

Equality and Human Rights Commission

Using the equality duties to make fair financial decisions

A guide for decision-makers

Introduction

With major reductions in public spending, organisations in Britain may be required to make difficult financial decisions. This guide sets out what is expected of you as a decision-maker and leader of a public authority responsible for delivering key services at a national, regional and/or local level, in order to make such decisions as fair as possible.

The equality duties do not prevent you from making difficult decisions such as reorganisations and relocations, redundancies, and service reductions nor do they stop you from making decisions which may affect one group more than another. What the equality duties do is enable you to demonstrate that you are making financial decisions in a fair, transparent and accountable way, considering the needs and the rights of different members of your community. This is achieved through assessing the impact that changes to policies, procedures and practices could have on different equality groups.

Assessing the impact of proposed changes to policies, procedures and practices is not just something the law requires, it is a positive opportunity for you as public authority leaders to ensure you make better decisions based on robust evidence.

What the law requires now

Under equality legislation, your authority has legal duties to pay 'due regard' to the need to eliminate discrimination and promote equality with regard to race, disability and gender, including gender reassignment, as well as to promote good race relations.

The law requires that this duty to pay 'due regard' be demonstrated in the decision-making process. Assessing the potential equality impact of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can show 'due regard'.

It is also important to note that public authorities subject to the equality duties are also likely to be subject to the obligations under the Human Rights Act. We would therefore recommend public authorities should consider the potential impact their decisions could have on human rights.

What the law will require from April 2011

The Equality Act 2010 introduces a new public sector duty which extends this coverage to age, sexual orientation, pregnancy and maternity, and religion or belief.

In preparation for these new duties coming into force, we would recommend that you start to assess the impact your financial decisions might have on the new protected groups where relevant and proportionate.

Aim of this guide

This guide aims to assist decision-makers in ensuring that:

- the process followed to assess the equality impact of financial proposals is robust, and
- the impact financial proposals could have on equality groups is thoroughly considered before any decisions are arrived at.

We have also produced detailed practical guidance for those responsible for assessing the equality impact of policies, which is available from our website. You can access this guidance at:

www.equalityhumanrights.com/financialdecisions

The benefits of carrying out Equality Impact Assessments (EIAs)

By law an assessment must:

- contain sufficient information to enable a public authority to show it has paid 'due regard' to the equality duties in its decision-making
- identify methods for mitigating or avoiding any adverse impact.

Such assessment does not necessarily have to take the form of one document called an Equality Impact Assessment (EIA), although this is what we recommend for reasons explained below. If you choose not to undertake an EIA, then some alternative form of analysis which systematically assesses any adverse impact of a change in policy, procedure or practice will be required.

An impact assessment is not an end in itself and should be tailored to and proportionate to the decision that is being made. Whether it is proportionate for an authority to conduct an assessment of a financial decision depends on its relevance to the authority's particular function and its likely impact.

We recommend using a formal EIA document when developing financial proposals as it is likely to help you to:

- **ensure you have a written record of the equality considerations** you have taken into account
- **ensure that your decision includes a consideration of the actions that would help to avoid or mitigate any unfair impact on particular equality groups.** Individual decisions should also be informed by the wider context of decisions in your own and other relevant public bodies, so that particular groups are not unduly affected by the cumulative effects of different decisions
- **make your decisions based on evidence:** a decision which is informed by relevant local and national data about equality is a better quality decision. EIAs provide a clear and systematic way to collect, assess and put forward relevant evidence
- **make the decision-making process more transparent:** a process which involves those likely to be affected by the policy, and which is based on evidence, is much more open and transparent. This should also help you secure better public understanding of the difficult decisions you will be making in the coming months
- **comply with the law:** the duties are legal obligations which should remain a top priority, even in times of economic difficulty. Failure to meet the duties may result in authorities being exposed to costly, time-consuming and reputation-damaging legal challenges.

When should assessments be carried out?

An assessment of impact must be carried out at a formative stage so that the assessment is an integral part of the development of a proposed policy, not a later justification of a policy that has already been adopted.

Financial proposals which are relevant to equality such as those likely to impact on equality for your workforce and/or for your community should always be subject to a thorough assessment. This includes proposals to outsource or procure any of your organisation functions. The assessment should form part of the proposal, and you should consider it carefully **before** making your decision.

If you are presented with a proposal that has not been assessed for equality impact, you should question whether this enables you to consider fully the proposed change and its likely impact. Decisions not to

impact assess should be fully documented, along with the reasons and the evidence used to come to this conclusion. This is important as authorities may need to rely on this documentation if the decision is challenged.

It is also important to remember that potential impact is not just about numbers. Evidence of a serious impact that may affect a small number of individuals is just as important as a potential impact affecting many people.

What should I be looking for in an assessment?

An assessment needs to be based on relevant data and sufficient analysis to enable the decision-maker to understand the equality implications of a decision and any alternative options or proposals.

As with everything, proportionality is a key principle. Assessing the impact of a major financial proposal is likely to need significantly more effort, and resources dedicated to ensuring effective consultation and involvement, than a simple assessment of a proposal to save money by changing staff travel arrangements. There is no prescribed format for an EIA, however the following questions and answers provide guidance to assist you in determining whether you consider that an EIA is robust enough to rely on:

- **Is the purpose of the financial proposal clearly set out?**
A robust EIA will set out the reasons for the change; how this change can impact on equality groups, as well as who it is intended to benefit; and the intended outcome. You should also think about how individual financial proposals might relate to one another. This is because a series of changes to different policies or services could have a severe impact on particular equality groups. Joint working with your public authority partners will also help you to consider thoroughly the impact of decisions on the people you collectively serve.

