

# BETTER IMPACTS

USING THE EQUALITY IMPACT ASSESSMENT DUTY TO  
INFLUENCE DECISION MAKERS - A GUIDE FOR  
VOLUNTARY AND COMMUNITY ORGANISATIONS IN  
SCOTLAND

**COALITION FOR RACIAL EQUALITY AND RIGHTS**



The Coalition for Racial Equality and Rights is a Scottish anti-racist organisation which focusses on helping to eliminate racial discrimination and harassment and promote racial justice.

CRER's key mission is to: Protect, enhance and promote the rights of minority ethnic communities across all areas of life in Scotland; and to empower minority ethnic communities to strengthen their social, economic and political capital.

CRER takes a rights based approach, promoting relevant international, regional and national human rights and equality conventions and legislation.

For more information on this report or the wider work of CRER, or to request this report in an alternative format, please contact:

Carol Young,  
Policy and Information Officer: [carol@crer.org.uk](mailto:carol@crer.org.uk),  
0141 418 6530

CRER is a charity registered in  
Scotland (SC029007)



## About this guide

The purpose of this guide is to provide information for the voluntary and community sectors on steps they can take to improve public bodies' decisions or actions that impact on Black / minority ethnic (BME) organisations and those working with BME communities. **The information in this guide is not legal advice**, but provides a focus on a process public bodies should use so that services are designed to ensure equal access for BME people.

The guide aims to

- Explore how groups can use the public sector equality duty to challenge unfair decision making
- Explain what you should expect from an equality impact assessment
- Provide information to help you take steps to challenge or improve decisions about public sector services

Every attempt has been made to ensure the information is up to date as of January 2015. Additionally, the guide provides an appendix of useful contacts and information as a source via which you can keep updated.

Everyone in Scotland has legal protection from discrimination under the Equality Act 2010. The Equality Act is there to protect people from being treated unfairly because of a 'protected characteristic'. For more information on the 9 protected characteristics and how they work, see <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/protected-characteristics-definitions/>

Note that individual people can claim protection under the Equality Act 2010 if they have been unfairly treated because of a protected characteristic when accessing a service or a job, no matter what type of organisation or company is involved, but this guide is not designed to show you how to do this. If you need advice on an individual problem, please telephone the Employment Advisory and Support Service on 0808 800 0082 (or text phone 0808 800 0084).

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## Introduction

We all have rights to equality of opportunity in accessing services and jobs. Organisations in the public sector have the power to make decisions that impact on how we access these rights.

Communities often lose out when there are cuts or changes in the way services are run or funded. This is especially true when times are hard financially. However, many people don't realise that public sector bodies have a legal duty to think carefully about how their decisions are made and who they will affect. In some cases, this legal duty can help communities to challenge bad decisions and/or bad practice in how decisions are made.

Within the Equality Act 2010 there is one particular part that relates to how public bodies make decisions and deliver services called the public sector equality duty. This legislative process is imposed on public bodies to enable them to demonstrate that they are active in anti-discrimination as well as in promoting equality of opportunity. There are general duties (Appendix A) that are supplemented with specific duties (Appendix B). The public sector equality duty can only help if:

- A public sector body covered by the public sector equality duty is responsible for the issue
- The problem is particularly affecting people who have a protected characteristic such as race, whether the public body intended it to have this effect or not

This means that the public body will have to consider the possible impact of its decisions, policies and procedures upon those within the community that are protected by anti-discrimination legislation and this includes Black / minority ethnic people. For example, if, due to budgetary constraints, a public body is considering cuts to funding for organisations serving or representing Black and minority ethnic groups, the public body would be obliged to:

- Conduct an equality impact assessment of the proposed cuts
- Consider any other options that achieve the objective of saving money in ways that impact less upon this protected group.

This process must be completed before any final decision is made. Failure to follow this process may well mean any final decision is open to challenge.

**The full list of Public Bodies in Scotland covered by PSED can be found here (<http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/public-authorities-in-scotland-who-is-covered-by-the-specific-duties/>)**

## Equality Impact Assessments (EqIA)

In order to comply with the public sector equality duty, a public body needs to identify barriers that groups might face in accessing services or in securing employment. An EqIA is a systematic way of finding out if there are any barriers and whether a policy or initiative affects all groups equally. The process can be used to take into account different needs and experiences and to achieve better results and remove any barriers before a policy or initiative is implemented. It can aid a public body to think about what they are trying to achieve as well as to challenge discrimination and advance equality.

