



# **PUBLIC SECTOR EQUALITY DUTY - A GUIDE TO MEETING THE DUTY AND UNDERTAKING EQUALITY ANALYSIS**

## Introduction

**The Public Sector Equality Duty (PSED) is set out in the Equality Act 2010 (s.149). This requires public authorities, in the exercise of their functions, to have 'due regard' to the need to:**

- Eliminate discrimination, harassment and victimisation
- Advance equality of opportunity between people who share a protected characteristic and those who do not, and
- Foster good relations between people who share a protected characteristic and those who do not

The characteristics protected by the Equality Act 2010 are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership.
- Pregnancy and maternity
- Race
- Religion or belief
- Sex (gender)
- Sexual orientation

Case law has established the following principles apply to the PSED:

- **Knowledge** – the need to be aware of the requirements of the Equality Duty with a conscious approach and state of mind.
- **Sufficient Information** – must be made available to the decision maker
- **Timeliness** – the Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken not after it has been taken.
- **Real consideration** – consideration must form an integral part of the decision-making process. It is not a matter of box-ticking; it must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- **Sufficient information** – the decision maker must consider what information he or she has and what further information may be needed in order to give proper consideration to the Equality Duty
- **No delegation** - public bodies are responsible for ensuring that any third parties which exercise functions on their behalf are capable of complying with the Equality Duty, are required to comply with it, and that they do so in practice. It is a duty that cannot be delegated.
- **Review** – the duty is continuing applying when a policy is developed and decided upon, but also when it is implemented and reviewed.

**However there is no requirement to:**

- Produce equality analysis or an equality impact assessment
- Indiscriminately collect diversity data where equalities issues are not significant
- Publish lengthy documents to show compliance

- Treat everyone the same. Rather, it requires public bodies to think about people's different needs and how these can be met
- Make services homogeneous or to try to remove or ignore differences between people.

**The key points about demonstrating compliance with the duty are to:**

- Collate sufficient evidence to determine whether changes being considered will have a potential impact on different groups
- Ensure decision makers are aware of the analysis that has been undertaken and what conclusions have been reached on the possible implications
- Keep adequate records of the full decision making process

Complying with the Equality Duty may involve treating some people better than others, as far as this is allowed by discrimination law. For example, it may involve making use of an exception or the positive action provisions in order to provide a service in a way which is appropriate for people who share a protected characteristic – such as providing computer training to older people to help them access information and services.

**Taking account of disabled people's disabilities**

The Equality Duty also explicitly recognises that disabled people's needs may be different from those of non-disabled people. Public bodies should therefore take account of disabled people's impairments when making decisions about policies or services. This might mean making reasonable adjustments or treating disabled people better than non-disabled people in order to meet their needs.

**What is due regard?**

- It involves considering the aims of the duty in a way that is proportionate to the issue at hand
- Ensuring that real consideration is given to the aims and the impact of policies with rigour and with an open mind in such a way that it influences the final decision
- Due regard should be given before and during policy formation and when a decision is taken including cross cutting ones as the impact can be cumulative.

The general equality duty does not specify how public authorities should analyse the effect of their business activities on different groups of people. However, case law has established that equality analysis is an important way public authorities can demonstrate that they are meeting the requirements.

Even in cases where it is considered that there are no implications of proposed policy and decision making on the PSED it is good practice to record the reasons why and to include these in reports to committees where decisions are being taken.

It is also good practise to consider the duty in relation to current policies, services, procedures etc. even if there is no plan to change them.

Throughout this document the term policy and decision making is used in its broadest sense to include:

- Organisation policies and functions
- Key decisions
- Policies setting out guidance for others.

It includes policy decisions, budgetary decisions, public appointments, service provision, statutory discretion, individual decisions, employing staff and procurement of goods or services.

This equality analysis guidance is designed to help officers think carefully about the impact of policy and decision making on different communities or groups protected by the Equality Act 2010 and to outline a process for undertaking an equality analysis.

## **What is an Equality Analysis?**

An equality analysis is a risk assessment tool that examines whether different groups of people are, or could be, disadvantaged by service provision and decisions made. An equality analysis is a key tool for improving services from an equality perspective. It involves using equality information, and the results of any engagement or consultation with particular reference to the protected characteristics to understand the actual effect or the potential impact of policy and decision making decisions taken.

