

<b>Key Decision Required</b>		<b>In the Forward Plan</b>	
<b>Management Team</b>	<b>5<sup>th</sup> April 2022</b>		

## REPORT OF THE ASSISTANT DIRECTOR- PARTNERSHIPS

### A.1. EQUALITY IMPACT ASSESSMENT

(Report prepared by Carol Magnus)

#### PART 1 – KEY INFORMATION

##### **PURPOSE OF THE REPORT**

To recommend updating the current Equality Impact Assessment form with associated Policy document providing guidance.

##### **EXECUTIVE SUMMARY**

This paper outlines the proposals and reasons for updating the organisation’s procedures for conducting Equality Impact Assessments.

As a public body, the Equality Act 2010 places an increased duty (known as the Public Service Equality Duty or PSED) on them to ensure that they have ‘due regard’ in the exercise of their functions to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 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.

These are known as the three equality aims of the PSED, under which there are nine protected characteristics.

Although it is not a requirement within the Act, the practice of using Equality Impact Assessments (EIA) is a recognised way by which public bodies can demonstrate that due regard has been undertaken and provides evidence of the matters taken into account. Failure to demonstrate that the PSED has been fulfilled can result in legal challenges (for example with changes in service delivery, residential or commercial planning proposals) or even to prosecution.

This report proposes the adoption of an updated EIA format along with clear guidance for those who will be completing the assessment through the production of a Policy

The Public Sector Equality Duty and Equality Impact Assessment Policy and Guidance document has been developed to outline the organisation’s commitment to ensuring it meets its PSED and the means by which this will be achieved; namely through the use of the EIA.

Cabinet, at its meeting in February adopted the highlight priority actions for 2022/23, which included in Appendix A to that report, a commitment to progress with the development of a revised strategy

for Inclusion and Equality. It is intended as part of its revised strategy, an updated People Impact Assessment would be produced aimed at securing robust governance arrangements are in place across the organisation. However, because the draft inclusion and equality strategy will not be presented to Cabinet until quarter 2 of 2022/23, and will be subject to further consultation, officers have, in consultation with the Portfolio Holder for Partnerships, updated the existing operational procedures pending the adoption of the strategy. If any amendments are necessary to the operational processes, as a result of the strategy being adopted, these can be actioned as required.

The Council's Annual Governance Statement for 2020/21 identified the need for the Council's Equality and Diversity Strategy, Policies and Procedures to be reviewed and as a consequence of the review, a revised EIA Form and Policy is recommended giving officers further and updated guidance. Training on the EIA process was previously undertaken during 2019, this will be repeated following adoption to raise awareness across the Council.

## **RECOMMENDATIONS**

**It is recommended that the Assistant Director for Partnerships in consultation with the Portfolio Holder for Partnerships, with responsibility for Inclusion and Equality :**

- **approves the updated Public Sector Equality Duty and Equality Impact Assessment Policy;**
- **approves the revised Equality Impact Assessment form and associated processes;**
- **promotes the use of the phrase People Impact Assessment within the emerging Inclusion and Equality Strategy for consultation;**
- **publishes an Officer Decision to record the decision to approve and implement the revised procedures; and**
- **arranges internal communication with officers to raise awareness and training on the updated Policy, Guidance and EIA form.**
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## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

The proposed Equality Impact Assessment process is consistent with the Council's commitment to put Community Leadership at the heart of everything we do through delivery of high quality, affordable services and working positively with others.

It reflects the priorities of effective and positive governance and health and wellbeing – for effective services and improved public health.

It also supports the corporate value of Councillors and staff upholding personal integrity, honesty and respect for others and also, of us recognising the diversity and equality of individuals.

### **FINANCE, OTHER RESOURCES AND RISK**

All associated costs will be met from within existing budgets.

### **LEGAL**

The Equality Act 2010 enacts a single general Public Sector Equality Duty (PSED) under s149, in that public authorities exercising public functions must have “due regard” to eliminating unlawful discrimination, advance equality of opportunity and good relations between communities.

The duty on public authorities to have "due regard" to the Public Sector Equality Duty is more than a requirement to have general regard. Real – active – tangible thought has to be given to the PSED requirements.