Public bodies should carry out an **equality impact assessment** of key decisions, new policies or practices and significant changes to an existing policy or practice. An EqIA should cover the aims of the policy / practice or changes, identify who will benefit and see if there is any negative impact on people with one or more protected characteristic. It should be based on evidence drawn from internal and external sources. If the public body has received evidence from people with protected characteristics, this should be taken into account.

Carrying out an EqIA involves systematically assessing the likely (or actual) effects of policies and practices on people from all protected characteristics. Opportunities to promote equality should be identified, and negative or 'adverse' impacts removed or mitigated where possible.

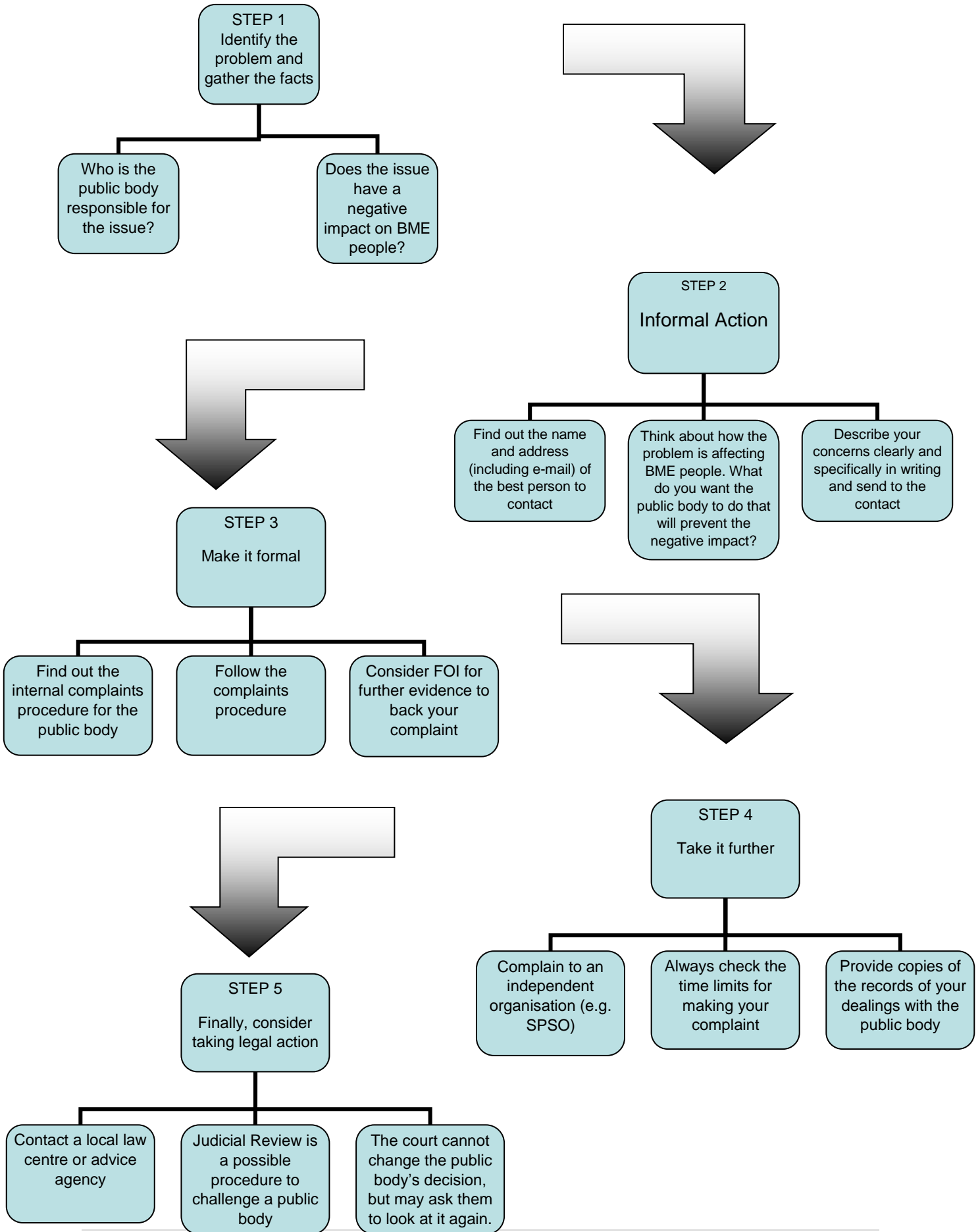
There is no legal right for people to be involved in the equality impact assessment process, however, legal judgements have shown that public bodies need to comply with their equality duties when making decisions. In particular, they need to carry out equality impact assessment properly and in some cases, legal judgements have shown must also consult the people affected. (See appendix D for detail on some relevant legal judgements)

