

Public Sector Equality Duties

Who does the public sector equality duty apply to?

The public sector equality duty applies to all public authorities. A public authority is 'any person who has functions of a public nature', this includes Ministers of the Crown and government departments, as well as police forces and police authorities.



How the public sector equality duties came about and what their purpose is

Following the report of Sir William Macpherson in 1999, the race equality duty was born as a means of seeking to change the culture within public institutions going forward. It required all public authorities to have due regard to race equality issues as part of the decision-making process. The equality duties were then extended to disability and gender equality issues, and there is now a "Single Equality Duty" in force, covering also religious belief or non-religious belief, sexual orientation, gender reassignment, pregnancy and maternity and age, as well as gender, race and disability equality.

The aim of these duties is to ensure that public authorities take responsibility to ensure proper consideration is given to progressing equality in relation to race, disability, gender, religion, sexual orientation and age when making policy decisions. The duties require public authorities to focus on the areas where there is most inequality so that they can take action to redress the inequalities. If they fail to comply with the duties, legal action can be taken to enforce the duties.

What are the public sector equality duties?

The duties require public authorities to take action to redress inequalities encountered by people of different ages, racial groups, disabled people, men and women, different religious groups, sexual orientation, gender reassignment and pregnancy. When making any policy decision, public authorities should pay proper attention as to whether the policy decision will eliminate inequality and positively promote equality.

There is an additional aspect as regards disabled persons in that the public body should also, as part of its policy making decision, be mindful that there may be a need to treat disabled people more favourably than non-disabled persons in order to progress equality, as well as the need to promote positive attitudes towards disabled people, and encouraging them to participate in public life.

The duties were originally introduced to ensure that public authorities could be held accountable for failing to tackle entrenched inequalities in all areas including education, criminal justice and health.

Legislation governing the public sector equality duties imposes both general duties on all public authorities, and specific additional duties on certain key public bodies, which set out the specific steps that those key public authorities are expected to take to meet the general duty.

As part of the general duty, a public body is required to consider the potential inequality that may result as part of its decision making, and consider how that inequality might be eliminated. If the specific duty also applies, the public body might be required to publish information relevant to equality issues and monitor policies for adverse impact. The specific duties would, therefore, seek to further the objectives identified in the general duty.

Continue overleaf >

How to check whether a public authority is complying with its equality duty

The Equality Act 2010 (Specific Duties) Regulations 2011 came into force in September 2011.

These Regulations provide that Public Authorities including police forces and police authorities must annually publish information demonstrating compliance with the public sector equality duty. This information must include reference to specific protected characteristics and reference to the impact on employees and those affected by a particular policy or procedure. In addition, all public authorities must prepare and publish objectives for achieving the aims of the public sector equality duty by 6th April 2012 and thereafter every 4 years. The Home Office have issued guidance to assist Public Authorities in this regard.

There are number of steps that you can take to establish whether a public authority is complying with its equality duty in respect of a particular decision. Primarily, you should be looking for actions taken by the authority to gather evidence regarding the impact of its decision on equality gaps, such as a formal Equality Impact Assessment document. It is also helpful to refer to any equality schemes or equality objectives published by the authority and consider if they have complied with what is set out, or where they have failed to do so.

Where decisions are likely to be undertaken that will impact on equality issues, and where there is no evidence of that authority considering those issues, there is a possibility that you might be able take legal action by way of judicial review. We can provide you with advice and guidance on what steps to take to enforce the duties. Time is of the essence in judicial review proceedings, and even a short delay between a decision being made and proceedings being lodged might be too long.



Mandatory ACAS Early Conciliation

If you are thinking about making an employment tribunal claim, you will first need to notify details of your claim to ACAS, who will then offer early conciliation to try to resolve the dispute. The conciliation period can be up to one month. If the claim does not settle, ACAS will issue a certificate confirming that the mandatory conciliation process has concluded.

There are changes to time periods within which to lodge claims to allow for the period during which a claim is with ACAS. The period within which a claim is with ACAS will not count for calculation of time limits; and if the time limit would usually expire during that period, or within the month after the certificate is issued, then you will have up to one month following receipt of the conciliation certificate in which to lodge a claim.

The process makes the calculation of time limits in employment tribunal cases more complicated. Claimants are advised to be aware of limitation issues and seek legal advice promptly. For further information on the ACAS early conciliation process visit: www.acas.org.uk

Employment Tribunal Fees

You have to pay a fee when you file your claim in the employment tribunal. Fees are payable when you issue your claim and prior to a final hearing. A fee remission scheme is in place- see the employment tribunal website at www.employmenttribunals.service.gov.uk for further details. The booklet on the website "EX160A Court and Tribunal fees – do I have to pay them?" Provides details for claiming a remission of fees.

If you need further assistance, in the first instance please contact your local Joint Branch Board.

W: www.slatergordon.co.uk/policelaw

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