

# **Moray Council**

## **Equality Impact Assessment Seminar**

**07 October 2014**

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## Foreword

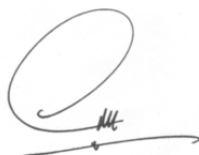
Equality Impact Assessments (EIAs) are an important element of the Moray Council's commitment to equal opportunities.

We both recognise that, within the Moray Council, it is essential that there are robust procedures for carrying out such assessments and using them in our decision making process. This is far more than simply a statutory duty as EIA's help us deliver our services in a fairer and more effective manner by ensuring that these services reach people with the greatest need.

Over the past few years the process of carrying out EIAs has become well embedded within our decision-making process and we have now moved beyond the stage where these are simply an add-on to committee reports. So when we are faced with difficult decisions we ensure that equality is, more and more, an integral part of the discussions and has a significant role in determining the outcomes.


This heightened focus puts a greater demand on the quality of our impact assessments and has encouraged us to further assess our capacity in this regard. As part of this process a seminar, held on 7 October 2014, formed an important step in the continuous improvement of EIA's by providing an opportunity to collectively reflect on equal opportunities and their relevance to all our processes, procedures and practices. The participants' contributions to the seminar have helped us move towards clearer guidance and assistance for staff and will strengthen our desire for continuous improvement in this field.

The numbers that attended the seminar and the level of discussions on the day demonstrate a commitment to equal opportunities through all levels within the Moray Council, however a special mention must be made of Lynn Welsh, Head of Legal of the Equality and Human Rights Commission for Scotland for travelling up to Moray and delivering a keynote speech at both sessions of the seminar. Her presentation clearly set the legal context in Scotland of the Equality Act 2010 and the regulations which define the public sector equality duties in Scotland.



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**Stewart Cree**  
**Convener of the Moray Council**



**Roddy Burns**  
**Chief Executive**



## Introduction

On 7 October 2014 a seminar was held at the Moray Council on Equality Impact Assessments (EIAs). The purpose of the seminar was to:

- Enable officers and elected members to gain a more in-depth knowledge of the issues around EIAs;
- Introduce officers and elected members to our duties arising out of the Human Rights Act 1998;
- Produce more in-depth guidance on EIAs incorporating human rights considerations.

This report gives an overview of the information given to participants on the day, the discussions that took place, their outcomes and next steps to be taken.

The first section describes the agenda of the two sessions of the day and the numbers that attended.

Section 2 summarises the presentation given by Lynn Welsh. The slides of the presentation are attached in **Appendix 1**.

Section 3 gives an introduction to human rights legislation and its implications for public authorities. The slides with the presentation relevant to this section can be found in **Appendix 2**.

Participants were asked to undertake some group activities. Activity 1 was a case study which focused on the practice of publishing planning applications and comments on the Moray Council's website and asked participants to consider equality and human rights issues related to this. The activity and the answers to the questions are described in section 4 of this report.

Section 5 describes the second group activity, a case study around a proposed school uniform policy, an analysis of the issues related to this activity.

At the end of each session, participants were asked to fill in an evaluation which contained a small test. The results of these are given in section 6.

## Section 1: Agenda and attendance

The seminar took place over two separate sessions. The morning session was aimed at managers (3<sup>rd</sup> tier and above) and the afternoon primarily at elected members although it was also attended by officers. The format for both sessions was the same although there was a slight difference between the morning and afternoon group activities.

Welcome and introduction:	10 minutes
Lynn Welsh keynote speech:	25 minutes
Introduction to group activities:	5 minutes
Activity 1 group work:	20 minutes
Activity 1 feedback	15 minutes
Activity 2 group work	20 minutes
Activity 2 feedback	20 minutes

The morning was attended by 34 participants. The breakdown by Department was:

Environmental Services:	16
Corporate Services:	10
Education and Social Care:	7
Chief Executive Office:	1

During the afternoon, there were 21 participants. The breakdown by Department was:

Elected Members:	13
Corporate Services:	4
Environmental Services:	2
Chief Executive Office:	1
Education and Social Care:	1

## **Section 2: The Public Sector Equality Duty.**

### **Presentation by Lynn Welsh, Head of Legal of the Equality and Human Rights Commission for Scotland**

The slides for this presentation can be found in **Appendix 1**. The presentation was in three parts:

1. The general public sector equality duty;
2. The specific public sector equality duties in Scotland. In this report we shall refer only to these insofar as they relate to equality impact assessments;
3. Recent case law relating to the duties.