Example: A local authority takes separate decisions to limit the eligibility criteria for community care services; increase charges for respite services; scale back its accessible housing programme; and cut concessionary travel. Each separate decision may have a significant effect on the lives of disabled residents, and the cumulative impact of these decisions may be considerable. This combined impact would not be apparent where the decisions are considered in isolation.

- **Has the EIA considered available evidence?**
Public authorities should consider the data and research already available locally and nationally. The assessment should be underpinned by up-to-date and reliable information about the different groups the proposal is likely to affect. A lack of data is not a sufficient reason to conclude that there is no impact.¹
- **Have those likely to be affected by the proposal been consulted and involved?**
Involvement and consultation are crucial to the EIA process. There is an explicit requirement to consult different ethnic groups under race relations law in the context of an EIA but, as a matter of best practice and in order to improve your evidence, applying the same principle to other groups should be considered. No-one can give you a better insight into how proposed changes will affect, for example, disabled people, than disabled people themselves.
- **Have potential positive and negative impacts been identified?**
It is not enough to state simply that a policy will affect everyone equally; there should be a more in-depth consideration of available evidence to see if particular equality groups are more likely to be affected than others. Equal treatment does not always produce equal outcomes; sometimes authorities will have to take specific steps for particular groups to address an existing disadvantage or to meet differing needs.
- **What course of action does the EIA suggest I take? Is it justifiable?**
The EIA should clearly identify the option(s) chosen, and their potential impacts, and document the reasons for this decision. There are four possible outcomes of an EIA. More than one may apply to a single proposal:

¹ Where there is no detailed quantitative data available, there may often be national statistics or qualitative studies on the relevant policy area. These can be supplemented by local informal consultation. Providing evidence that your organisation has looked for data will improve the quality and transparency of your EIA. For longer-term monitoring of impact, you can include your plans to collect data in the EIA action plan.

- **Outcome 1: No major change required** when the EIA has not identified any potential for discrimination or adverse impact and all opportunities to promote equality have been taken.
 - **Outcome 2: Adjustments to remove barriers identified by the EIA or to better promote equality.** Are you satisfied that the proposed adjustments will remove the barriers identified?
 - **Outcome 3: Continue despite having identified some potential for adverse impact or missed opportunities to promote equality.** In this case, the justification should be included in the EIA and should be in line with the duty to have 'due regard'. For the most important relevant policies, compelling reasons will be needed. You should consider whether there are sufficient plans to reduce the negative impact and/or plans to monitor the actual impact, as discussed below.
 - **Outcome 4: Stop and rethink** when an EIA shows actual or potential unlawful discrimination.²
- **Are there plans to alleviate any negative impact?**
Where the assessment indicates a potential negative impact, consideration should be given to means of reducing or mitigating the negative effects. This will in practice be supported by the development of an action plan to reduce impact that identifies the responsibility for delivering each action and the associated timescales for implementation. Considering what action you could take to avoid any negative impact is crucial, to reduce the likelihood that the difficult decisions you will have to take in the near future do not create or perpetuate inequality.

² The relevant Codes of Practice and guidance on the public sector duties provide information about what constitutes unlawful discrimination. More information is available on the Commission's website <http://www.equalityhumanrights.com>.

Example: A University decides to close down its childcare facility to save money, particularly given that it is currently being underused. It identifies that doing so will have a negative impact on women and individuals from different racial groups, both staff and students.

In order to mitigate such impact, the University designs an action plan to ensure relevant information on childcare facilities in the area is disseminated to staff and students in a timely manner and to develop partnership working with its local authority and ensure sufficient and affordable childcare facilities remains accessible to its students and staff.

- **Are there plans to monitor the actual impact of the proposal?**
Although an EIA will help to anticipate a proposal's likely effects on different communities and groups, in reality the full impact of a decision will only be known once it is introduced. It is therefore important to set out arrangements for reviewing the actual impact of the proposals once they have been implemented.

What happens if you don't properly assess the impact of relevant decisions?

If you have not carried out an assessment of the proposal, or have not done so thoroughly, you risk leaving yourself open to legal challenges, which are both costly and time-consuming. Recent legal cases have shown what can happen when authorities do not consider their equality duties when making decisions.³

Example: A court recently overturned a decision by Haringey Council to consent to a large-scale building redevelopment in Wards Corner in Tottenham, on the basis that the council had not considered the impact of the proposal on different racial groups before granting planning permission.

However, the result can often be far more fundamental than a legal challenge. If people feel that an authority is acting high-handedly or without properly involving its service users or employees, or listening to their concerns, they are likely to become disillusioned with you. Above all, authorities which fail to carry out robust assessments risk making

³ See relevant case law on our webpage at <http://www.equalityhumanrights.com/financialdecisions>

poor and unfair decisions that could discriminate against particular equality groups and perpetuate or worsen inequality.

As part of its regulatory role to ensure compliance with the equality duties, the Commission will monitor financial decisions with a view to ensuring that these have been taken in compliance with the equality duties and have taken into account the need to mitigate impact where possible.

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