

The Public Sector Equality Duty

Organisational approach:

Showing due regard to the equality duty in how we develop our work and in our decision making.

Contents

Section 1: The legislation	3
The Public Sector Equality Duty (PSED)	3
The General Duty	3
Specific Duties	4
Frequently asked questions	5
Section 2: How the Council is meeting the requirements of the Equality Duty.....	8
Equality information.....	8
Equality Objectives.....	8
Section 3: How we show due regard to the three aims of the general duty in our decision making processes.....	9
Showing due regard and equality impact assessments.....	9
Helping our staff to show due regard throughout the decision making process:.....	10
The Brown Principles in practice	10
Frequently asked questions	14
How do I know if I need to complete a due regard statement?.....	14
We know we need to complete a due regard statement, when do we start filling it in?.....	14
How do I know what is proportionate and if my work is relevant to the equality duty?	14
Are Due Regard Statements published?.....	15
What do we do about data gaps across the newer protected characteristics?	15
We use data by vulnerable or disadvantaged groups, is that okay?.....	16

Section 1: The legislation

The Public Sector Equality Duty (PSED)

The PSED was created by the Equality Act 2010 and replaces the race, disability and gender equality duties. The duty came into force in April 2011 and places a duty on public bodies and others carrying out public functions.

The aim of the PSED is to embed equality considerations into the day to day work of public authorities, so that they tackle discrimination and inequality and contribute to making society fairer.

The Equality duty covers the following protected characteristics:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race,
- Religion or belief and
- Sex
- Sexual orientation

It also applies to marriage and civil partnership, but only in respect of the requirement to have due regard to the need to eliminate discrimination.

The PSED consists of a **general duty**, with three main aims (set out in section 149 of the Equality Act 2010 and outlined below); and **specific duties**. The specific duties are designed to help public bodies meet the general duty.

The General Duty

The new Equality Duty requires public bodies to have due regard (*see FAQ below*) to the need to:

- Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;

- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Equality Act explains that the second aim (advancing equality of opportunity) involves, in particular, having due regard to the need to:

Remove or minimise disadvantages suffered by people due to their protected characteristics.

Take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people.

Encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

It states that meeting different needs includes (among other things) taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It explains that compliance with the general equality duty may involve treating some people more favourably than others.

Specific Duties

In addition to the general Equality Duty, set out above, Section 153 of the Equality Act gives the Government a power to impose specific duties on certain public bodies to enable them to perform the Equality Duty more effectively.

The specific duties are intended to support compliance with the General Duty.

The new specific duties focus on reducing burdens and bureaucracy on public bodies, and moving away from a process-driven approach to focus on transparency.

The specific duties require organisations like the Council too;

- publish information to demonstrate their compliance with the Equality Duty, at least annually; and
- set equality objectives, at least every four years

Frequently asked questions

Q. How can showing 'due regard' help me in my role?

It depends on what you do. For example:

Commissioning/Service delivery

It is obvious that a 'one size fits all' approach is not an effective approach of planning, designing or delivering services to a community with different needs.

Showing due regard will lead to services that are more appropriate to the user, and services that are more effective and cost-effective.

By operating from a position of this level of understanding you:

- Will be better at prioritising and meeting customer needs within the resources available.
- Deliver best value for the citizens of Gloucestershire.
- Support GCC in achieving its strategic objectives.
- Commission services that are non-discriminatory and do not create or exacerbate existing inequalities in Gloucestershire.

Financial planning/Strategy Development

The MTF5 is the Council's strategic three year plan of internal resource allocations which helps us to deliver our council strategy. The MTF5 is updated and refreshed on an annual basis with changes in allocation determined in accordance with the Council's goals and priorities. By showing due regard throughout the planning process the Council can:

- Have an oversight of how proposed spending allocations across different service areas of the council will affect the different protected groups, prior to the development of detailed commissioning plans.
- Consider how our partners business plans will advance the equality duty and where further joined up working would be productive
- Take account of a large consultation process which will gather views on what our priorities should be from a broad range of groups, communities and individuals living in Gloucestershire.

See our short films on how staff have been showing due regard on our staffnet equalities pages.

Q. Does showing ‘due regard’ stop me making difficult decisions?

No, the general duty is a duty to **consider** needs, not a duty to **meet all** needs.