#### **2.1 General Duty**

The general duty existed in the various bits of legislation which existed before these were amalgamated into the Equality Act 2010. The general duty arose from the McPherson enquiry into the death of Stephen Lawrence and was recommended as a means to tackle what was termed “institutional racism”.

Institutional racism refers to a pattern of behaviour that leads to outcomes which disadvantages groups of people on the grounds of their race. Such outcomes are, often unintentionally, consequence of policies, procedures, operations and organisational culture. In other words, discrimination can occur in instances where people assume they don't discriminate without considering evidence that may challenge this assumption.

In order to avoid this, the general duty requires public authorities to have **due regard** to the need to:

- **Eliminate** discrimination, harassment, victimisation or any other prohibited conduct;
- **Advance** equality of opportunity by having due regard to:
  - removing or minimising disadvantage;
  - meeting the needs of particular groups that are different from the needs of others;
  - encouraging participation in public life;
- **Foster** good relations – tackle prejudice, promote understanding.

The three duties all apply to the 8 protected characteristics of age, disability, gender, sexual orientation, race, religion and belief, gender reassignment, pregnancy and maternity. The protected characteristic of marriage and civil partnerships applies only to the non-discrimination duty.

These duties are relevant to the Moray Council as a service provider, policy maker and as an employer. They also apply to services and functions that we contract out. In this respect, it is recommended that an impact assessment is carried out for particular services before starting the tendering process. The outcomes of the assessment should be included in the business case and, where appropriate, should be included in the assessment criteria.

The principles of having due regard have been defined following a number of court cases, often summarised within the “Brown principles”. These can be found on the Moray Council’s website at <http://www.moray.gov.uk/downloads/file89347.pdf>.

Due regard is a flexible concept. As a rule, we would need to give more consideration if a policy, procedure or practice affects a large number of people on the grounds of their protected characteristics (proportionality), or if it has a high impact on a small number of people, especially if these are particularly vulnerable (relevance).

The duty to have due regard applies throughout the entire process, from the early developmental stages to the final decision. Where the principles of proportionality and relevance apply, it has to be demonstrated that due regard has influenced the final decision. This can mean that the original proposals have been amended and/or that active steps have been taken to mitigate any adverse impact. The assessment of impacts has to be based on evidence, ideally evidence collected in consultation with those who may be affected.

If the process identifies adverse impact which cannot be fully mitigated, the proposals can still go ahead, provided there is a justification. This justification has to be included in the decision.

## **2.2 Specific duties**

The Specific public sector equality duties are laid down in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. In this report we will focus on the duty to assess and review policies and practices.

Under the regulations public authorities now have an actual duty to assess. Previously, the duty was to state how they would assess. Now, public authorities must:

To the extent necessary to meet the general duty, assess the impact of proposed policies and practices as well as any changes to and revisions of existing policies and practices.

As a first step, we need to consider if a policy or practice has any relevance to one or more of the three elements of the general duty:

- Eliminate discrimination, harassment, victimisation or other prohibited conduct;
- Advance equality of opportunity;
- Foster good relations.

The next step is then, to assess if, and to what extent, these elements are relevant to each of the protected characteristics. This must be based on evidence relating to people with protected characteristics. The evidence can be statistical information, such as Census data, customer feedback, or evidence gathered following a consultation.

The results of the assessment have to be taken into account in the final decision and, if the decision is to go ahead with the proposals, the results of the assessment must be published.

Because the duty also applies to existing policies and practices there need to be arrangements in place to review and revise them.

## 2.3 Case Law

In this section we will summarise the main findings from the various court cases. For each of these there will be a reference to the specific case in which they occurred<sup>1</sup>. The details of individual cases will be presented in separate text boxes with links to documents from the cases, where available.