Although what is sufficient to evidence “due regard” has often been a subject of dispute, the High Court considered the “due regard” requirement in *R (Brown) v Secretary of State for Work and Pensions and others [2008]*. The High Court held there was no prescribed way to evidence “due regard”. However, a public authority had to be able to evidence it had regard to the impact of its proposed policy on equality. The Court then, very helpfully, set out the following general principles about complying with the due regard requirement:

- There should be a proper analysis of all the relevant material and an appreciation of the duty to have due regard.
- Regard should be had to the duty to have due regard before, and at the time, a particular policy is considered. It shouldn't be a "box-ticking" exercise but should instead be a process integrated in the decision-making process.
- The duty is a continuing one.
- The duty is non-delegable and will always remain the responsibility of the body subject to the duty.
- The duty should be exercised with rigour and an open mind.
- The duty should be reconsidered if new information comes to light and adequate records should be kept of the consideration and decision-making processes undertaken in order to demonstrate that the equality duties have been undertaken conscientiously. If the relevant general equality duty is not mentioned, it does not mean that the duty has not been performed, however it is good practice to refer to the duty and any considerations under it to avoid future legal challenge.

These general principles have also been confirmed in later cases. As with all case law they are not an exhaustive or final list, but we know that in general the principles are:

1. Proper Analysis
2. An initial consideration not an afterthought
3. Continuing Duty
4. Non-delegable
5. Rigorous and transparent
6. Obligation of reconsideration

An Equality Impact Assessment (EIA) is not a necessary requirement of the Section 149 obligation, but it is favourable to undertake to demonstrate due regard showing evidence that appropriate analysis of the equality implications has been undertaken. An internal EIA has been produced and is available on PING. The outcome of the EIA can be referred to and recorded within the relevant decision making template, therefore ensuring that the decision maker whether it be Cabinet, Portfolio Holder or Officer is making an informed decision on all of the facts, considerations and implications, with the reasons for the decision set out. Legal challenges for being unable to demonstrate due regard, are difficult to defend.

## **OTHER IMPLICATIONS**

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

**Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.**

The proposed decision will place equality, diversity and health inequality considerations at the forefront of policy formulation, decision-making and service development.

There are no direct environmental or other identified implications for TDC in adopting the updated process for undertaking, publishing and monitoring People Impact Assessments.

## **PART 3 – SUPPORTING INFORMATION**

### **BACKGROUND**

The Public Sector Equality Duty (PSED) is set out in Section 149 of the Equality Act 2010. This requires all public bodies, in the carrying out of their duties, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

These are known as the three equality aims of the PSED, under which there are nine protected characteristics:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership (in respect of the first equality aim only)
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

The PSED requires public authorities to pay “due regard” in respect of all services, including policy making, employment, planning and procurement. It also applies to any private bodies or voluntary organisations that carry out public functions on the Council’s behalf, such as any commissioned services.

Although not currently a legal requirement in England, Equality Impact Assessments (EIAs) are used by public bodies as a way of demonstrating compliance with the PSED. EIAs are an analytical tool to assess the equalities implications of a proposal on service users and pay particular consideration to the needs of individuals in respect of the nine protected characteristics set out in the PSED.

A PSED and People Impact Assessment Policy and Guidance document has been produced (Appendix A) to summarise the reasons why TDC is committed to carrying out equality impacts and to provide some summary guidance that is not contained within the detail of the form itself.

The current EIA template is attached at Appendix B. This was introduced in 2012 and slightly revised in late 2018; it is available to officers on the council's intranet site. A review of the authority's approach to assessing equality impacts features within the revised performance monitoring arrangements for 2021-22. It is also a key element of reviewing the council's Equality and Diversity strategy, policies and procedures, which is an ongoing action in the Annual Governance Statement 2021-22.

The aim is for impact assessments to become an integral part of our decision making process. The council recognises that such assessments should be proportionate to the level of impact/risk and focused on improvements for our residents, service users and staff. The intention is that the impact assessment process will build equality and other people-related considerations into the project, service or policy development process from the very beginning, ensuring a balanced view can be taken. It is also recognised that, on occasions, policies may be implemented where an adverse impact has been identified. The assessment process provides transparent evidence that this impact or consequence was considered initially and removed or reduced, where possible.

