

APPENDIX 4 - PUBLIC SECTOR EQUALITY DUTY

The Public Sector Equality Duty provides (as far as is relevant) as follows:

1. A public authority must, in the exercise of its functions, have due regard to the need to:
 - eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act;
 - 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.
2. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
3. Case law has established the following principles relevant to compliance with the PSED which Council will need to consider:
 - a. Compliance with the general equality duties is a matter of substance, not form.
 - b. The duty to have "due regard" to the various identified "needs" in the relevant sections does not impose a duty to achieve results. It is a duty to have "due regard" to the "need" to achieve the identified goals.
 - c. Due regard is regard that is appropriate in all the circumstances, including the importance of the area of life of people affected by the decision and such countervailing factors as are relevant to the function that the decision maker is performing.
 - d. The weight to be given to the countervailing factors is in principle a matter for the authority. However, in the event of a legal challenge it is for the court to determine whether an authority has given "due regard" to the "needs" listed in Section 149 of the 2010 Act. This will include the court assessing for itself whether, in the circumstances, the local authority has given appropriate weight to those "needs" and not simply deciding whether the authority's decision is a rational or reasonable one.

- e. The duty to have “due regard” to disability equality is particularly important where the decision will have a direct impact on disabled people. The same applies for other protected groups where a decision could directly affect them.