all times and in all contexts.[20]

Values-led institutions deploy their values as a lens, through which, to: develop strategic goals and objectives; identify priorities and allocate resources; establish a standard for staff and management practices and behaviours; create a benchmark for decision-making; and communicate with all stakeholders. The values-led organisation ensures ongoing internal dialogue about its core values to ensure shared meaning and engagement among staff with the core organisational values.

Gains from Being a Values-Led Institution

Organisations are increasingly recognising the link between living their values and organisational effectiveness.[21] From a review of the relevant research, Values Lab has identified the potential for organisations in being values-led:

- Values-led organisations are more effective: an examination of the 100 best workplaces in the UK, found that 97% of those organisations were values-led.[22] These values-led organisations benefited, in their effectiveness, from higher levels of trust between staff and management, positive staff perceptions of organisational integrity and credibility, and high staff ratings for management follow-through on values.
- Organisations that strive to ensure their core values are prominent in shaping and driving organisational priorities, practices, and processes, are less likely to see implicit values shaping their culture, than organisations that do not have an explicit value focus.

20. Mullen, R. (2018) op cit.

21. Freedman, R, E. and Auster, E, R. (2015). Bridging the Values Gap: how authentic organisations bring values to life. Barrett-Koehler Publishers, BK Business book, Oakland, CA.

22. Great Place to Work, (2014). Organisational Values. Are they worth the bother? How values can transform your business from good to great. Great Place to Work Institute UK.

- Public sector organisations working for social change and the common good, readily acknowledge their work as values-based, therefore it makes sense to underpin their work with a values-led approach.
- Public bodies working for social change and the common good operate in a fragmented space and values offer a framework to support a coherent cross-sectoral response to issues of concern.[23]

Gains from a Values-Led Approach to Implementing the Public Sector Duty

A values-led approach to implementing the public sector duty is aligned with the current ethos and culture of public sector bodies. It enables:

- an integration of the two traditions of equality and human rights through the common values that motivate a concern for such goals,
- equality and human rights to be brought to life as part of the ethos and culture of the body in a manner that avoids a bureaucratic tick-box approach,
- a simple and efficient process to implement the public sector duty that is both effective and impactful, and
- a re-balancing of values in the public sector, so that equality and human rights values take their place alongside the more operational values of value-for-money, efficiency, and effectiveness.

Implementing a Values-Led Approach to the Public Sector Duty

A values-led approach to the public sector equality and human rights duty involves the following steps:

- 1 Establishing an internal institutional infrastructure and establishing responsibility for the implementation of the public sector duty.
- 2 Identifying the equality and human rights values that have greatest relevance to the mandate of the organisation, and building consensus around:
 - shared definitions for each value;
 - statements of objective, practice, and process for each value.

- 3 Identifying and assessing the equality and human rights issues of relevance to the mandate of the organisation. This is usefully conducted in alignment with each of the identified equality and human rights values.
- 4 Developing systems and processes to apply identified equality and human rights values as a lens, in the consideration of plans, procedures, and practices of the organisation. This will enable the organisation to be consistent and coherent in applying its equality and human rights values while addressing the equality and human rights issues identified for action.

Tools to implement the key steps:

1 Establish an internal institutional infrastructure

Establishing an equality and human rights infrastructure is important to ensure a commitment and a capacity to implement the public sector equality and human rights duty, and to ensure there is monitoring in place to assess and sustain the standard of implementation.

What needs to be done?

- Identify a person(s) from senior management level who will be responsible for coordinating the implementation of the duty.
- Establish an equality and human rights committee to advise on, and drive the implementation of the duty. This would enable the different parts of the organisation to be involved in order to ensure a whole organisation approach and coherence in its implementation. It would ensure internal stakeholder participation with the diversity of employees represented.
- Build the capacity of the organisation to implement the duty and to take a values-led approach in doing so. This could include: networking with other public bodies to enable peer learning and support; training for key staff; and engaging external expertise as a mentoring support for the early period of the work of implementing the duty.
- Develop the external stakeholder relationships that would enable their participation in implementing the duty. This would include: trade unions representing employees; and civil society organisations representing those groups experiencing inequality or human rights violations.
- Develop the data systems of the organisation to ensure they are adequate to track progress made on addressing the equality and human rights issues assessed as relevant for the organisation.

How can the process be most effective?

Leadership is the first pre-requisite for the effective implementation of mainstreaming duties. This establishes the importance of the endeavour for the organisation and underpins high standards in its pursuit.

Participation is the next pre-requisite for effective implementation. This ensures that the voice, experience, and insights of those who experience inequality and human rights issues, inform all steps in implementing the duty.