**The equality analysis should be conducted at the outset of a project and should inform policy formulation/proposals. It cannot be left until the end of the process.**

**The purpose of the equality analysis process is to:**

- Identify unintended consequences and mitigate against them as far as possible, and
- Actively consider ways to advance equality and foster good relations.

When undertaking an equality analysis Officers responsible for developing proposals will need to actively apply due regard as outlined above.

**The objectives of the equality analysis are to:**

- Identify opportunities for action to be taken to advance equality of opportunity in the widest sense
- Try and anticipate the requirements of all service users potentially impacted
- Find out whether or not proposals can or do have any negative impact on any particular group or community and to find ways to avoid or minimise them.

- Integrate equality diversity and inclusion considerations into the everyday business and enhance service planning
- Improve the reputation of the City Corporation as an organisation that listens to all of its communities
- Encourage greater openness and public involvement.

In addition to the protected groups, it may be relevant at the same time to consider the impact of the proposal on other disadvantaged groups that do not readily fall within the protected characteristics, such as children in care, people who are affected by socio-economic disadvantage or who experience significant exclusion or isolation because of poverty or income, education, locality, social class or poor health, ex-offenders, asylum seekers, people who are unemployed, homeless or on a low income.

An equality analysis should indicate improvements in the way policy and services are formulated. Even modest changes that lead to service improvements are important. If it is not possible to mitigate against any identified negative impact, then clear justification should be provided for this.

By undertaking an equality analysis officers will be able to:

- Explore the potential impact of proposals before implementation and improve them by eliminating any adverse effects and increasing the positive effects for equality groups
- Contribute to community cohesion by identifying opportunities to foster good relations between different groups
- Target resources more effectively
- Identify direct or indirect discrimination in current policies and services and improve them by removing or reducing barriers to equality

### **Deciding what needs to be assessed**

The following questions can help determine relevance to equality:

- Does the policy affect service users, employees or the wider community or employees?
- How many people are affected and how significant is the impact on them.
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, significantly affecting how functions are delivered?
- Will the policy have a significant impact on how other organisations operate in terms of equality?
- Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the policy relate to an area with known inequalities?
- Does the policy relate to any equality objectives that have been set?

Consider:

- How the aims of the policy relate to equality.
- Which aspects of the policy are most relevant to equality?
- Aims of the general equality duty and which protected characteristics the policy is most relevant to

If it is not clear if a policy or decision needs to be assessed an equality analysis a Test of Relevance screening tool has been designed to assist officers in determining whether or not a policy or decision will benefit from a full equality analysis. Completing the Test of Relevance screening also provides a formal record of decision making and reasons. It should be noted that the PSED continues up to and after the final decision is taken and so any Test of Relevance and/or full Equality Analysis should be reviewed and evidenced again if there is a change in strategy or decision.

<p><b>Examples of where there is no relevance to equality</b></p>	<p><b>Examples of where there is significant relevance to equality in relation to one or more protected characteristics. An equality analysis should be undertaken in order to demonstrate 'due regard'.</b></p>	<p><b>Examples of where it is unclear how significant relevance to equality is. Applying the test of relevance screening can help determine whether a more detailed equality analysis would be useful to demonstrate 'due regard'</b></p>
<p>Changes to back office internal process</p> <p>Changes to internal supplies/products</p>	<p>Ceasing a particular service to disabled residents</p> <p>Changes to the way a service is delivered, e.g. moving to online access only</p> <p>Changes to eligibility criteria, rules or practices for a service</p> <p>Changes to discretionary fees and charges</p>	<p>The policy decision is mandatory but there may be an element of discretion</p> <p>where a previous EA exists and a review shows that it is still relevant at the time of the final decision; i.e. the facts have not changed</p>

## **How to carry out an Equality Analysis**

An assessor's role is to make sure that an appropriate analysis is undertaken. This can be achieved by making sure that the analysis is documented focussing on identifying the real impact of a decision and set out any mitigation or improvements that can be delivered where necessary. The flow chart on the following page gives an overview of the process.