### 2.3.1 Main findings

- Where very vulnerable groups are affected, even if they concern a small group of people, there is a high degree of due regard needed.  
(Ref: *R (Hajrula) v London Councils* [2011] EWHC 448)
- In order to demonstrate due regard, decision makers need to be aware of the general equality duty.  
(Ref: *R (Harris) v Haringey LBC* [2010] EWCA Civ 703)
- It is not enough to say that there will be an impact on protected groups. This impact needs to be defined in relation to the effect it would have on the aims of the equality duty.  
(Ref: *R (W, M and others) v Birmingham CC* [2011] EWHC 1147. Also: *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158)
- Due regard involves a conscious approach and an open mind and has to be exercised with rigour and in such a way that it influences the final decision.  
(Ref: *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158)
- Due regard applies before and at the time a particular policy is under consideration as well as at the time a decision is taken.  
(Ref: *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158)
- The duty cannot be delegated and continues after the decision has been taken.  
(Ref: *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158)
- It is good practice for those exercising public functions to keep an accurate record showing that they had actually considered the duty and pondered relevant questions.  
(Ref: *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158)

<sup>1</sup> Full texts of the rulings can generally be found on the database of the British and Irish Legal Information Institute, using their case law search facility on [http://www.bailii.org/form/search\\_cases.html](http://www.bailii.org/form/search_cases.html)

- The duty is upon the decision maker personally. What matters is what the decision maker takes into account, not what advice has been given by officers.  
(Ref: *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345)
- The context of financial resources in a tight budget does not excuse non-compliance with the duty. Indeed there is much to be said that in straightened times the need for clear, well informed decision making when assessing the impacts on less advantaged members of society is as great, if not greater.  
(Ref: *R. (W) v. Birmingham City Council* [2011] EWHC 944)
- The duty applies not only to general formulation of policy but also to decisions made in applying policy in individual cases.  
(Ref: *Pieretti v Enfield Borough Council* [2010] EWCA 1104  
Also *Miller v Fife Council*)

### 2.3.2 Cases

#### *R. (Brown) v Secretary of State for Work and Pension, 2008*

The ruling in this case set out a range of principles which are now commonly accepted as criteria for assessing to what extent a public authority has complied with the general equality duty. The principles are commonly referred to as the Brown principles.

The case involves the closure of a local post office in Hastings as part of a long-running programme of post office closures in an attempt to make the Post Office network financially viable against the background of a sharp decline in the use of Post Offices as a result of technological innovation. At the time of the closure, the government recognised that a high proportion of Post Office customers comprised elderly people, disabled people, those on low incomes and those without ready access to private transport.

The case was brought by an elderly lady who has a disability and cannot stand or walk for long periods without acute discomfort and pain, who cannot carry heavy loads for long and who is dependent on public transport.

The Court ruled in this case that the State had not failed in its equality duties and went on to put forward the general principles of the equality duties.

The full judgement can be found [here](#).

### *R. (Harris) v Haringey LBC, 2010*

In December 2008 the London Borough of Haringey granted planning permission for the development of a site in Tottenham. The grant permitted demolition of existing buildings and erection of mixed use developments. The existing site was predominantly made up of local independent traders with a mix of Turkish, Cypriot, Colombian and Afro Caribbean influences. It was claimed that, in granting planning permission, the council had failed in its duty to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between person of different racial groups.

The council argued that, because the development would assist an area where a large proportion of ethnic communities are concentrated it had given due regard.

The court ruled that it had not done so. Although it had attempted to promote the interest of one particular racial group, it had not sufficiently considered the impact on other racial groups. The various, conflicting, interests had not been included in the report to committee, nor had the committee been made aware of its duties under the equality legislation that existed at the time.

The full judgement can be found [here](#).

## Pieretti v Enfield Borough Council

In 2008 a couple were evicted from their home following notice that their assured shorthold tenancy had come to an end. The landlady would have granted the couple further tenancy were it not for a period of delayed payment during the previous year. A month before the eviction, the couple applied to the council for accommodation and asked to be put on the priority list. The council's agreed that they were homeless, eligible for assistance and had a priority need because of old age and their medical condition. However, it also decided that they had become homeless intentionally because of the payment issues of the previous year. There was a medical report which stated that the husband had for the last 13 years suffered a depressive illness and this, together with the details of the dispute around the delayed payment raised a real possibility that the delay was a result of a mental impairment.

The ruling was that the duty to have due regard apply not only to policy making but also to the way policies are implemented and that the reviewing officer, in deciding that the couple had intentionally become homeless, had been in breach of this duty.