If you know there is a potentially serious equality issue with a particular service or area of work, the following pages will provide steps you can take to help you challenge this.

**The Equality and Human Rights Commission has published a guide to equality impact assessment. You can access the guide here.**

[http://www.equalityhumanrights.com/sites/default/files/documents/PSD/equality\\_impact\\_assessment\\_guidance\\_quick-start\\_guide.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/PSD/equality_impact_assessment_guidance_quick-start_guide.pdf)

You can check for examples of completed equality impact assessments on public bodies' websites.



## Step 1: Identify the Problem and Gather the Facts

Start by thinking carefully about the issue you would like to raise concerns about. Remember, equality law will only be helpful in challenging public bodies if you feel that their actions or decisions are having a worse impact on a particular group of people who share a protected characteristic.

Who is the public body responsible for the decision? You can check the list of public bodies as outlined on page 4 to make sure that they are covered by the specific equality duties.

Public bodies are supposed to publish their equality impact assessments. You could check their website and find out if they conducted an EqIA. However many still do not comply, so you may have to contact them directly and ask for a copy.

Think about what you want to ask them to do. For example:

- Do you want them to reconsider their decision?
- Do you want them to change the way they do something in the future?
- Do you want them to make a service more accessible to a specific group of people?
- Do you want them to investigate something which might be discriminatory?
- Do you want them to explain why they have acted in a particular way?

For example, an advice centre that provides information and specialist welfare rights advice in community languages is closing as a result of a funding decision by the local authority. The centre also provides outreach services to disabled people. The advice centre is in an area with a large BME population. The nearest mainstream advice centre is a bus ride away and only has access to telephone interpreting and does not provide an outreach service. There is no evidence the local authority consulted the local community or that an equality impact assessment had been conducted. Your organisation was not consulted either and you believe the closure will have a negative impact on particular groups of people who share a protected characteristic, i.e. the local BME community and disabled people. This decision should have been equality impact assessed by the local authority and the result of the assessment should have been published.



## Step 2: Informal Action

Keep a record of all correspondence and other communications. Wherever possible, put things in writing. Writing a letter or an email to the public body informally may be an effective way of raising initial concerns.

First, you will need to find out the name and address (or email address) of the best person to contact. This could be either a specific person you've already had contact with, who perhaps knows about the issue you're raising; or otherwise identify an appropriate contact through the public body's customer services.

Think about how the problem is affecting people with a protected characteristic, such as race, as you will need to explain this clearly.

If you would like some help in drafting a letter, you could also ask a local advice service if they can help you to write the letter, or ask an elected member such as your MP, MSP or local Councillor for help.

Here are a **few tips** on writing to a public body about your issue:

- Make sure you describe your concerns clearly and specifically.
- If your concerns are about a specific thing that has happened, try to include all the information you can, for example places, times, dates and who was involved as well as what occurred.
- Try to outline how you think the issue might breach their equality duties – explain what the impact is on people with protected characteristics.
- You could ask them for a copy of any equality impact assessment, section of the mainstreaming report, equality outcomes (see appendix C) or other published information that's relevant to your problem.
- Ask them to respond to you with details of how they will resolve the problem and how long they expect it to take to resolve. Remember to provide your contact details.
- You might want to make sure it is delivered, for example sending the letter by recorded delivery (also known as 'Signed For') or by using your email settings to ask for a 'delivery receipt' and 'read receipt'.
- Keep a copy of your letter/email and a note of the date it was sent.
- If you have not received a reply within two weeks, contact them again and ask when you can expect a reply.

Writing a letter like this may be enough to resolve your problem. The public body may explain their decision to your satisfaction or they may invite you to meet with them to discuss your concerns. Remember to keep a record of any discussions at the meeting and record this with a follow up letter or e-mail.

