



Briefing Paper 01/11

Equality Impact Analyse

What is an Equality Impact Analyse?

An Equality Impact Analyse (EIA) is a tool for identifying the potential impact of a policy, services and functions on its beneficiaries.

By carrying out EIAs, organisations are able to ensure that the services that they provide fulfill the requirements of equalities legislation.

EIAs are measured against the Equality Act 2010 and the recently launched Public Sector Equality Duty (PSED).

Organisations are to have **due regard** to the need to advance equality of opportunity, which involves the consideration of the need to:

- remove or minimise disadvantages suffered by people due to their protected characteristics;
- meet the needs of people with protected characteristics; and
- encourage people with protected characteristics to participate in public life or in other activities where their participation is low.

Who are people with 'Protected Characteristics?'

The Equality Act 2010 outlines the following groups/people:

Age

Where this is referred to, it refers to a person belonging to a particular age (e.g. 32 year olds) or range of ages (e.g. 18 - 30 year olds).

Disability

A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

Gender reassignment

The process of transitioning from one gender to another.

Marriage and civil partnership

Marriage is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners must be treated the same as married couples on a wide range of legal matters.

Pregnancy and maternity

Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

Race

Refers to the protected characteristic of Race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.

Religion and belief

Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

Sex

A man or a woman.

Sexual orientation

Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes

I disagree with my local councils decision to cut funding to a service I use, can I use the Equality Act and/or an EIA to stop the cuts?

YES you can.

The Equality Act 2010 and the PSED **can** be used to stop public authorities from making decisions which may affect one group more than another.

The PSED provides public authorities with guidance to demonstrate that they are making decisions in a fair, open, transparent and equitable way, considering the needs and the rights of different members of their community. This is achieved through assessing the differing impact that the proposed change could have on people who have Protected Characteristics.

If a Public Body has **NOT** considered the differing impact and in particular not completed the EIA robustly and has **NOT** consulted beneficiaries appropriately, in particular, where it is known, that it may have a differing negative impact on people with a Protected Characteristic.

Beneficiaries can request a review of the decision and impel the Public Body to conduct an EIA. Thus, in the meantime, stopping any previous decisions.¹

The EIA shows that changes to service provision will have a disproportionate impact on disabled people. Can they still carry out the changes?

Yes, but the public body will need to have clearly identified methods for mitigating or avoiding any negative impact it has found during its EIA.

The EHRC recommends for public bodies to develop an action plan which shows clearly how they propose to reduce impact and identify the responsibility for delivering each action and the associated timescales for implementation.

Organisations can request (directly or through the Freedom of Information Act) information on the implementation of the actions and further EIAs to ascertain whether the actions have been implemented and indeed whether the identified adverse impact has been mitigated.

I work for a public authority which has decided to close down my department. Although they have considered the impact this might have on equality, they haven't done a formal Equality Impact Assessment, are they in breach of their obligations?

By law an EIA must:

- contain sufficient information to enable a public authority to show it has paid 'due regard' to equality, as set out in the Equality Act 2010 in its decision-making
- identify methods for mitigating or avoiding any adverse impact.

¹ *Rahman, R v Birmingham City Council [2011] EWHC 944*, where the five claimants challenged a decision by the Council's Cabinet on 29 November 2010 to end funding for services they used pending new commissioning arrangements coming into force in the summer of 2011.

My local authority is short of money. why should they waste time impact assessing, if they don't have to take any notice of what they find in their EIA?

Local Authorities have to take into account what their EIA are showing them. Local Authorities that have not carried out an assessment, or have not done so thoroughly, risk leaving themselves open to legal challenges, which are both costly and time-consuming. Therefore is it in their interest to ensure that appropriate process is completed to save expensive legal proceedings and the associated cost.

However, the result can often be far more fundamental than a legal challenge. Authorities which fail to carry out robust assessments, risk making poor and unfair decisions that could discriminate against particular people with Protected Characteristics and perpetuate or worsen inequality.

My health authority is cutting services for older people, but not younger ones, they haven't looked at the age equality implications of this, do they have to?

Yes they do.

Under previous equality legislation, all public authorities have a legal duty to pay 'due regard' to the need to eliminate discrimination and promote equality with regard to race, disability and gender, including gender reassignment, as well as to promote good race relations.

The Equality Act 2010 extended this coverage to age, sexual orientation, pregnancy and maternity, and religion or belief.

Under these new duties, public authorities have to assess the impact their financial decisions might have on the new protected groups where relevant and proportionate.

What do I do if I want to challenge a Public body over their decision?

- Contact the Manchester Equality Hub **Tele: 07811531160**
- Be aware of the time limitation for bringing a case, this is currently 3 months
- Request the decision making and EIA information from the public body
- Analyse the information you have collected with regard to equalities issues and impact
- Consider who else is involved, who has information that might help
- Consider a challenge the decision using the Compact, The Ombudsman, or Public Law
- Contact Voice for Change - Compact Officer (Tel: 02078436124 or www.voice4change-england.co.uk)
- Contact NAVCA - Public Law officers (Tel: 02075203161 or www.navca.org.uk/evs)

What's the point?

Some examples of legal challenges under Equality Act 2010 / PSED:

- *Rahman, R v Birmingham City Council [2011] EWHC 944*, where the five claimants challenged a decision by the Council's Cabinet on 29 November 2010

to end funding for services they used pending new commissioning arrangements coming into force in the summer of 2011. Authority Loses.

- Closure of post offices - compliance with the Disability Equality Duty *R (Brown) v Secretary of State for Work & Pensions [2008] EWHC 3158 (Admin)* Authority win
- Cuts to welfare rights and advice services/DED/GED/RED *Meany & Ors, R (on the application of) v Harlow District Council [2009] EWHC 559 (Admin) (09 March 2009)* Authority Loses
- *R (Chavda and others) v London Borough of Harrow [2007] EWHC 3064 (Admin)* – the importance of taking Public Sector Equality Duties into account Authority loses
- *R (Kaur) v London Borough of Ealing [2008] EWHC 2062 (Admin)* – the need to impact assess before making a decision. Southall Black Sisters (SBS) provides specialist services to Asian and Black Caribbean women, particularly in relation to domestic violence issues. Authority loses
- *R (Janet Harris) and The London Borough of Haringey and (1) Grainger Seven Sisters Ltd (2) Northumberland and Durham Property Trust Ltd and the Equality and Human Rights Commission [2010] EWCA Civ 703* – Duty to consider the impact on racial groups when proposing redevelopment. Authority and others lose

For more information

Manchester Equality Hub – 07811531160
www.manchesterbmenetwork.org.uk

Voice for Change - Compact Officer ; 02078436124
www.voice4change-england.co.uk

NAVCA - Public Law officers; 02075203161
www.navca.org.uk/evs

Equalities and Human Rights Commission; 0845 604 6610;
<http://www.equalityhumanrights.com>

Information developed by:



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Manchester Equality Hub is a new Third Sector development in Manchester, which aims to support all sectors to reduce inequality across Manchester. Manchester Equality Hub is currently being hosted by the Manchester BME Network