The full judgement can be found [here](#).

### *R (W) v Birmingham City Council*

In November 2010 the Council took the decision to terminate funding to a number of legal entitlement advice centres, pending new commissioning arrangements coming into force the following summer. The centres provided specialist services to people who communicate poorly in English.

The withdrawal of funding in meant that the centres were at risk of no longer being in existence by the time recommissioning took place.

An Equality Impact Needs Assessment had been completed prior to the decision, but this was not referred to in the report that was considered by the Council in reaching its decision.

Following a judicial review, the Council revisited its decision in March 2011. Decision makers were made aware of the Equality Needs Impact Assessment. However, the court found that affected groups had not been properly consulted and that the assessment did not address the degree of disadvantage to existing users from the discontinuation of funding.

The full judgement can be found [here](#).

## R (W, M and others) v Birmingham City Council

Following the Government's Spending Review of 2010, local authorities in England faced a reduction in real terms of their budgets by 28% over 4 years. In March 2011 Birmingham City Council approved a business plan which included savings of £17 million by raising the needs threshold for Adult Social Care Services. The decision was that it would no longer pay for any adult care needs that were not "critical".

An Equality Impact Needs Assessment was submitted with the business plan and included the observation that there was likely to be a disproportionate impact on some of the most disadvantaged groups within the community which might affect older people, those with disabilities and some BME communities. It also stated that reconfiguring care in order to meet people's needs better and investing in prevention of need would provide some mitigation for older people and those with disabilities. It contained some general assessment and comment about impact.

The court ruled that the consultation that was carried out was done on very general terms and did not include questions about the impact of terminating the funding on service users.

The full judgement can be found [here](#).

## R (Hajrula) v London Councils

Observant readers may recognise this case from the first page of the Moray Council's Equality Impact Assessment Form. In 2010 London Councils had decided to cut £10 million from their grants budget of £26 million. Prior to the decision, the Councils had undertaken a consultation on the proposals. The Roma Support Group, one of the organisations which lost its funding as a result, brought a case against the Councils, arguing that the consultation was flawed and that the Councils had failed to have due regard to the impacts on racial groups when setting its criteria. The criteria did not include any reference to groups protected under the equality legislation at the time.

The court ruled that the consultation was not flawed but held that there had been insufficient consideration of the impact on groups protected by equality legislation. It also ruled that funding to all groups had to be reinstated pending a new equality impact assessment.

The full judgement can be found [here](#).

## M v Fife Council

M was a disabled pupil at a residential independent school. He has an autism spectrum disorder and dyspraxia, and experiences severe social anxiety. During his 6th year, a transition process to college was attempted, but it was concluded that M was not ready for a transition to college. It was recommended that he remain at school for a seventh year, but Fife Council refused to provide funding, on the basis that he had reached the age of 18. The court found he had suffered discrimination both on the grounds of age and disability.

More details can be found on the Equality and Human Rights Commission for Scotland's website, [here](#).

## Section 3: Human Rights Legislation<sup>2</sup>

### 3.1 Introduction

Human rights were developed to provide a safeguard against arbitrary and excessive actions by public bodies that could result in loss of life, liberty, and amount to degrading treatment, or intrude in our lives. These rights are defined and protected under British, European and international laws.

The Human Rights Act 1998 (HRA) reflect the rights laid down in the European Convention on Human Rights (ECHR). The Convention came into force in 1953. The United Kingdom was one of its first signatories, and indeed played a significant part in drafting the Convention. Since the HRA came into force, in October 2000, UK citizens who feel their human rights have been unlawfully interfered with can seek redress in the British Courts. Prior to that, the only way this could be done was through the European Court of Human Rights in Strasbourg. The Convention defines the rights or freedom as well as any permitted exceptions in a series of articles. There are 16 basic rights in the Human Rights Act, which are often referred to as Convention rights.

Under the Human Rights Act 1998 public bodies have a duty to ensure that proposed new or revised activities do not breach the human rights principles set out in the European Convention on Human Rights.

### 3.2 The Convention Rights

There are 16 basic rights in the Human Rights Act, which are often referred to as Convention rights. The rights are divided into three categories: absolute rights, limited rights and qualified rights.