Depending on the proposal being assessed and data already available, the process of gathering information may take a while to complete and should be planned for. Once it has been gathered the analysis at the heart of the assessment process and the development of an action plan to address any identified inequalities will make the analysis much easier.

### **Who else is involved?**

Chief Officers are responsible for overseeing the equality analysis process within departments to ensure that equality analysis exercises are conducted according to the agreed format and to a consistent standard. Departmental equality champions are a key people to consult when undertaking an equality analysis. Depending on the subject it may be helpful and easier to involve others. Input from another service area or from a related area might bring a fresh perspective and challenge aspects differently. In addition those working in the customer facing roles will have a particularly helpful perspective. Some proposals will be cross departmental and need a joint approach to the equality analysis.

## EA flow chart process - Is an equality analysis required?

**Identify the main aims and consequences of your policy or proposal**  
 Ensure you have read about the Equality Act (2010) and the public sector Equality Duty\* see - <http://colnet/Departments/Pages/News/Equality%20and%20Diversity/About%20Equality-and-Diversity.aspx>

**Does your policy or proposal have a clear and obvious relevance to equality?**

For example are you looking to:

- Cease a service
- Reduce a service or reduce it in particular areas

- Change a way a service is delivered, e.g. moving to online access only

- Change eligibility criteria, rules or practices for a service
- Make changes to discretionary fees and charges or similar

**Yes**

**No / not sure**

**Stage 1 – Undertake test of relevance screening - identify relevance of the proposal to the equality duty**

**Stage 2 - Equality Analysis**

**Impact identified as: potentially / definitely negative or adverse on an equality group**

**Impact identified as: positive / no impact / no potential for negative impact on any equality group**

**2.1 Completing the information gathering and research stage** - gather as much relevant equality-related information, data or research as possible in relation to the policy or proposal, including any engagement or consultation with those affected

**2.2 Analyse the evidence** - make an assessment of the impact or effects on different equality groups

**2.3 – Developing an action plan** – set out the action you will take to improve the positive impact and / or the mitigation action needed to eliminate or reduce any adverse impact that you have identified

**2.4 Director approval and sign off of the equality analysis** - include the findings from the EA in your report or add as an appendix including the action plan

**2.5. Monitor and review** – monitor the delivery of the action plan & ensure that changes arising from the assessment are implemented

**Record on the test of relevance template and get Director to sign off. Confirm your findings in your report**

### \*What is the public sector Equality Duty?

The Equality Duty has **three aims**. It requires public bodies to have due regard to the need to:

1. eliminate unlawful discrimination
2. advance equality of opportunity
3. foster good relations

**Protected characteristics** (equality groups) defined in the Act are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation. Marriage and civil partnership are also protected characteristics for the first equality aim to eliminate discrimination.



## Stage 1 - Test of Relevance Screening

### To identify relevance of the proposal to the equality duty

This is a short exercise that involves looking at the overall proposal and deciding if it is relevant to the PSED.

**Note: If the proposal is of a significant nature and it is apparent from the outset that a full equality analysis will be required, then it is not necessary to complete the Test of Relevance screening template and the full equality analysis and be completed.**

There is a series of questions in the Test of Relevance Screening Template to help decide if the proposal is equality relevant and whether a detailed equality analysis is required. The key question is whether the proposal is likely to be relevant to any of the protected characteristics.

Quite often, the answer may not be so obvious and service-user or provider information will need to be considered to make a preliminary judgment. For example, in considering licensing arrangements, the location of the premises in question and the demographics of the area could affect whether section 149 considerations come into play.

There is no one size fits all approach but the screening process is designed to help fully consider the circumstances.

In general, the following questions all feed into whether an equality analysis is required:

- How many people is the proposal likely to affect?
- How significant is its impact?
- Does it relate to an area where there are known inequalities?

At this initial screening stage, the point is to try to assess obvious negative or positive impact.

If a negative/adverse impact has been identified (actual or potential) during completion of the screening tool, a full equality analysis must be undertaken.

If no negative / adverse impacts arising from the proposal it is not necessary to undertake a full equality analysis.