However, if you think that they are not taking the issue seriously or have not dealt with it in the time they had promised, you can contact someone more senior or you can move to the next step of making a formal complaint.

### Step 3: Make it Formal

If you decide to make a complaint, you will need to use the public body's complaints process. Details of this will often be available on their website, or you can ask for information by telephone.

When writing up your complaint, include the same information that you used in your informal letter or email. You can also add any additional information. Be sure to explain how you tried to deal with the issue informally, and what happened as a result.

The complaints process should tell you how long you might have to wait for a reply. If you've come to the end of the complaints process and haven't received a reply, or you feel the reply isn't good enough, there are further steps you can take.

You can use the Freedom of Information (Scotland) Act 2002 (which gives everyone the right to ask for any information held by a Scottish public authority) to ask for specific information or copies of documents you want to see that will provide further evidence.

The Scottish Information Commissioner's website has published a leaflet explaining your rights to information at:

<http://www.itspublicknowledge.info/uploadedfiles/YRTK2012.pdf>

The Scottish Public Services Ombudsman have published a guide to complaints you may find helpful at:

[http://www.spsso.org.uk/sites/spso/files/communications\\_material/leaflets\\_public/general/2013\\_05\\_15\\_Easy\\_to\\_read\\_advice\\_leaflet\\_graphics.pdf](http://www.spsso.org.uk/sites/spso/files/communications_material/leaflets_public/general/2013_05_15_Easy_to_read_advice_leaflet_graphics.pdf)

## Step 4: Take it Further

If you would like to take the matter further because you feel the issue was not resolved through the internal complaints process, there are a number of extra options for taking action.

The Scottish Public Services Ombudsman can investigate how your complaint was handled by the public body. The SPSO have produced a leaflet which tells what they can do and how to make a complaint through them. Find it at

[http://www.spsso.org.uk/sites/spsso/files/communications\\_material/leaflets\\_public/general/2013.03.12\\_SPSO\\_information\\_leaflet\\_1.pdf](http://www.spsso.org.uk/sites/spsso/files/communications_material/leaflets_public/general/2013.03.12_SPSO_information_leaflet_1.pdf)

The Equality and Human Rights Commission have a regulatory role to ensure public bodies comply with the equality duty. They do not provide advice and support to members of the public, however to help them in their own work they do find it useful to know about any potential breaches of the equality duties. They encourage lawyers, advisers and NGOs to pass this information on to them.

The EHRC may decide to investigate or take action if they have the resources available to prioritise this, and they are more likely to look into an issue if it has wider strategic significance (as part of their strategic litigation work). If you feel your issue might be of interest to the Equality and Human Rights Commission and would like to discuss, get in touch with CRER: [mail@crer.org.uk](mailto:mail@crer.org.uk). We don't have an advice service but we can informally discuss public sector equality duty issues as part of our work in supporting the voluntary and public sectors.

## Step 5: Taking Legal Action

Get in touch with a law centre or advice organisation that specialises in the area you need to complain about; they may be able to advise you about legal options. For example when challenging a public body who may have not complied with their public sector equality duty, it could be possible to apply for Judicial Review.

**Judicial Review** can be used to challenge the way that decisions have been made by a public body in court, rather than the decisions themselves. It is a means to question the procedure, for example whether the public body has not paid due regard to the general equality duty before making a decision (for example on cuts in funding to services targeted at Black / minority ethnic groups).

A public authority may be acting unlawfully if it has made a decision or done something:

- Without the legal power to do so
- So unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing
- Without observing the rules of natural justice
- In breach of European Community Law or the Human Rights Act

Claims for Judicial Review need to be made **within three months** of the date of the decision that needs to be challenged. **NB:** Before taking any action against a public body with regard to Judicial Review, you should **seek specialist legal advice**.