Absolute rights cannot be infringed under any circumstances. These rights are right to life (art. 2), the right to protection from torture and inhuman or degrading treatment (art. 3), the right not to be treated as a slave or to be required to perform forced or compulsory labour (art. 4), the right not to be punished for actions which were not against the law at the time they were committed (art. 7). There is an active obligation on public authorities to intervene if it knows that someone's rights under articles 2, 3 and 4 are (at risk of) being interfered with.

Limited rights are similar to absolute rights in that they cannot be "balanced" against the rights of other individuals or the public interest. But governments are entitled under the Convention to derogate from their application in times of war or national emergency. The right to liberty (art. 5) and the right to a fair trial (art 6) are examples of limited rights. For local authorities, the right to liberty has relevance in relation to providing care for people with mental ill health. The right to a fair trial includes a right to a reasoned decision, which can give people the opportunity to decide if they can challenge the decision, for example in processing benefits, permits or licences.

<sup>2</sup> A more in-depth description of the implications for public authorities of the Human Rights Act 1998 can be found in the handbook for public authorities *Human Rights: Human Lives*, first published by the Ministry of Justice in 2006 and updated in May 2014 by the Equality and Human Rights Commission. It can be found [here](#)

Qualified rights are rights which can be restricted not only in times of war or emergency but also in order to protect the rights of another or the wider public interest. In general, qualified rights are structured so that the first part of the Article sets out the right, while the second part establishes the grounds on which a public authority can legitimately interfere with that right in order to protect the wider public interest. Examples are the right to respect for private and family life (art. 8), right to freedom of thought, conscience and religion (art. 9), freedom of expression (art. 10) and freedom of assembly and association (art. 11).

Public authorities have an obligation to act in accordance with the Convention rights. They also have an active duty to intervene if it knows of the existence of a real and immediate risk to someone's life, if someone is subjected to torture or inhuman and degrading treatment, if someone is subjected to slavery.

When it comes to decision making the rights of one person often have to be balanced against the rights of others or against the needs of the broader community. Any restriction that will be imposed in these circumstances needs to be objectively justified, that is it must serve a legitimate aim and the restriction must be no greater than is needed to achieve the aim.

The human rights are:

- Article 2: Right to life
- Article 3: Prohibition of torture
- Article 4: Prohibition of slavery and forced labour
- Article 5: Right to liberty and security
- Article 6: Right to a fair trial
- Article 7: No punishment without law
- Article 8: Right to respect for private and family life
- Article 9: Freedom of thought, conscience and religion
- Article 10: Freedom of expression
- Article 11: Freedom of assembly and association
- Article 12: Right to marry
- Article 13: Right to redress (this is not included in HRA)
- Article 14: Prohibition of discrimination (in relation to the Convention rights)
- Article 1 of Protocol 1: Protection of property
- Article 2 of Protocol 1: Right to education
- Article 3 of Protocol 1: Right to free elections by secret ballot
- Article 1 of Protocol 13: Abolition of the death penalty.

### **3.3 Qualified rights**

The activities during the seminar focused on some of the qualified rights. For the purpose of impact assessments these are more likely to be relevant. There will be proposals which require consideration of conflict between the rights of one group against those of others: for example, the right to freedom of expression of one group may conflict with the right to respect for private and family life (which includes the right to physical and psychological integrity. In such situations, interference with someone's right will be unavoidable and will require careful consideration of all the

rights involved and an objective justification of the final decision. One right does not automatically have precedence over another.

### **3.3.1 Article 8: Right to respect for private and family life, home and correspondence**

This right means that authorities should not intrude into the private sphere without strict justification. It covers four areas:

- **Private life.** This includes an individual's physical and psychological integrity. In this respect it is often considered alongside article 3, for example in cases of child abuse where ill-treatment does not meet the level of severity demanded by article 3 to constitute torture or inhuman or degrading treatment.
- **Family life.** This covers engaged, cohabiting and same-sex couples as well as relationships with children, siblings, foster parents and foster children and grandparents and grandchildren.
- **Home.** This includes someone's current residence, holiday home, business premises, caravans and homes built in contravention of applicable town planning regulations.
- **Correspondence.** This includes postal correspondence, telephone calls, emails and text messages. Interference includes opening, reading, censoring or deleting correspondence.