On completion of the Test of relevance screening officers should:

- Ensure they have fully completed and the Director has signed off the Test of Relevance Screening Template.
- Store the screening template safely so that it can be retrieved if for example, Members request to see it, or there is a freedom of information request or there is a legal challenge.
- If the outcome of the Test of Relevance Screening identifies no or minimal impact refer to it in the Implications section of the report and include reference to it in Background Papers when reporting to Committee or other decision making process.

## **Stage 2 - Equality Analysis**

### **2.1 Completing the information gathering and research stage**

If a Test of Relevance screening Identifies that a full equality analysis is necessary, identify and gather relevant equality-related information, data or research in relation to the proposal including any engagement or consultation with those affected. It is a good idea to determine what data or evidence relevant to the impact of a proposal on the affected groups is already available.

In many cases, the best way to obtain that evidence is to consult or otherwise engage with the affected groups about the potential impact of the proposal. The term “engagement” in this context conveys the full spectrum of ways in which the organisation may interact with those likely to be affected by a proposal. This may include surveys, questionnaires, focus groups meetings etc.

Not all proposals will require full-scale consultation. The form and level of engagement will depend on the context. However failure to engage appropriately with those likely to be affected may result in a failure to fulfil the due regard duty. Other sources of data and information include:

- Census and other local population data
- Equality monitoring data in relation to the take-up and satisfaction of the service
- Equality related employment data where relevant
- Generic or targeted consultation results or research that is available locally, London-wide or nationally
- Complaints from different groups and other feedback
- Colleagues in City of London Corporation or your equivalent in other councils or organisations.

The richer the evidence base the easier the assessment will be. However data may simply not be readily available. Where appropriate and relevant the officer should consider obtaining further information or evidence. This might be through focus groups or a questionnaire. In some cases this will not be possible and information may still be patchy even after taking the extra steps. In this cases the officer should continue with the assessment using the information gathered and include activity in the action plan to find out more about how the particular policy or service can / does affect the protected groups.

### **2.2 Analyse the evidence to make an assessment of the impact or effects on different communities, customer and employee groups**

Using the information gathered, the officer should make an informed assessment about the actual or likely impact that the proposal will have on the protected equality groups subject to the Equality Analysis.

Analyse the information and establish:

- What kind of equality impact might there be?
- Is the impact positive or negative or is there a mix of both?
- How significant is the impact in terms of its nature and the number of people likely to be affected?
- On which elements/aims of the Equality Duty will this impact be?
- Could the impact constitute unlawful discrimination?
- Can any negative impact be justified?
- What further information is required to gauge the probability and/or the extent of the impact?
- Where and how can that information be obtained?

Identify and weigh up opposing considerations. These may include the reasons behind the formulation of the proposal, the benefits it is expected to deliver, budget reductions, the need to avert a graver crisis by introducing a policy now and not later, and so on. The weight of these factors in favour of implementing the proposal must then be measured against the weight of any evidence as to the potential negative equality impacts of the proposal, bearing in mind the various “needs” which are identified in section 149 of the Equality Act (the most relevant of which will usually be the need to advance equality of opportunity).

When analysing the evidence to make the assessment:

- Officers and Members making a decision where there is an equalities impact must give conscious and open minded consideration to the impact of the duty on the decision, e.g. be prepared to change or amend a decision although negative equalities impacts does not stop a decision being made
- The duty is **not**, to achieve the three equality aims but to take them into account when making the final decision – therefore, **the duty does not stop difficult but justifiable decisions being made.**
- The decision maker may take into account opposing factors that may objectively justify taking a decision which has negative impact on equalities, e.g. financial targets, value for money or service needs.

The equality analysis template should be completed as fully and as honestly as possible from the evidence available and gathered and professional knowledge. If the impact is not known then this should be noted. Consideration should be given to find out more and this can be included the action plan that will be develop.

### **2.3 Developing an Action Plan**

Where a negative impact is identified make a plan setting out the action that can and will be taken to improve the positive impact of the proposal and/or the action needed to eliminate or reduce any adverse impact that has been identified balanced against the opposing factors.

This is the most important part of the process and the point of carrying out the assessment is to identify action to eliminate or minimise any negative impact that

has been identified and better ways of delivering services so that all communities who need them can benefit from them.

