

**ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS**

<b>1.</b>	<b>Meeting:</b>	<b>Self Regulation Committee</b>
<b>2.</b>	<b>Date:</b>	<b>12<sup>th</sup> July 2012</b>
<b>3.</b>	<b>Title:</b>	<b>Public Sector Equality Duty</b>
<b>4.</b>	<b>Directorate:</b>	<b>Resources</b>

**5. Summary**

This report explains the requirements of the Public Sector Equality Duty (section 149 of the Equality Act 2010) and sets out the Council's approach to Equality Analysis, which is an important mechanism for complying with the Duty.

**6. Recommendations**

- 6.1 The report is received.**
- 6.2 The progress on undertaking Equality Analysis is noted.**
- 6.3 Self-Regulation Committee receive an annual report on completed Equality Analysis in June 2013.**

## **7. Proposals and Details**

### **7.1 Overview of the Public Sector Equality Duty**

The new Public Sector Equality Duty came into force on 5 April 2011. Supporting specific duties came into force on 10 September 2011.

The broad purpose of the Equality Duty is to integrate consideration of equality and good relations into the day-to-day business of public authorities. It requires equality considerations to be reflected in decision making, the design of policies, the delivery of services and in employee management; and for these issues to be kept under review.

The duty consists of a General Equality Duty, which is set out in section 149 of the Equality Act 2010, and Specific Duties, which are imposed by Specific Duties Regulations 2011. The new duties replace the previous public sector race, gender and disability equality duties. They apply to all public bodies, including local authorities and schools. They apply across all functions and services, including any that are contracted out.

### **7.2 Protected Characteristics**

The new duty covers the following eight protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The duty also covers marriage and civil partnership, but not for all aspects of the duty.

### **7.3 General Equality Duty**

The general equality duty requires that public bodies must have 'due regard' to the need to:

- Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it.
- Foster good relations between people who share a protected characteristic and those who do not share it.

These are often referred to as the three aims of the duty. The Act explains that having due regard for advancing equality involves:

- Removing or minimising disadvantages experienced by people due to their characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people. (This includes taking account of disabled people's disabilities.)
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

Fostering good relations is described as tackling prejudice and promoting understanding between different groups.

#### **7.4 Specific Duties**

The purpose of the specific duties is to help performance on the general equality duty. These require public bodies to:

- Publish information to demonstrate compliance with the general duty.
- Prepare and publish one or more objectives

#### **7.5 Principles from case law**

Principles from case law on the previous race, gender and disability duties continue to apply. These include the requirements that:

- Decision makers actively consider the likely effects of decisions on people with protected characteristics:
  - Decisions include commissioning, decommissioning, policy development, policy review, resource allocation etc.
  - Decisions may require evidence gathering and/or consultation with people from the protected groups affected.
  - The duty must be complied with at the time a decision is being taken - a decision cannot be taken and justified afterwards.
- Employees and strategic leaders, including Elected Members, are aware of the duty and apply it.
- Third parties delivering functions and services on the authority's behalf also must comply with the duty.
  - RMBC remains responsible for meeting the equality duty where services are delivered by an external contractor.

#### **7.6 Meeting the Equality Duty in Policy and Decision Making – Equality Analysis**

Public authorities are required to have due regard to the aims of the equality duty when making decisions and when setting policies. This involves taking action to understand the effect or potential effect of decisions and policies on people with different protected characteristics. If a decision or policy is challenged, the Council will need to be able to demonstrate how it has carried out this process, which is often referred to as Equality Analysis. The Equality and Human Rights Commission (ECHR) guidance on the Equality Duty recommends that a record is kept of the thought process and the outcomes of the analysis.

While there is no explicit legal requirement under the general equality duty to engage with people with different protected characteristics, engaging with service users, other stakeholders and employees helps public authorities to base their decisions

and policies on evidence, rather than on assumptions. This evidence can be used to improve decision-making and is therefore an important component of Equality Analysis.

## **7.7 RMBC Equality Analysis Toolkit**

An **Equality Analysis Toolkit** (formerly called Equality Impact Assessment Toolkit) has been developed to help managers and decision makers analyse the likely impact of decisions or policies on Equality Act protected groups and to evidence the process. It should be used when making decisions in relation to commissioning, decommissioning, policies, projects, services, strategies and functions.

A programme of Equality Analysis is currently underway within all Directorates, with particular attention being paid to decisions relating to allocation of resources and restructure of services (see appendix 1).

## **8. Finance**

Complying with the Public Sector Equality Duty is a core requirement for all functions and services of the Council.

## **9. Risks and Uncertainties**

Recent judicial reviews show that the courts are increasingly prepared to intervene if the equality duties are ignored. This includes compliance with the requirements to carry out equality impact assessments prior to a policy or practice being introduced, and also compliance with the relevant (Equality and Human Rights Commission) codes of practice.

Case law shows that a lack of proper consultation and the decision maker being provided with insufficient information in relation to the obligations under the Equality Duty have been at the heart of findings that a public authority has not complied with the law. (Examples are: R (Boyejo) v Barnet LBC and R (Smith) v Portsmouth CC, both of which were claims for judicial review of decisions by local authorities to cease to provide residential warden services in their sheltered housing schemes.)

In Kaur and Shah vs. London Borough of Ealing, the Council was found to have acted unlawfully by failing to carry out a race equality impact assessment before changing funding conditions for organisations dealing with domestic violence.

Equality and community cohesion implications should therefore be identified and addressed for reports to RMBC Elected Member and Management Boards covering areas such as policy decisions, policy development and review, commissioning and decommissioning, or resource allocation. The best way of doing this effectively is often through a systematic and detailed Equality Analysis based on information, research and stakeholder engagement. Report writers are encouraged to include a summary of the Equality Analysis in all reports to Member and Management Boards. Failure to do this could leave the Council at risk if a decision is challenged.

## **10. Policy and Performance Agenda Implications**

Promoting equality and addressing inequalities is a key component in achieving the Corporate Plan priority “Making sure no community is left behind”.

## **11. Background Papers and Consultation**

Equality and Human Rights Commission [Guidance on the Equality Duty](#)  
RMBC [Equality Analysis Toolkit](#)

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## Appendix 1 - Equality Analysis undertaken/schedule

Directorate	Policy/Service/Function
EDS	Library Review Strategy
	Pupil Transport Policy
	Review of Clinical Waste Disposal
NAS	Community and Home Care Service (Domiciliary Care)
	Rationalisation of the Integrated Community Equipment Service
	Transfer of Management of council housing to the local authority.
	Charging Policy (Adult Social Care)
	Shared Lives Changes (Adult Fostering)
	IDVA Service Changes
	Rethink Service Changes
	Scope Service Changes
	Connect to Support (e-Marketplace)
	Supporting People Savings
	Division of Rothercare Direct (Assessment Direct)
	Clifton Court Wellbeing Service changes
CYPS	Reshaping Children's Centres
	Schools and Lifelong Learning, Safeguarding and Corporate Parenting, Community Services
	Early Years and Child Care Services
	Early Help Strategy
	CYPS Management Structure Review
	Budget matrix reviews which will include the completion of an EA: Local Safeguarding Children's Board Learning & Development; Training and Development; Workforce Strategy and Development; Parent Partnership Service; Systems Development; Vulnerable groups - ethnic minorities.