Integration of the steps for implementing the duty into the systems and structures of the organisation is the final pre-requisite. This ensures that the duty becomes part of the way that the organisation conducts its business rather than being an add-on to normal business. This is central for such a process-based mainstreaming duty.

2 Identify and define the equality and human rights values of the organisation

The process of identifying and defining the equality and human rights values that will underpin the implementation of the duty can be achieved through the development of an equality and human rights statement.^[24] This is a tool to support the organisation to apply a values lens to its planning and operations.

An equality and human rights statement involves identifying and defining the equality and human rights values of the organisation, and establishing what these values indicate regarding the objectives, processes, and practices of the organisation.

What needs to be done?

The development of an equality and human rights statement involves:

- identifying values that motivate the organisation in its concern for equality and human rights,
- developing a shared understanding of each value, relevant to the remit and functions of the organisation,
- setting out a statement of objective for each value: to establish the direction of travel suggested, for each of the functions of the organisation, in espousing each of these values,
- setting out a statement of process for each value: to establish the way the organisation will operate, to deliver on its functions, in accordance with each value,

24. This is a tool developed by Values Lab to support public bodies to implement the public sector equality and human rights duty. For examples of tools developed, visit our website links: <http://www.values-lab.ie/learn-more.php>

- setting out a statement of practice for each value: to establish the staff and management practices and behaviours suggested in respect of each value,
- establishing how the organisation will deploy and make use of the equality and human rights statement in its ongoing work and, specifically, in implementing the public sector duty.

How can the process be most effective?

The preparation of an equality and human rights statement should be a management-led and participative process involving staff engagement and input. The organisation's equality and human rights committee has a key role to play in leading and informing this process. Consultation with staff, by survey or focus groups, would enrich the process, by further embedding the future statement and its commitments across the organisation.

The draft equality and human rights statement could usefully be tested with a focus group of key external stakeholders. This would include, in particular, trade unions and civil society organisations representing groups experiencing inequality and human rights issues. This consultation would inform the final statement and build an engagement from these groups with its future application within the organisation.

The equality and human rights statement will require champions within the organisation, to play a role in ensuring an ongoing engagement of staff, with the values espoused, in order to ensure these values become embedded in organisational culture.

3 Identify and assess the equality and human rights issues of relevance

A key requirement in implementing the duty is an organisational assessment of the equality and human rights issues that are relevant to its key functions and statutory remit.

What needs to be done?

- The equality and human rights statement provides a framework, within which, to collect and analyse the equality and human rights issues relevant to each of the functions of the organisation.
- Equality and human rights issues can be identified under each value in the statement in relation to the statements of objective, process, and practice identified for each.

- Equality and human rights issues assessed should address:

> the identity, situation, and experience of groups experiencing inequality across the grounds covered by equality legislation: gender (inc. gender identity); civil status; family status (inc. lone parents and carers); age (inc. young people and older people); disability (inc. people with all forms of impairment as well as people with mental health issues); sexual orientation; race; religion; and membership of the Traveller community.

> the identity, situation, and experience of groups experiencing inequality on the ground of socio-economic status.

> human rights recommendations that have been made by international human rights bodies, to Ireland, under the various international instruments to which Ireland is a party.

- The functions of the organisation for which equality and human rights issues are assessed should encompass:

- > Policy-making
- > Employment
- > Service provision
- > Funding and grant-making
- > Procurement

How can the process be most effective?

The assessment should be evidence-based. It should make use of equality and human rights data available to the organisation. It should draw from the knowledge and insights of staff, service users, and other relevant stakeholders. It should make use of relevant research studies conducted or commissioned by the organisation and others.

The assessment should be participative. Trade unions and relevant civil society organisations could be invited to present equality and human rights issues for consideration at the start of the process and could usefully review the final assessment before it is completed.

4 Developing systems and processes to apply core values

The public sector equality and human rights duty requires organisations to establish the policies, plans, and actions in place or to be put in place to address the equality and human rights issues assessed and to report on progress made, in their annual reports. As a result, the equality and human rights statement needs to be underpinned by systems that deploy the statement, in planning, decision-making, and reporting,

to ensure the identification and effective implementation of such policies, plans and actions.

What needs to be done?

- Planning:

> Organise a formal process to test out the plan in question against the equality and human rights statement:

* Does the plan contribute adequately to the statements of objective set out under each value in the statement?

* Does the plan respect the statements of process set out under each of the values in the manner in which its commitments are to be implemented?

> Test out the plan in question against the equality and human rights issues identified:

* Does the plan identify the policies, plans, and actions to address the equality and human rights issues under each of the values?

* Does the plan commit to additional policies, plans and actions to address any gaps in already existing responses to the equality and human rights issues identified under each of the values?