But you need to have demonstrated that the needs of all of the protected groups to inform how you prioritise those needs have been considered.

By showing this consideration, the general duty will enable you to demonstrate that you are making decisions in a fair, transparent and accountable way. Showing due regard in this way helps to ensure that GCC resources are better targeted and that money is spent where it will have the greatest effect. It promotes evidence based decision making.

Q. What does showing ‘due regard’ to the general duty actually mean?

‘Due regard’ is a legal term that requires **proportionality** and **relevance**.

The weight given to the general duty will depend on how that area of work affects discrimination, equality of opportunity and good relations. For example, decisions on social care or community safety are likely to be more relevant and have greater impact on equality than those on waste disposal.

Principles from case law and regulatory work on the former race, disability and gender equality duties help us to understand what must be done to **show ‘due regard’** and to be compliant with the general duty. The key case law principles are commonly referred to as the **Brown Principles** and are often used in court to determine whether a public body has shown ‘due regard’ to the equality duty. The following principles, drawn from case law, explain what is essential in order for the Equality Duty to be fulfilled. Public bodies should ensure:

Table 1: The Brown Principles

Brown Principle	Requirement
Knowledge	The decision makers must be aware of their duty to have ‘due regard’ to the three aims of the duty.
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 Duty.
Timeliness	The Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision. A public body cannot satisfy the Duty by justifying a decision after it has been taken.

<p>Real consideration (Decision making)</p>	<p>Consideration of the three aims of the Equality Duty must form an integral part of the decision-making process. The Equality Duty 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</p>
<p>Accountability(No delegation)</p>	<p>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 delegate</p>
<p>Monitoring and review</p>	<p>Public bodies must have regard to the aims of the Equality Duty not only when a policy is developed and decided upon, but also when it is implemented and reviewed The Equality Duty is a continuing duty</p>

Section 2: How the Council is meeting the requirements of the Equality Duty

Publishing **equality information** and **setting equality objectives** as required by the specific duties enables service users, staff, the Commission, regulators and other interested parties to assess the equality performance of the Council.

It promotes transparency and helps the Council to explain how and why we have reached conclusions and made certain decisions. It provides a clear picture of how the Council is complying with the general equality duty and will make our decision-making more transparent.

Equality information

The Council is required to publish annually a range of equality information covering our workforce and our service delivery areas. This information addresses two main categories:

- Information that we used to identify our equality objectives, and;

(This includes information about our workforce, Customer satisfaction rates, access to our services, details of engagement and outcomes)

- Information demonstrating the steps we have taken to show due regard to the three aims of the general duty in our decision making processes.

(This includes information about how the Council has reached certain conclusions and made certain decisions. For example published board reports and how due regard has been shown.)

View equality information on our [website](#).

Equality Objectives

View our latest equality objectives on our [website](#).

Section 3: How we show due regard to the three aims of the general duty in our decision making processes.

The following section outlines the practicalities of showing due regard and why we no longer carry out equality impact assessments.

Showing due regard and equality impact assessments

Up until March 2011 there was a requirement to show 'due regard' through the completion of equality impact assessments. This required following a prescribed process to assess impact on the protected groups.

There is no longer a specified process that public authorities are expected to follow. It is up to each authority to choose the most effective approach for them, which will vary depending on the size of the organisation, the functions they carry out, and the nature of the particular decision.

The rationale for this change was the recognition that:

- Greater flexibility was required in how public bodies show due regard. Consequently, the new duty does not outline a mandated process that should be used to demonstrate that 'due regard' to the equality duty has been shown.
- Greater emphasise was required on the 'analysis of the effects on equality' (Equality analysis) and how it is used in decision-making, and less on the production of a document, which some may have taken to be an end in itself.

As a result of changes to the requirement to carry out equality impact assessments we have adapted our approach to one that is centred on mainstreaming equality considerations in our day to day activities and underpinned by the Brown Principles..

Our approach focuses on ensuring that the council engages with individuals across all the protected groups and uses equality information across all the protected groups, from local data to national reports and statistics. Our approach will be proportionate, for example decisions made on social care or community safety are more likely to be relevant and have greater impact on equality than those on refuse collection.

Helping our staff to show due regard throughout the decision making process:

The Brown Principles in practice

1. Knowledge

To show due regard to the equality duty you must first know what it is! Reading this document is a good start to understanding the requirements of the public sector equality duty. Further training is available. Please contact the equalities lead for further information.

