

Public Sector Equality Duty

(a) Summary

The University is considered a “public authority” for the purposes of the Equality Act 2010 and must therefore have “due regard” to the Public Sector Equality Duty (PSED) when formulating policies and taking individual decisions. This will enable the University better to embed equality considerations into its day-to-day work, improving decision-making and fostering a more supportive culture. On the other hand, failure to consider the PSED may result in regulatory action by the Equality and Human Rights Commission or legal claims as well as reputational harm and wasted resources. Please see www.admin.ox.ac.uk/eop/policy/framework for further information on the Public Sector Equality Duty.

The Legal Services Office and the Equality and Diversity Unit are providing a series of briefings across University committees in order to raise awareness of the PSED.

(b) Action for the committee

The committee is asked to **note** the information in this paper and to **take the steps set out below** in exercising its remit.

(c) Key Issues

1. Role of Committees in respect of the PSED

A committee has the following role in respect of the PSED:

- ❖ The Committee’s papers should contain PSED analysis and considerations where relevant and significant.
- ❖ Committees should scrutinise any PSED analysis before them and raise any concerns before approving the proposals in a paper.
- ❖ Committees should be prepared to request further explicit PSED analysis if it appears to be insufficient or missing before approving proposals in a paper.

Guidance on how a committee should go about this is provided in the rest of this paper.

2. The Three Aims of the PSED

As a public authority, the University must, in the exercise of its functions, have due regard to the need to:

1. eliminate discrimination, harassment, victimisation or any other prohibited conduct;
2. advance equality of opportunity between persons who share a relevant protected characteristic¹ and those who do not, by:
 - a. removing or minimising disadvantages suffered by people with various protected characteristics;
 - b. taking steps to meet the needs of persons with a relevant protected characteristic where they are different from the needs of other people; and
 - c. encouraging persons with a relevant protected characteristic to participate in public life or other activities where their participation is low;
3. foster good relations between persons who share a relevant protected characteristic and those who do not, by:
 - a. tackling prejudice; and
 - b. promoting understanding between different groups.

3. When does the Duty apply?

“In the exercise of its functions” means that the PSED applies to any decision made by a public body. In the context of the University it should be considered for all decisions which are likely to affect staff, students or others, and both to new decisions and to those being reviewed. We have used the word “decision” but this must be understood broadly – the duty applies for any policy / practice / decision / function etc implemented at all levels of the University.

¹ **Protected Characteristics** include: Age, Disability, Gender Reassignment, Marriage and Civil Partnership (only in relation to eliminating discrimination in employment), Pregnancy and Maternity, Race (including colour, nationality and ethnic or national origins), Religion or Belief (including lack of belief), Sex, Sexual Orientation

4. Relevance

In theory, therefore, the application of the PSED is very broad, so a proportionate approach is essential and decision-makers need to make a preliminary judgement as to whether the PSED is relevant, the likely risk and the level of scrutiny required. This can be done by considering whether a positive or negative impact on equality is likely under the three aims, and by having regard to any relevant contextual factors, for example:

- a) Does the decision involve significant financial resource or a major policy change?
- b) Will the decision have an impact on people? How many, and how significantly? Is it likely to affect people with particular “protected characteristics” differently?
- c) Does it relate to an important or highly sensitive policy area (e.g. student admissions, harassment)?
- d) Does it relate to an area with known under-representation or differential outcomes (e.g. assessment, admissions)?

If the PSED is considered relevant, this initial judgment should be followed by further analysis. For some decisions more detailed equality analysis will be necessary, but for others it may be appropriate simply to make an informal note of the relevant considerations and/or to complete the checklist provided at www.admin.ox.ac.uk/eop/policy/data/analysis. If it is decided that the PSED is not relevant the reasons for this should be recorded in high risk areas, particularly if they are not self-evident.

5. Evidence & Consultation

In assessing the decision’s potential impact on equality and people with different protected characteristics, it may be necessary to draw on available evidence, which could be any combination of local, national, international or sectoral.

If the decision is likely to have a significant impact on staff and/or students and/or groups with protected characteristics, it may be necessary to undertake targeted consultation. The EDU can advise on and help with this: contact equality@admin.ox.ac.uk

6. Assessing equality impact

Questions that should be considered, and recorded where appropriate, include:

- a) Which protected groups might be affected – either positively or negatively – by the decision?
- b) Are there issues of “intersectionality” between different protected characteristics – e.g., could the impact be greater on older or younger people of different sexes and ethnicities?
- c) Are there any means of remedying or mitigating a potential negative impact?
- d) If there are no remedies, can the negative impact be justified?
- e) Could the decision have a positive impact on equality and, if so, what steps would need to be taken to achieve this and would it be proportionate to do so?

7. Recording the outcome

Decision-makers should record the steps they have taken where appropriate. This should be done at the early stages of policy formulation as well as being recorded in committee papers and minutes (templates available at www.admin.ox.ac.uk/eop/policy/data/analysis).

8. Due Regard

Case law has set out the following principles for determining if “due regard” has been had:

- ❖ ‘Due regard’ is the level of consideration that is appropriate in all the circumstances.
- ❖ Equality issues should be treated as equally important as financial and other considerations.
- ❖ Each of the three aims must be considered consciously, separately and equally.
- ❖ The duty must be exercised in substance, with rigour and an open mind in such a way that it could have an influence on the outcome – not as a retrospective or tick-box exercise.
- ❖ The consideration must be based on sufficient evidence.

(d) Further information

Further resources, including guidance, a checklist and templates for committee papers and minutes prepared by the EDU and LSO are available at www.admin.ox.ac.uk/eop/policy/data/analysis. Further information on the PSED can be obtained from the Equality & Diversity Unit (equality@admin.ox.ac.uk) or Legal Services (lsoweb@admin.ox.ac.uk).