- Decision-Making:

> Assess the equality and human rights impact of key decisions as a formal part of the decision-making processes of the organisation:

* Does the decision made contribute to the statement of objective for each value in the equality and human rights statement?

> Review and keep under review internal procedures governing policy-making, employment, service provision, funding and procurement:

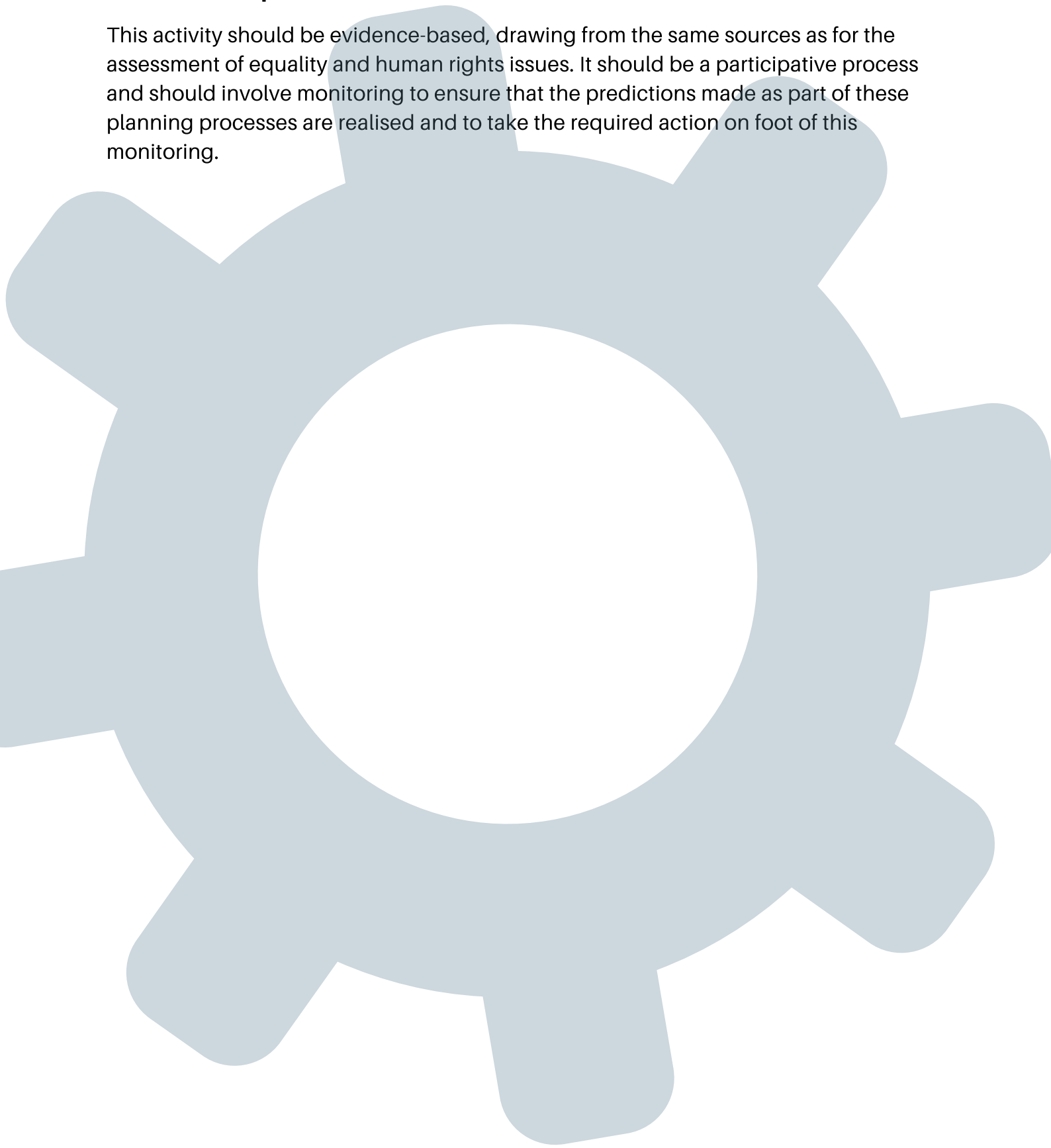
* Do the procedures adequately implement the statements of process for each value in the equality and human rights statement?

- Reporting:

> Report annually on progress made under the statements of objective, process and practice for each value in the equality and human rights statement and in addressing the equality and human rights issues assessed.

How can the process be most effective?

This activity should be evidence-based, drawing from the same sources as for the assessment of equality and human rights issues. It should be a participative process and should involve monitoring to ensure that the predictions made as part of these planning processes are realised and to take the required action on foot of this monitoring.





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