

Equality Analysis

An Equality Analysis is a document that summarises how the Trust has had due regard to the Public Sector Equality Duty (PSED)(Equality Act 2010) in decision-making.

Public Sector Equality Duty

The Equality Act 2010 places a duty on the Trust, when exercising public functions, to have due regard to the need to:

- 1) Eliminate discrimination, harassment and victimisation;
- 2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- 3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

These are known as the three aims of the general equality duty.

Protected Characteristics

The Equality Act 2010 sets out nine protected characteristics that apply to the equality duty:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Marriage and civil partnership*

*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

Due Regard

To 'have due regard' means that in making decisions and in its other day-to-day activities the Trust must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations.

How much regard is 'due' will depend on the circumstances and in particular on the relevance of the aims in the general equality duty to the decision or function in question.

The greater the relevance and potential impact, the higher the regard required by the duty. The three aims of the duty may be more relevant to some functions than others; or they may be more relevant to some protected characteristics than others.

The following questions can help you to determine relevance, but this is not an exhaustive list:

- Does the policy, strategy or business case affect service users, employees or the wider community, and therefore potentially have a significant effect in terms of equality? Remember, relevance will depend not only on the number of those affected but also by the significance of the effect on them.
- Is it a major policy, strategy or business case, significantly affecting how functions are delivered in terms of equality?
- Does the policy, strategy or business case relate to functions that previous engagement has identified as being important to particular protected groups?

- Does or could the policy, strategy or business case affect different protected groups differently?
- Does it relate to an area with known inequalities?
- Does it relate to an area where equality objectives have been set by the Trust?

When you decide that a policy, strategy or business case is not relevant to equality, you will need to document this, along with the reasons and the information that you used to make this decision.

A simple statement of no relevance to equality without any supporting information is not likely to be sufficient, nor is a statement that no information is available. This is particularly important where you are not familiar with methods of equality analysis or with equality concerns, as you could inadvertently overlook issues that could indicate relevance to equality. This could leave the Trust vulnerable to legal challenge.

Case law principles

A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the decision makers.
- The duty is a continuing one.
- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- The general equality duty is not a duty to achieve a result, it is a duty to have due regard to the need achieve the aims of the duty.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

Timing

- Having 'due regard' is a state of mind. It should be considered at the inception of any decision.
- Due regard should be considered throughout the development of the decision. Notes should be taken on how due regard to the equality duty has been considered through research, meetings, project teams, committees and consultations.
- The completion of the EA is a way of effectively summarising the due regard shown to the equality duty throughout the development of the decision. The completed EA must inform the final decision-making process. The decision-maker must be aware of the duty and the completed EA.