2. Sufficient information

To show due regard to the duty across all the protected groups you must consider sufficient information about those groups in the context of your activity. Information can be quantitative or qualitative through consultation and engagement.

Service user data

Using service user data across the protected groups is crucial to demonstrate due regard when reviewing, developing or designing services. Data should be collated as part of routine monitoring of in- house or external services. If service user data is not available identify what improvement actions will be used to gather data going forward.

[Service user diversity reports](#) are available on our website and give an indication of service user participation across commissioning areas, for example adult residential services and youth services. It does not include participation data at individual service level.

Workforce diversity reports are also available on our website.

Demographic/statistical data

[Gloucestershire population demographics](#) data is available to understand the representation of different protected groups across the county and help with needs analysis. Data like this may also be also useful for benchmarking to identify under or over representation of a service by any of the protected groups. For example, a service is open to all residents and from monitoring you know that 2% of service users are disabled: However, demographic data indicate that 16.7% of Gloucestershire residents report having a disability or long term limiting illness. This finding can be used to explore if there are barriers to participation by

residents with disabilities and how this can be addressed as part of the development of your 'policy'.

Data gaps

You may find that you have more information about some of the protected groups for example, gender, age, disability and less about others, for example, sexual orientation and religion and/or belief. If data is not available and you intend to start collating data about a protected characteristic please use the action plan to outline how this data will be collated. You can find equality monitoring guidance on our [website](#) including an equality monitoring template.

3. Timeliness

The Brown Principles make it very clear that due regard should be undertaken through both the development and implementation stages of projects, policies and practices. **Before** and **during** the decision making process.

Showing 'due regard' as an afterthought once a decision is imminent, minimises the opportunity to consider equality at the appropriate stages and is not enough to demonstrate compliance with the general duty. Start showing due regard as early as possible.

4. Real consideration

It is important is that you can 'document a trail' of how due regard has been shown throughout the development of your work and how it then informs the final decision making.

This recording trail can be mainstreamed into your project plans through minutes of meetings and as a summary in cabinet reports if applicable.

However to support a consistent approach to recording due regard, staff must use the due regard statement to capture the 'journey/story' of how due regard has been shown.

The statement has been developed to capture the essential principles of using sufficient information and how the findings have informed the Councils work.

The latest version of the Due Regard Statement can be found on our [website](#).

Decision making

As a minimum the following information should be provided to enable the decision maker to demonstrate that he/she has had 'due regard' to the three aims of the duty when making a decision.

- Equality information used to understand the needs/outcomes/experiences of each protected group in the context of the activity being considered: what data gaps existed across the protected groups and what you intend to do close those gaps. How you used other sources of information to understand the impacts
- Opportunities and challenges identified with regard to the three aims of the general duty and the protected group(s) affected.
- How you used those findings to develop the activity under consideration
- Plans for monitoring and review actions

Attaching a due regard statement as an annex to a Cabinet report is not acceptable unless it is also supported with a short summary within the body of the report or is specifically referred to and deliberated within the agenda.

5. Accountability

The duty is the Councils responsibility even when an external provider delivers a service or function on the council's behalf. Read more about considering equality throughout commissioning on the procurement pages on our website.

6. Review

When you review your 'policy' you must continue to show due regard. This is likely to be achieved through continued use of sufficient information across the protected groups.

Table 1: Examples of due regard

<p>A tender to procure a new ICT service provider for GCC is under review. As part of the discussions, it is agreed that further consideration will be required to understand if there are any additional requirements needed to ensure that the needs of disabled users are met. This is met by additional consultation and significant considerations forming part of the development of the tender specification.</p>
<p>Analysis of service user data has highlighted low take up of services offering mental health and well being support amongst those aged 30-40. This is addressed through closer working with partner organisations to promote awareness of</p>

services.

Changes to how residents can engage with the council are being introduced so that more contact is being shifted to on-line contact. Consideration is given to who currently uses neighbourhood services and therefore more likely to be affected by the increased on-line point of contact. Older people are identified as being more likely to be affected by changes as a result of being less likely to have on-line access and more likely to use neighbourhood services. Further investigation identifies that there are alternative routes that older people can use to access a service and contact the council which will be promoted as well as consideration of how older people can be supported to use council web services.