**You will find more information on PSED and taking legal action at**  
[http://www.adviceguide.org.uk/england/discrimination\\_e/discrimination\\_public\\_sector\\_equality\\_duty\\_e/ed5\\_public\\_sector\\_equality\\_duty\\_taking\\_legal\\_action.htm](http://www.adviceguide.org.uk/england/discrimination_e/discrimination_public_sector_equality_duty_e/ed5_public_sector_equality_duty_taking_legal_action.htm)

**You will find information on Judicial Review at**  
<http://www.scotland.gov.uk/Publications/2010/02/23134246/11>

## Appendix A

### The General Public Sector Equality Duty

**The general equality duty** is designed to make sure public sector bodies meet the needs of communities and avoid disadvantaging any section of the community. As a result, the general equality duty is designed to take a proactive approach to tackling discrimination and inequality. The general equality duty says that public bodies must consider the need to:

- Eliminate discrimination, harassment, victimisation and other actions banned by equality law
- Advance equality of opportunity
- Foster good relations

They must consider these three things in everything that they do as an employer or a service provider, thinking about all of the protected characteristics (although marriage and civil partnership is only included in the first part about eliminating discrimination). Some voluntary and private sector organisations are also covered by the general equality duty when carrying out any business they do which is a 'public function'.

**'Public functions' are not only carried out by public bodies but may be undertaken by a voluntary or private organisation. A public function includes activities that would normally be provided by government rather than a voluntary or private organisation. Examples would include providing adoption services or running a prison.**

Local Authorities have responsibility for many local services, but sometimes they pay private companies called Arm's Length External Organisations (ALEOs) to deliver some of the services for them. An ALEO will be covered by the general equality duty for any public function it carries out.

**Information about ALEOs can be found here [http://www.audit-scotland.gov.uk/docs/local/2011/nr\\_110616\\_aleos.pdf](http://www.audit-scotland.gov.uk/docs/local/2011/nr_110616_aleos.pdf)**

**More information about the general equality duty can be found here (<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/introduction-to-the-equality-duty/>)**

## Appendix B

### The Scottish Specific Public Sector Equality Duties

To help public authorities comply with the general equality duty, some of them have extra duties called **specific equality duties** placed on them. Unlike the general equality duty, which is in place across Britain, there are separate specific equality duties for Scottish public bodies.

These specific equality duties can be helpful to individuals and community organisations with concerns about equality and discrimination. Public bodies should use them to set out the evidence of what they're doing to improve equality. They are required to set out this information in a number of ways:

- Publishing 'mainstreaming' reports to explain what they've done to embed equality into everything they do
- Writing 'equality outcomes' stating the changes they want to achieve in equality for people with protected characteristics; they must involve people who have protected characteristics or groups that represent them in this process
- Undertaking and publishing 'equality impact assessments' for different areas of policy and practice, showing how their organisation has taken account of the different impacts these can have on people with protected characteristics
- Gathering and publishing a range of information about their employees and using this to help identify how they could improve equality for staff
- Publishing information about pay in their organisation including an 'equal pay statement' setting out how they'll make sure pay is fair for women and men (including information on occupational segregation), and details of the 'gender pay gap' between male and female staff. Race and disability should also be taken into account in the equal pay statement and occupational segregation information from 2017 onwards
- Considering how they can embed equality into their procurement processes
- Making sure that certain documents they produce under the specific equality duties are published accessibly

**Once you know which body you want to contact, check to see if your issue is related to the specific equality duties. <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/public-sector-equality-duty-scotland>**

This guide concentrates on equality impact assessment, however you might also want to familiarise yourself with other equality publications from the public body you are dealing with – for example mainstreaming reports and equality outcomes.

**A public body will usually publish this equality information on their website, however CRER have a Public Sector Equality Duty Portal where you will find mainstreaming reports, equality outcomes, equal pay statements and more from Public Bodies in Scotland. <http://www.crer.org.uk/public-sector-equality-duty>**

## Appendix C

### Equality Outcomes

Public bodies covered by the specific equality duties must publish a set of equality outcomes. These set out changes that will improve equality. They must be changes that would help meet their responsibilities under the general equality duty. In preparing a set of equality outcomes, the public body must take reasonable steps to involve people who have protected characteristics and their representatives, for example equality organisations, community groups or anyone else who the public body feels represent the interests of those people.

There are a number of ways in which equality outcomes can be useful for taking action about an equality issue. You could:

- Read through the public body's equality outcomes to see if your problem fits in with any of them. If it does, explaining this might help the public body to see your point.
- If the equality outcomes don't seem to do anything to improve equality for a particular protected characteristic, you can ask the public body to explain this. Outcomes must cover all of the protected characteristics, and if they do not, they must explain why.
- You could ask them to consider your issue when reviewing their equality outcomes. Equality outcomes have to be published according to a set timescale; for most public bodies, the first set of outcomes will have been published by 30<sup>th</sup> April 2013. They must publish a fresh set of outcomes at least every four years after this. They can also choose to review and revise the content of the outcomes at any time, if they like.
- They must write a report on progress towards achieving these every two years, the first one no later than 30<sup>th</sup> April 2015. After that date, you could ask for a copy of the progress report.

