

The public sector equality duty: Requirement and application in the planning context



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The PSED (1)

- Section 149 of the Equality Act 2010
 - (1) *A public authority must, in the exercise of its functions, **have due regard to** the need to—*
 - (a) **eliminate discrimination, harassment, victimisation** and any other conduct that is prohibited by or under this Act;
 - (b) **advance equality of opportunity** between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) **foster good relations** between persons who share a relevant protected characteristic and persons who do not share it.
 - (2) *A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).*
 - ...

The PSED (2)

(3) Having due regard to **the need to advance equality of opportunity** between persons who share a relevant protected characteristic and persons who do not share it **involves** having due regard, **in particular**, to the need to—

(a) **remove or minimise disadvantages** suffered by persons who share a relevant protected characteristic **that are connected to that characteristic**;

(b) take steps to **meet the needs** of persons who share a relevant protected characteristic **that are different from** the needs of persons who do not share it;

(c) **encourage** persons who share a relevant protected characteristic **to participate in public life** or in **any other activity in which participation by such persons is disproportionately low**.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, **steps to take account of disabled persons' disabilities**.

The PSED (3)

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

*(a) **tackle prejudice**, and*

*(b) **promote understanding**.*

*(6) Compliance with the duties in this section **may involve treating some persons more favourably than others**; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.*

Protected characteristics

- Section 149(7):
 - age
 - disability
 - gender reassignment
 - pregnancy and maternity
 - race
 - religion or belief
 - sex
 - sexual orientation

What does the duty require?

- ***R (Coleman) v Barnet LBC* [2012] EWHC 3725 (Admin) at [65]-[71]**
 - Vital distinction between a duty to achieve a result and duty to have due regard to the need to achieve statutory goals
 - Has the DM in substance had due regard to the relevant statutory need
 - “Due” regard means “the regard that is appropriate in all the circumstances”
 - Those circumstances include “the importance of the areas of life of the members of the disadvantaged ... group that are affected by the inequality of opportunity and the extent of the inequality” and “such countervailing factors as are relevant to the function which the decision-maker is performing”
 - “Countervailing factors” can include economic and practical factors
 - Performance of the duty must be an integral part of the formation of the decision, not merely the justification for making it

Application in the planning context

- ***R (Coleman) v Barnet LBC* [2012] EWHC 3725 (Admin) at [71]:**

*The decision under challenge in this case is a planning decision, the decision of a local planning authority to approve a scheme of development. It is not a decision of a public body to withdraw or reduce a particular service, such as the court had to consider, for example, in the Birmingham case, which concerned the provision made for disabilities in the then current budget of Birmingham City Council. Much of the case law is concerned with decisions of that kind. **This is not to say that the public sector equality duty is less onerous in a planning case than it is in others. It is not. But in such a case the circumstances in which the authority's performance of the duty has to be scrutinized will inevitably be different.***

Application in the planning context: examples (1)

- ***Baker***: inspector's refusal of planning permission to allow members of the traveller community to pitch caravans on a site in the green belt
 - Duty complied with despite no express reference to it
- ***Coleman***: decision of local authority to grant permission for the development of a school on land on which a garden centre had been situated which was regularly used by the disabled and elderly
 - Duty complied with – countervailing factors properly weighed
- ***R (Lakenheath PC) v Suffolk CC [2019] EWHC 978***: decision of LPA to grant permission for the construction of a new school next to an active military airfield
 - Duty complied with despite no express reference to it

Application in the planning context: examples (2)

- ***LDRA Ltd v SSCLG* [2016] EWHC 950 (Admin)**: inspector's grant of planning permission on appeal for an office and warehouse building which would replace a car park which was regularly used by disabled people to access the riverside
 - Despite clear evidence that the development would make it very difficult, if not impossible for disabled people to access the riverside, the PSED was not mentioned in the officers' report and it was likely that the inspector on appeal overlooked it → error of law
- ***R (Danning) v Sedgemoor* [2021] EWHC 1649 (Admin)**: LPA's grant of planning permission for a pub to be converted to a residential dwelling
 - No evidence that the committee had considered whether the decision could have implications for those with protected characteristics at all → error of law

Practice points

- Is there evidence that the decision will impact on those with a protected characteristic? **Duty engaged**
 - Suspect impacts but insufficient info? **Ask for it** (*LRDA Ltd v SSCLG*, at [32])
- Go through the statutory aims in s.149(1): would the decision promote or undermine these aims? **Both are relevant**
- Remember “due” regard:
 - ultimately a matter of judgment
 - but need to show that you have reached reasoned judgment
 - wide spectrum: withdrawing a public service vs not maximising potential to advance equality of opportunity
- Countervailing factors
 - any factors that it is proper and reasonable to consider
 - weight a matter for DM

Thank you for listening

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