The usual principles about SMART action plans apply. Consider:

- What actions can be taken to reduce negative impact?
- If the action proposed will not fully mitigate the adverse consequences or if no action is intended explain and justify this.
- Can anything further be done to promote equality of opportunity in relation to any of the equality strands?
- Undertake further consultation/research if necessary?

The full EA template includes 4 possible outcomes. These are:

**Outcome 1:** No major change required when the assessment has not identified any potential for discrimination or adverse impact and all opportunities to advance equality have been taken.

**Outcome 2:** Adjustments to remove barriers identified by the assessment or to better advance equality.

**Outcome 3:** Continue despite having identified some potential for adverse impacts or missed opportunities to advance equality. In this case, the justification should be included in the assessment and should be in line with the duty to have 'due regard'. You should consider whether there are sufficient plans to reduce the negative impact and/or plans to monitor the actual impact.

**Outcome 4:** Stop and rethink when an assessment shows actual or potential unlawful discrimination.

## **2.4 Director approval and sign off of the equality analysis.**

Once the equality analysis has been completed, the Director (or Directors where the proposal crosses services) should be provided with the equality analysis and supporting documentation for sign off and approval to progress the project/policy prior to finalising recommendations regarding the policy/decision making and prior to committee /decision making process.

As noted above it is good practise to revisit the EA to ensure that during the process of developing proposals/recommendations the EA has not changed?

Only after these steps have been taken, can the policy-makers decide what should happen to the policy/proposal and how it should be progressed. It may be it:

- Can be implemented in its existing form
- Needs to be modified in some way
- Is abandoned altogether

Once proposals are finalised the EA s must be referred to the relevant decision making body in the background papers as a minimum. Where the subject has a significant effect or there is negative impact, report authors should make specific reference to the equality analysis in the body of the report or add it as an appendix including any action plan drawn up to inform decision making.

## **2.5 Record keeping monitoring and review**

Chief Officers are responsible for ensuring that that consideration of due regard to the PSED is recorded and retained.

It is necessary to put in place systems to monitor the delivery of the action plan and ensure that any changes arising from the assessment are implemented. The analysis is not an end in itself but the start of a continuous monitoring and review process.

EA are public documents and can be requested by service users, members or other interested parties. There is no specific legal duty to publish your Equality Analysis, however completed Equality Analysis documentation is subject to Freedom of Information regulations and may be requested by the public.

## Further information and resources

(Note the following links will be published on Colnet)

### Government Equalities Office

GEO has published 2 quick-start guides to help public bodies understand the Equality Duty and the specific duties:

- [Quick start guide: public sector Equality Duty](#)
- [Quick start guide: Specific duties](#)

### Equality and Human Rights Commission

The Equality and Human Rights Commission is the statutory body established to help eliminate discrimination and reduce inequality. The Commission has published new non-statutory guidance on:

- [The essential guide to the public sector Equality Duty](#)
- [Meeting the Equality Duty in policy and decision-making](#)
- [Engagement and the Equality Duty](#)
- [Equality objectives and the Equality Duty](#)
- [Equality information and the Equality Duty](#)
- [Technical guidance on the public sector Equality Duty - England](#)

### Useful websites such as:

- [www.gov.uk/government/organisations/government-equalities-office](http://www.gov.uk/government/organisations/government-equalities-office)
- [www.equalityhumanrights.com/](http://www.equalityhumanrights.com/)
- [www.stonewall.org.uk](http://www.stonewall.org.uk)
- [www.statistics.gov.uk](http://www.statistics.gov.uk)
- [www.ageuk.org.uk/](http://www.ageuk.org.uk/)
- [www.ons.gov.uk/ons/index.htm](http://www.ons.gov.uk/ons/index.htm)
- [www.edf.org.uk/](http://www.edf.org.uk/)
- <http://odi.dwp.gov.uk/>
- [www.rota.org.uk/](http://www.rota.org.uk/)

### City of London Corporation resources:

- <http://www.cityoflondon.gov.uk/business/economic-research-and-information/city-business-library/resource-guides/Pages/Statistics-for-business-and-planning.aspx>
- <http://www.cityoflondon.gov.uk/business/economic-research-and-information/statistics/Pages/default.aspx>