

Equality and Human Rights Commission

# Making fair financial decisions

A guide for decision-makers in  
Scottish public authorities

January 2015



# **This guidance reflects the requirements of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and provides advice about the general equality duty.**

## **Introduction**

With major reductions in public spending, public authorities in Britain are being required to make difficult financial decisions. This guide sets out what is expected of you as a decision-maker and leader of a Scottish 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 public sector equality duty (the equality duty) does not prevent you from making difficult decisions such as reorganisations and relocations, redundancies, and service reductions, nor does it stop you from making decisions which may affect one group more than another group. The equality duty enables 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 proposed new or revised policies or practices could have on different protected groups (or protected characteristics under the Equality Act 2010).

Assessing the impact on equality of proposed new or revised policies or practices is not just something that the law requires, it is a positive opportunity for you as a public authority leader to ensure you make better decisions based on robust evidence.

## **What the law requires**

Under the equality duty (set out in the Equality Act 2010), public authorities must have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.

The protected groups covered by the equality duty are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnerships, but only in respect of eliminating unlawful discrimination.

The law requires that public authorities demonstrate that they have had 'due regard' to the aims of the equality duty in their decision-making. Assessing the potential impact on equality of proposed new or revised policies or practices is one of the key ways in which public authorities can demonstrate that they have had 'due regard'.

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

The Scottish Human Rights Commission and Equality and Human Rights Commission recognise that some public authorities are choosing to address both the equality and human rights implications of proposed, new or revised policies or practices when they assess impact. To support public authorities in this integrated approach to impact assessment, we have developed a number of resources which are available [here](#).

## **Aim of this guide**

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

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

We have also published detailed non-statutory guidance aimed at those responsible for implementing the public sector equality duty in public authorities in Scotland including [Assessing Impact and the public sector equality duty](#).

## **The benefits of assessing the impact on equality**

In Scotland, by law a public authority must assess the impact of applying a proposed new or revised policy or practice, against the needs of the general equality duty, in so far as is needed to meet the general equality duty.

In making the assessment, an authority must consider relevant evidence relating to people who share a protected characteristic (including any evidence received from those people).

In developing a policy or practice, an authority must take account of the results of their assessment of that policy or practice.

If an authority decides to apply the policy or practice in question, it must publish the results of the assessment, within a reasonable time.

An authority must also make arrangements to review and, where necessary, revise any existing policies or practices.

An authority's consideration of whether or not an assessment of impact is needed cannot be treated as an assessment itself.

Assessing impact on equality is not an end in itself and it should be tailored to, and be proportionate to, the decision that is being made.

Whether it is proportionate for an authority to conduct an assessment of the impact on equality of a financial decision or not depends on its relevance to the authority's particular function and its likely impact on people from the protected groups. It is likely

that most financial decisions that you make will require an equality impact assessment.

We recommend that you document your assessment of the impact on equality when developing financial proposals. This will 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 impacts on particular protected groups.** Individual decisions should also be informed by the wider context of decisions in your own and other relevant public authorities, 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 information about equality is a better quality decision. Assessments of impact on equality provide a clear and systematic way to gather, assess and present 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 accountable and transparent. This should also help you secure better public understanding of the difficult decisions you may be making.
- **Comply with the law:** you are required by the regulations to publish the results of your assessment. A written record can also be used to demonstrate that due regard has been had. Failure to meet the equality duty may result in authorities being exposed to costly, time-consuming and reputation-damaging legal challenges.

## When should your assessments be carried out?

Assessments of the impact on equality 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 in your workforce and/or for your community, should always be subject to a thorough assessment. This includes proposals to outsource or procure any of the functions of your organisation. The assessment should form part of the proposal, and you must consider it carefully before making your decision.

The Equality and Human Rights Commission has also produced [guidance](#) to support listed public authorities to meet the [requirements of the Scottish Specific Duty](#) to consider award criteria and conditions in relation to public procurement.

If you are presented with a proposal that has not been assessed for its impact on equality, you should question whether this enables you to consider fully the proposed changes and its likely impact and whether your organisation has met its specific duties. Decisions not to assess the impact on equality 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. Consideration as to whether an assessment is needed can never be treated as the assessment itself.

It is also important to remember that the potential impact is not just about numbers. Evidence of a serious impact on a small number of individuals is just as important as something that will impact on many people.

## **What should I be looking for in my assessments?**

Assessments of impact on equality need to be based on relevant evidence and 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 on equality of a major financial proposal is likely to need significantly more effort and resources dedicated to ensuring effective engagement, than a simple assessment of a proposal to save money by changing staff travel arrangements.

There is no prescribed format for assessing the impact on equality, but the following questions and answers provide guidance to assist you in determining whether you consider that an assessment is robust enough to rely on:

- **Is the purpose of the financial proposal clearly set out?**

A robust assessment will set out the reasons for the proposed change; how this change can impact on protected groups, as well as whom 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 protected groups.

Joint working with your public authority partners will also help you to consider thoroughly the impact of your joint 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 if the decisions were considered in isolation.

- **Has the assessment considered relevant evidence?**

Public authorities should consider the information and research already available locally and nationally. The assessment of impact on equality should be underpinned by up-to-date and reliable information about the different protected groups that the proposal is likely to have an impact on. A lack of information is not a sufficient reason to conclude that there is no impact.

- **Have those likely to be affected by the proposal been involved?**

There is no explicit requirement to involve people in assessing impact under the equality duty, but it will help you to improve the equality information that you use to understand the possible impact on your policy on different protected groups. No-one can give you a better insight into how proposed changes will have an impact on, 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 impact on everyone equally; there should be a more in-depth consideration of available evidence to see if particular protected groups are more likely to be affected than others. Equal treatment does not always produce equal outcomes; sometimes authorities will have to take particular steps for certain groups to address an existing disadvantage or to meet differing needs.

- **What course of action does the assessment suggest that I take? Is it justifiable?**

The assessment 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 assessment of the impact on equality, and more than one may apply to a single proposal:

**Outcome 1:** No major change required when the assessment has not identified any potential for discrimination or adverse impact and all opportunities to advance equality have been taken.

**Outcome 2:** Adjustments to remove barriers identified by the assessment or to better advance equality. Are you satisfied that the proposed adjustments will remove the barriers identified?

**Outcome 3: Continue despite having identified some potential for adverse impacts or missed opportunities to advance equality.** In this case, the justification should be included in the assessment 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 assessment shows actual or potential unlawful discrimination.

- **Are there plans to mitigate any negative impacts?**

Where the assessment indicates a potential negative impact, consideration should be given to means of reducing or mitigating this impact. This will in practice be supported by the development of an action plan to reduce impacts. This should identify 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.

**Example:** A University decides to close down its childcare facility to save money,

particularly given that it is currently being under-used. 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 impacts, 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. This will help to improve partnership working with the local authority and to ensure that sufficient and affordable childcare remains accessible to its students and staff.

- Are there plans to monitor the actual impact of the proposal?  
Although assessments of impact on equality will help to anticipate a proposal's likely effect 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 on equality of relevant decisions?**

If you have not carried out an assessment of impact on equality 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.

**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 the authority.

Above all, authorities which fail to carry out robust assessments of the impact on equality risk making poor and unfair decisions that could discriminate against particular protected groups and perpetuate or worsen inequality.

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