



## Strategy and Challenge

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Our Ref: JB/lar

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Date: 25 April 2013

Dear Mr Hayward

### Re: Review of the Public Sector Equality Duty

Thank you for your recent letter relating to the GEO review of the Public Sector Equality Duty (PSED). Please find outlined below our response to the points detailed in your letter.

#### Part 1: The Libraries Judicial Review

We are particularly interested in issues covered in recent media coverage related to your local authority's activity on equalities (e.g. <http://www.bbc.co.uk/news/uk-england-gloucestershire-19063873>) and would invite you to comment on:

- **the accuracy of the story;**

**GCC response:** the BBC report is not totally accurate in that a certain "spin" has been put upon the outcome, as is to be expected. The High Court decision was that the Council did not have sufficiently due regard to the PSED. Before re-taking its decision on the libraries review, the Council embarked on an extensive consultation with the public and stakeholders which was very much linked to the PSED and the gathering of relevant data to inform the impact assessment. We produced an extensive Community and Equality Impact Assessment (44 pages). The doubts expressed by FOGL in the BBC story are unfounded as extreme care was taken to ensure that vulnerable people did not lose access to a library.

- **your reasoning for the course of action you took;**

**GCC response:** We were committed to the reshaping of the Library Service.

- **the level of staff resources taken to deal with the judicial review;**

**GCC response:** the legal costs amounted to £238,000 to which should be added the officers' time from the Libraries service (un-costed).

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- ***your views on how the judicial review process deals with challenges around the duty;***

**GCC response:** the case law relating to the PSED developed very quickly and became a facet of challenges to local authority budget reductions. In the GCC case the Claimant's barrister subjected the council's documentation to the sort of forensic analysis which was disapproved by the courts in later cases.

- ***whether you feel that any changes could be made to the Duty to ensure that there is greater protection around decision making processes which cover equality considerations;***

**GCC response:** we feel that the difficulty lies in determining what is "due regard" since this is a judgment call and will vary with the circumstances of each decision. Some guidance from central government on this point would be of assistance and may give comfort to decision makers to ensure that disproportionate effort is not expended on producing an equality impact assessment.

At the Council we now use the "Brown Principles" to help staff to understand what it means to show "due regard" in their work. Staff record evidence of "due regard" on a due regard statements which is viewed by the decision maker. Decision makers are then able to scrutinise the level of due regard shown and are aware that this is an important aspect of the decision making process. At this point due regard can be deemed sufficient or further clarity may be sought. Further guidance is required on how the duty requires that we **consider** the needs of all the protected groups and is not a requirement to **meet** all the needs of the protected groups. This is particularly pertinent to local government who are often in a position where a number of protected groups are accessing the same services that are facing financial reductions or are struggling to meet a growing demand.

## **Part 2: Experience of complying with the PSED**

- ***How does the PSED influence the equalities data that you collect, such as about service users and workforce make-up?***

**GCC response:** The Council has practices in place to gather/store/analyse equality monitoring data across all the protected groups which is in direct response to meeting the requirements of the PSED. Poor disclosure rates across the newer protected characteristics remains a challenge.

- ***How is the equalities data you collect used?***

**GCC response:** Equality monitoring data is used to inform:

- strategic/financial planning;
- commissioning and service delivery with a focus on: participation, outcomes and experience;
- our Due Regard process; and
- identify equality objectives

- ***Are you aware of equalities data that is collected and stored but not used?***

**GCC response:** No. Staff are advised to only instruct data collection for a specific purpose of use. Staff are also advised of data protection principles relating to the collation of personal data, which includes equality monitoring data.

- ***How does the PSED influence tender documentation you produce in contracting out public services, goods and/or functions?***

**GCC response:** The PSED is considered within the following aspects of tender documentation.

Pre-qualification questionnaires (when used): Pre qualification questions are used to ascertain that a supplier is compliant with the statutory requirements of the Equality Act, 2010 and the readiness of an organisation to deliver any equality outcomes pertinent to the contract. It is a backward look at the track record of an organisation with regard to equalities and are they suitable partners to work with going forward. The level of evidence required here is dependant on whether equality considerations feature as a core requirement to the contract.

Specifications: Commissioners are required to show due regard throughout the commissioning cycle. At the needs analysis stage of this process, equality related outcomes and requirements are identified and suppliers will be asked to outline how they meet any equality elements of a specification.

Contract: Equality requirements can be inserted into the contractual terms and conditions. There are standard contract conditions that relate to equalities that must be included in all contracts. Further clauses can be included if deemed relevant to the contract.

Performance targets: If appropriate performance targets that relate to equalities are included, for example: to improve the take up of a service by a particular group of the community.

- ***Do you vary tender documentation relating to equality and diversity considerations depending on the size of the contract? Is this a consequence of the PSED?***

**GCC response:** No, tender documentation is developed depending on the nature of the activity being procured, (as described in the response above).

- ***How is equality and diversity information collected as part of a tender process used? Is this a consequence of the PSED?***

**GCC response:** Potential suppliers will be asked to submit equality and diversity information at the same time that other tender documents are submitted. It will be made clear to tenderers' what information is required and how it will be evaluated. This is how the council operates its tendering process and is not resulting from requirements introduced by the PSED.

- ***How are the answers given relating to equality and diversity used in deciding who to contract to? Is this a consequence of the PSED?***

**GCC response:** At the selection stage the weighting given would be relevant to the subject matter of the contract and whether equality is a core requirement. As a minimum on low relevance contracts, a pass/fail scoring would be in place. For example suppliers may be asked to evidence that they have an equality and diversity policy. For contracts that are increasing in relevance to equality suppliers may be asked more in depth equality related questions which would be scored accordingly. For example suppliers may be asked to explain how they make sure that staff, or any sub contracted staff working on the Councils behalf, are made aware of and understand their obligations in relation to the equality duty. This is part in response to the PSED but primarily it is about ensuring we procure with credible organisations who can deliver the contract requirements.

## **Additional documents**

Copies of the following equalities guidance provided for staff have been included with this response:

- The Public Sector Equality Duty
- The Due Regard Statement
- Embedding equalities into the Commissioning Process- Guidance for commissioners
- Equality Monitoring

I hope that you find the information provided to be useful and we would be happy to clarify any of the responses provided if necessary.

Yours sincerely,



Jane Burns  
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