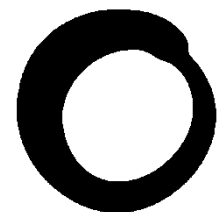


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Infosheet

Public Sector Equality Duty



**Friends of
the Earth**



Public Sector Equality Duty

A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination;
- (b) advance equality of opportunity;
- (c) foster good relations between different parts of the community

What is the public sector equality duty?

The Equality Act 2010 is the source of all anti-discrimination law in the United Kingdom. The Act outlaws discrimination on the following grounds: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

But, Section 149 of the Act, which creates the public sector equality duty, goes even further. It creates a positive duty on public authorities when doing the things it is legally required to do to consider (have “due regard” to) the impact of its decisions on 1) eliminating discrimination, 2) advancing equality of opportunity and 3) fostering good relations between different groups.

What does it mean?

The courts have ruled that ‘having due regard’ means that:

- the person who makes the decision must be made aware of his duty to have “due regard” to the identified goals. He cannot justify it after the decision has been made;
- the duty must be exercised in substance, with rigour and with an open mind. “ticking boxes” won’t do;
- the person who makes the decision should keep an adequate record showing that the equality duties have been actually considered;
- where negative impacts are identified, mitigation must be considered

The duty is so important for environmental lawyers because if the public authority has not had “due regard” and fulfilled its legal duty, the decision is unlawful and can

be 'quashed' by the courts. This means that equalities must be considered in environmental decision-making, including planning decisions.

In practice, the best way for a public authority to demonstrate that it has complied with the duty is to carry out an equalities impact assessment. This is usually a written document in which the public authority puts in writing how it has considered the impact of its decision making, and public consultation may also be required.

What can I do if I think that a public authority is breaching the duty?

- Ask the public authority in writing if it accepts the public sector equality duty is engaged;
- Ask to see, and check, the authority's equality policies and schemes; in particular see if there is a commitment to do an equality impact assessment.
- Ask if there will be such an assessment; inform the local authority's equality officers;
- Encourage people to engage in the process at any early stage and make their views known especially in relation to negative impact and suggest what could be done to mitigate or eliminate it.
- Put constructive ideas to the decision makers. If consultation or assessment is defective, take legal advice as soon as possible.
- Think about whether the decision might also constitute direct or indirect discrimination, which is unlawful and could be a separate ground of claim. This could actually change the outcome of the decision, rather than just looking at process. Indirect discrimination is where a decision is applied to everyone, but in practice has an adverse impact on particular groups.

You may be able to bring a legal challenge to the decision, known as a "judicial review". You can contact Friends of the Earth's free legal advice line – call 0808 801 0405 or email legal@foe.co.uk. You should take legal advice as early as possible.

Examples

Southall Black Sisters, who gave advice to black women who had been victims of domestic violence. The local authority cut their funding. The decision to cut funding was unlawful because the local authority did not carry out an equalities impact assessment prior to making the decision saying it was unnecessary.

Birmingham City Council acted unlawfully when it cut grants to legal advice centres that specialised in giving advice to members of the Bangladeshi and Pakistani communities. The decision was unlawful because there was no evidence to suggest that the Council was aware of the duty and how it was engaged in these decisions at the time they took the decision.

The London Borough of Haringey Council granted planning permission for the development of a site known as Wards Corner on High Road in Tottenham. The site incorporated a market where traders were mainly Latin American or Spanish speaking. The grant of planning permission was unlawful because the planning authority had not considered the potential impact of the destruction of the market on those communities.