To this end, an updated Equality Impact Assessment template (EIA) has been produced, (attached at Appendix C), which blends equality, socio-economic and health and wellbeing considerations into a single process. These are also additional considerations and headings included in the revised Cabinet Report template which was updated in early 2022. It is acknowledged that the proposed form represents a more in-depth assessment than the existing EIA and as a consequence, completion is likely to require more careful consideration and time investment, nonetheless the process has been made as streamlined and self-explanatory as possible.

Although the primary purpose of the EIA is to identify and address negative impacts, the form has been designed so that positive impacts and improvements are also recorded. This supports a balanced approach to move away from a deficit focus and to enable best practice and innovation to be recorded as well.

Guidance has been drafted to accompany the form, (this is primarily contained within the document for ease of use), providing a step-by-step explanation of how to complete the assessment and containing suggestions around helpful sources of information and issues for consideration, to assist officers in conducting robust analysis.

A EIA should be carried out when the Council is either changing or removing a new service, policy, strategy or function or introducing any of these activities. It is advisable to conduct the assessment as early as possible in the decision-making process and use the assessment to inform the end product.

The refreshed process being proposed is that officers should, as a minimum, complete the EIA checklist (that is, the front page of the form) in the instances outlined above. If the result is that no EIA is necessary, the checklist should be retained by the officer to evidence that consideration for undertaking a EIA was given and a reference to this included in the associated report under the "Other Implications" heading. If a EIA does need to be completed, the recommendation is that it

should:

- Be referred to in the report with a paragraph summarising the outcomes of the EIA and any mitigations that have been put in place. The EIA should also be named as a Background Paper, which means it is accessible to the public if requested.
- Be signed off by the relevant senior officer
- Be evidence-based to analyse the significance of any positive, negative or a combination of impacts on service users
- Identify any potential negative impacts and includes meaningful justification for why the proposal should go ahead
- Include a robust action plan to mitigate any negative impacts and enhance positive impacts, if possible

It is suggested that if approved, the EIA be rolled out to relevant staff across the authority during June 2022. ACAS have been commissioned to provide the required training as part of this roll out.

The introduction of a diversity, equality and inclusion staff network (to be called Inclusion Influencers) by the end of December 2022 would be able to provide support for the EIA process. Once formally established, the Inclusion Influencers network could be asked to act as a EIA Review Group, able to consider, comment and challenge.

Adopting the revised EIA and approving the associated actions will help further strengthen the council's decision-making and policy development and help ensure its compliance with the requirements placed upon it by the PSED.

## **CURRENT POSITION**

A key element of the PSED is the requirement of that provider to show it had "due regard" in its decisions to the elimination of discrimination, harassment and victimisation and other conduct prohibited under the Equality Act 2010, as well as the advancement of equality of opportunity and the fostering of good relations between persons sharing a relevant protected characteristic and those who do not.

The Council is committed to applying equality of opportunity in all its practices and service delivery with regard to ethnic origin, age, gender, religion or belief, sexual orientation, marital status and disability.

The authority's EIA form was last updated in late 2018, following delivery of an EIA webinar by Inclusive Employers. Under the current arrangements, although Management Team and Senior Managers may not necessarily require sight of completed EIAs, they will challenge whether these have been completed, prior to approving reports for presentation to Members for decisions to be made. In addition, officers are currently required to disclose whether there are any implications relating to equality and inclusion under the "Other Implications" heading in reports to Management Team, Council, Cabinet and Committees.

There is currently no mechanism in place to record or store completed EIA's centrally.

The proposed EIA process links in with a number of the Core Principles of Good Governance as outlined in the Council’s Code of Corporate Governance, such as “Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law” and “Implementing good practices in transparency, reporting, and audit to deliver effective accountability”.

The Equality and Human Rights Commission is responsible for enforcing compliance with the PSED. If public bodies are not robust when considering the implications of proposals, they can leave themselves open to judicial challenges.

A robust impact assessment will ensure that we focus on understanding the effect of our activities on different people, by using good evidence and analysis, and doing this at the right time, as part and parcel of the decision-making process.

**BACKGROUND PAPERS FOR THE DECISION**

There are none.

**APPENDICES**

- Appendix A – PSED and EIA Policy and Guidance**
- Appendix B – current EIA template**
- Appendix C – New EIA Template April 2022**