

Public Sector Equality Duty and Equality Impact Assessment (EIA) Policy

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Tendring District Council

Policy and Guidance

Public Sector Equality Duty and Equality Impact Assessment (EIA)

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Public Sector Equality Duty

1. Introduction

This policy and guidance should be read in conjunction with the organisation's Equality and Diversity (Employment) Policy updated in November 2017.

This document sets out Tendring District Council's approach to Equality Impact Assessment as part of its commitment to ensuring it meets its Public Sector Equality Duty as set out in Section 149 of the Equality Act 2010 and is able to demonstrate how the duty has been complied with. The organisation will utilise Equality Impact Assessments (EIAs) whenever it is seeking to make significant changes in any of its services, policies or processes and where the changes may have a direct or indirect impact upon members of the community or its staff. The organisation will be considering a revised Inclusion and Equality Strategy later in 2022 and a new phrase People Impact Assessment for its Equality Impact Assessment process will be consulted upon. This Policy and the EIA form may therefore, require updating in due course, however at the current time the term EIA will remain.

2. Public Sector Equality Duty

The Public Sector Equality Duty (PSED) came into force on 5 April 2011 and is set out in [Section 149 of the Equality Act 2010](#). It places a duty on public bodies to ensure they play their part in making society fairer.

Public authorities exercising public functions must have "due regard" to eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations between communities.

Any time the organisation plans a new service, reviews an existing one, or develops a policy it must think about the range of people who might use that service, or be affected by that policy and what barriers to access might be unintentionally created.

The duty cannot be delegated and will always remain the responsibility of the public body subject to the duty, in this instance, Tendring District Council. For example, when contractors are delivering services on the Council's behalf, the onus remains with TDC to ensure that they are delivering accessible, discrimination-free services.

Additionally, there is an obligation of reconsideration. This means that policies, strategies, projects and services must be kept under review as they evolve and when impacts of a decision are being felt. Adequate written records must always be kept of the decision-making processes undertaken.

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.

3. Purpose and Aims of the PSED

Compliance with the PSED is a legal obligation. Its broad purpose is to integrate consideration of equality and good community relations into the day-to-day business of public authorities.

This means public organisations must consciously think about the impact on protected groups of decisions that affect their policies, services and public functions and conduct appropriate and proportionate analysis of these impacts. In doing so, they can ensure that they give consideration to the needs of **all** individuals when developing and reviewing policies and in delivering services.

Those subject to the PSED must, in the exercise of their functions, have due regard 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.
- 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:

- 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 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.

4. Benefits of the PSED

By integrating equality into the core business and thinking of the organisation when carrying out our work we can

- Avoid discriminatory practices and adverse impacts on equality.
- Ensure our services are more efficient and cost effective, thereby improving public satisfaction.
- Build a supportive working environment resulting in increased productivity, staff satisfaction and retention.
- Using current equality information can lead to better decision-making and policy development.

Equality Impact Assessment Guidance

5. What is an Equality Impact Assessment?

Equality Impact Assessments (EIA) are a tool to ensure that our plans and activities meet the needs of individuals and groups that use our services and in addition, that a person's chance of leading a healthy life, free of discrimination, is the same wherever they live and whoever they are. This helps to shape Council activities that are fit for purpose and which meet the needs of Tendring's communities and workforce.

It is recommended to undertake an Equality Impact Assessment (EIA) in order to evidence "due regard" (as required under the PSED) and demonstrate that appropriate analysis of any equality implications has been undertaken.

A robust, rigorous and transparent EIA process provides a consistent method of assessment and ensures that any potential detrimental effects or discrimination is identified, eliminated where possible or mitigated.

The EIA also provides the opportunity to highlight and improve on positive impacts. By recording improvements the organisation will be able to record and collect examples of best practice and innovation that may inform its future developments.