## Appendix D

### Examples of Case Law using the Public Sector Equality Duty.

We are aware of one case related to race in Scotland using the public sector equality duty, however there are more examples of successful legal cases from England. It is possible that Scottish courts may refer to these if a challenge is made here. What is consistent within the legal judgements are the flaws in how public bodies consulted as well as how they conducted equality impact assessments.

**Capacity Building Project v the City of Edinburgh Council:** The Council decided to change the use of a building from a community centre to social work offices. The centre was used by the local BME population and the capacity building project argued that the council were in breach of their due regard to the need to eliminate unlawful racial discrimination and to promote equality and good relations between persons of different racial groups. The council revisited their plans for the building through an equality impact assessment and the building now has dual use as a community centre and an office for social work staff.

<http://www.scotcourts.gov.uk/opinions/2011CSOH58.html>

**R (Kaur and Shah) v London Borough of Ealing,** Southall Black Sisters provided specialist services to BME women fleeing violence. The High Court ruled that Ealing Council's proposals to move away from funding particular organisations such as Southall Black Sisters towards commissioning integrated services following a competitive bidding exercise was unlawful.

While Ealing Council did carry out an EqIA on its proposals, it did so belatedly and continued with its original plans despite concerns expressed by Southall Black Sisters that the move would have a negative impact on women from Black / minority ethnic backgrounds.

In an oral judgement, Lord Justice Moses reiterated the importance of undertaking an equality impact assessment and also the importance of carrying out an impact assessment before policy formulation. You can read the full judgement at:

[http://www.southallblacksisters.org.uk/downloads/LordJusticeMoses\\_JUDGMENT.rtf](http://www.southallblacksisters.org.uk/downloads/LordJusticeMoses_JUDGMENT.rtf)

**R Hajrula and Hamza v London Councils:** A Roma Support group challenged London Council's plans to cut funding across the voluntary sector as it would negatively impact on the people accessing their services.

The Court found that the London Councils' consultation process was flawed and they had failed to comply with their equality duties. The Court quashed the decisions and ordered the London Councils to re-consider their decisions having done full EqIAs.

The Court commented 'in a case where large numbers of vulnerable people, many of whom fall within one or more of the protected groups, are affected, the due regard necessary is very high.' You can read the full judgement at:

[http://www.deightonpierceglynnc.co.uk/news/news\\_docs/Hajrula%20v%20LondonC%20judgment.pdf](http://www.deightonpierceglynnc.co.uk/news/news_docs/Hajrula%20v%20LondonC%20judgment.pdf)



## **Useful Websites**

**Coalition for Race Equality and Rights [www.crer.org.uk](http://www.crer.org.uk)**

**CRER's Public Sector Equality Duty Portal**

**[www.crer.org.uk/public-sector-equality-duty](http://www.crer.org.uk/public-sector-equality-duty)**

**Equality and Human Rights Commission <http://www.equalityhumanrights.com/>**

**Audit Scotland <http://www.audit-scotland.gov.uk/>**

**The Scottish Information Commissioner [www.itspublicknowledge.info](http://www.itspublicknowledge.info)**

**Scottish Public Service Ombudsman [www.spsso.org.uk](http://www.spsso.org.uk)**

**Citizens Advice Bureau Advice Guide**

**[http://www.adviceguide.org.uk/scotland/discrimination\\_s/discrimination\\_public\\_sector\\_equality\\_duty\\_e/ed4\\_public\\_sector\\_equality\\_duty\\_taking\\_action.htm](http://www.adviceguide.org.uk/scotland/discrimination_s/discrimination_public_sector_equality_duty_e/ed4_public_sector_equality_duty_taking_action.htm)**

**Equality and Diversity Forum Legal Case blog**

**<http://www.edf.org.uk/blog/?p=17719>**

**The Scottish Government information about Judicial Review**

**<http://www.scotland.gov.uk/Publications/2010/02/23134246/11>**

**EHRC procurement guidance**

**<http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/public-sector-equality-duty-scotland/procurement-guidance-scottish-public-authorities>**

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