Frequently asked questions

How do I know if I need to complete a due regard statement?

Showing due regard to the public sector equality duty is not about the completion of a due regard statement. At GCC the due regard statement is the tool to document how due regard has been shown.

A due regard statement provides information to our decision makers that enables them to ensure that our staff are showing a level of due regard that is appropriate and proportionate to the many important decisions that we make.

There will be many ways in which you are showing due regard to the equality duty in your day to day practices that don't involve formal decision making and therefore won't require the completion of a due regard statement.. For example you may already offer additional support to address the needs of older people and disabled people and this is integral to the customer standards of care.

However if you are about to embark on any form of commissioning activity, policy development or planning process that involves key decision points it is important that you record how due regard has been shown using a due regard statement.

We know we need to complete a due regard statement, when do we start filling it in?

It is important that the process of due regard starts at the point where the aims and objectives are being decided. Time needs to be factored into the development of any activity, or service, for undertaking appropriate consultation and analysis of equality information. This will ensure that opportunities or challenges posed by the duty can be considered from the outset. The statement should be updated as the project/policy develops and a summary of the status should be provided to inform any formal decision making points along the way.

How do I know what is proportionate and if my work is relevant to the equality duty?

The following questions will be helpful in determining relevance and proportionality. Generally the more 'yes' responses indicates a higher level of relevance to the duty.

If you decide that a policy is not relevant to equality, you should be confident of your reasons for this. The fact that 'no information is available' would not be adequate to justify a decision that a policy is not relevant to equality. Recording your reasons for why a policy is not relevant will help you to increase transparency, encourage engagement and may assist in demonstrating compliance with the general equality duty.

Is the activity of work relevant to all or any of the aims of the general duty?
Does the policy affect service users, employees or the wider community?
Is there any relevant public concern about the activity of work and impact of the activity on any of the protected groups?
The relevance of a policy to equality depends not just on the number of those affected but on the significance of 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?

Are Due Regard Statements published?

In most cases the Due Regard Statement will be published alongside cabinet reports on our website. You may also find it useful to publish initial due regard findings as part of any consultation and engagement exercise from which further feedback can be gathered.

When a Due Regard Statement is completed on an internal facing document or one that is not presented to cabinet, the statement should be stored with other documents relating to this area of work and made available to other staff members to promote sharing of good practice.

What do we do about data gaps across the newer protected characteristics?

The new duty covers the following eight protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnership, but not for all aspects of the general duty and applies to eliminating discrimination only.

We recognise that the Council has not routinely collected certain data on all of the protected groups now covered by the public sector equality duty. As a result it will not be possible to identify the potential impacts of certain activities on some of the protected groups, most likely: Gender reassignment, sexual orientation, religion and/or belief, marriage and civil partnership and pregnancy and maternity.

Because the general equality duty requires you to analyse the effect of your activities on all protected groups, you will need to think about whether you have enough, and the right type, of information to enable you to give rigorous consideration to the aims of the general equality duty across all your functions.

There may be other means of identifying the equality issues faced. You may wish to consider relevant national reports to get ideas about equality priorities for employment and service provision for your area of work. This might include:

- The Commission's Triennial Review, or other research reports and statistics available on the Commission's website.
- Relevant national studies produced by central government departments or statistics bodies, including the Census.
- Information, reports or statistics produced by your sector's inspectorate or ombudsman.
- Information pooled with our partners.

There are also specialist equality organisations, such as the Runnymede Trust, Stonewall, the Fawcett Society, Press for Change, Age UK and RADAR (the disability network), which regularly produce studies and reports which you may find useful.

Where functions are highly relevant to the aims of the general equality duty, but information is not routinely collected or disaggregated, you should consider setting up systems to do so, or find other ways of gathering sufficient information. This may be, for example, by engaging with people who share relevant protected characteristics.

You may also need to ask providers to provide information on services that they provide for you.

We use data by vulnerable or disadvantaged groups, is that okay?

The use of the term vulnerable group or disadvantaged group is currently used commonly in assessments when identifying target groups. It is widely acknowledged that some of the most disadvantaged and vulnerable groups are also protected groups defined by the Equality Act, 2010. However, the two concepts are not

interchangeable and any equality analysis you do should be clear about any indirect or direct impacts by protected characteristics