The outcome of the EIA can be referred to and recorded within the relevant decision document, therefore ensuring that the decision maker, (for example a Portfolio Holder or authorised Officer), is making an informed decision on all of the facts, considerations and implications, with the reasons for the decision set out. An EIA should be accessible to the decision maker or a third party should they wish to review its contents.

6. When to Assess:

An EIA should be carried out when you are planning to;

- change or remove an existing service, policy, strategy or function; or
- introduce a new service, policy, strategy or function.

Services, policies, strategies and functions are referred to generally as an "activity" throughout this guidance document and the EIA template.

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. If an activity changes direction, it is also critical to review the EIA.

Please ensure that appropriate consultation with affected parties has been undertaken and evidenced.

7. Guidance when completing the Equality Impact Assessment (EIA)

To be read in conjunction with EIA form

The Equality Impact Assessment (EIA) is a single tool which will result in a set of recommendations to eliminate discrimination and inequality; enhance potential positive impacts and, where possible, mitigate against negative impacts.

When assessing the impact, please consider and note how your activity contributes to the three aims of the PSED, as stated above. If deemed to be non-compliant, it is not an acceptable defence to say we lacked evidence on a particular issue.

In conducting the EIA, you will need to assess the impact (positive, neutral or negative) of your activity not simply on individuals and groups with **protected characteristics**, (including staff delivering your activity), but also **socio-economic status** and **health and wellbeing** impacts on all residents, service users and staff.

8. What is meant by “impact”?

There are three possible impacts – negative, positive or neutral.

1. **Negative** - A negative or adverse impact is when the impact of an activity could disadvantage individuals or one or more of the groups with protected characteristics. This could be differential, where the negative impact on one group is likely to be bigger than on another. For example, if an event is held in a building with no access for people with mobility difficulties, this could have a negative or adverse impact on attendees who have mobility difficulties, (such as wheelchair users, people with pushchairs or people with mobility aids).
2. **Positive** - An impact that will benefit an equality target group is a positive impact. This could improve equal opportunities or community cohesion. There may also be a differential impact, where the positive impact on one particular group is likely to be greater than on another. For example, a health programme targeting Chinese residents would have a positive differential impact on Chinese people compared to other ethnic groups but it would not have a negative impact on other groups or individuals with any of the protected characteristics.
3. **Neutral** - A neutral impact where there is no likely change and therefore no potential impact on any groups or individuals with any of the protected characteristics.

It is essential that you note all negative impacts. This will demonstrate that you have paid ‘due regard’ to the Public Sector Equality Duty (<https://www.gov.uk/government/publications/public-sector-equality-duty>) if your activity is challenged under the Equality Act 2010.

9. Review

A service, strategy, policy or activity that is appropriate at one time, may no longer be appropriate as circumstances change. There may be changes in our population, growth and makeup. Legislative changes, environmental changes or socio-political changes also can have an impact and be taken into consideration.

Although we cannot predict what’s going to happen in the future, a review is recommended to ensure that what we are delivering as a Council is still the best use of our resources. The

timescale for review will be dependent on the scale of the activity and any monitoring designed to ensure that there is no future impact on protected groups and others.

As an example, a minor policy change may require a review in 6 months to assess whether there are any unintended outcomes of such a change.

Please indicate in this section how frequently it is expected the activity will be reviewed and a brief explanation as to why this timescale is recommended.

10. Action Plan

The real value of completing the EIA comes from identifying the actions that can be taken to eliminate/minimise negative impacts and enhance/optimize positive impacts.

Within the action plan, you should list the specific actions that set out how you will promote and positive impacts and address any negative equality and health & wellbeing impacts you have identified in this assessment.

Please ensure that your action plan is more than just a list of proposals and good intentions. It should set ambitious yet achievable outcomes and timescales and be clear about resource implications.

11. Next steps

Upon completion, the EIA should be referenced within any revised Strategies, Policies, Procedures, service review documentation, any associated reports to Management Team or formal Cabinet, Council or Committee reports. The EIA should also be approved by the relevant Head of Service or Assistant Director (where no Head of Service) .