Article 8 is a qualified right, which means that under certain circumstances (set out under article 8) can interfere so long as it is in accordance with the law, is proportionate and necessary to protect national security, public safety or the economic wellbeing of the country, to prevent disorder or crime, protect health or morals, or to protect the rights and freedoms of others.

### **3.3.2 Article 9: Freedom of thought, conscience and religion**

The freedom to hold views, beliefs and thoughts is absolute; the right to manifest those beliefs may be limited in specified circumstances. For public authorities, the emphasis should be on promoting mutual respect and tolerance rather than conflict between those holding different beliefs. The article protects a wide range of beliefs, not just religious beliefs, so long as these attain a certain cogency, seriousness and cohesion relating to an important aspect of human life or behaviour.

The areas in which this article may be relevant are:

- Dress requirements at work or in education;
- Leave policies;
- Dietary requirements;
- Ceremonies which include the swearing of oaths;
- Registration of births, marriages and deaths.

### **3.3.3 Article 10: Freedom of expression**

The right to express views can apply even if these views are unpopular or disturbing. It can be subject to conditions, restrictions or penalties, provided these have a proper legal basis. Examples of lawful restrictions are those relating to offensive language which is insulting to particular racial or ethnic groups. The right applies to expressing views as well as receiving information through various media.

Areas in to which this article relates are:

- Broadcasting;
- Regulation of communications or the internet;
- Public speeches;
- Provision of information;
- Regulations of processions, marches or demonstrations;
- Consultations.

### **3.3.4 Protocol 1, article 1: Protection of property**

This right to peaceful enjoyment of one's possessions has three elements:

- Peaceful enjoyment of one's property;
- A public authority cannot take away what someone owns;
- A public authority cannot impose restrictions on a person's use of their property.

As with all the other qualified rights public authorities can interfere with this right if there is a legal basis to do this and if this can be justified. Areas where this right is relevant include:

- Infrastructural developments;
- Benefits;
- Taxation;
- Planning;
- Licensing;
- Compulsory purchases.

### **3.3.5 Protocol 1, article 2: Right to education**

This right means that nobody should be denied access to the educational system. It also includes the right of parents to have their religious or philosophical beliefs respected in relation to their children's education.

It does not prevent schools from imposing disciplinary measures on pupils such as exclusions, provided they are able to have access to efficient education elsewhere.

The duty to provide education lies with the state or local education authority, not with the individual schools. The principle of education in conformity with parents' religious and philosophical convictions apply only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.

### **3.3.6 Article 14: Prohibition of discrimination**

This article applies only where any of the other articles are engaged. It is not a stand-alone right applicable to all areas of life.

Where any of the convention rights are concerned, the definition of discrimination under article 14 is much broader than the one used in the Equality Act 2010. Article 14 includes all the protected characteristics as well as "other status", including homelessness, property, birth, rural isolation.

## **3.4 Implications for decision making**

The Human Rights Act 1998 and the Equality Act 2010 don't prescribe what decisions should be made, instead they set out how to arrive at decisions. Under the Equality Act 2010 decisions can be lawful, provided they don't result in direct discrimination in relation to any of the protected characteristics, with the exception of age. Any indirect discrimination or direct discrimination on the grounds of age will need mitigation and/or justification for the decision to be lawful.

Under the Human Rights Act 1998, any decision which interferes with the absolute rights or limited rights will be unlawful. Decisions which interfere with any of the qualified rights will need an objective justification.

Where decisions have the potential to interfere with the convention rights, decision makers need a record of this. This will need to include a description of which rights are engaged, whose rights and the grounds upon which the interference is thought to be justified. This will need to be included in the final decision. A justification cannot be made retrospectively.

Similarly, where decisions have the potential to result in indirect discrimination, decision makers need to be made aware of this.

The following table gives an overview of the degrees to which a decision can be lawful under the Equality Act 2010 and the Human Rights Act 1998. The table uses a traffic light system with red indicating situations under which decisions will be unlawful and green situations where decisions will be lawful. The amber area represents those where impact assessments will be needed and mitigation and/or a justification is required.

Unlawful	Potentially lawful, if mitigated or justified	Lawful
Equality Act 2010		
Direct discrimination	Direct discrimination on grounds of Age	No discrimination
	Indirect discrimination	
Human Rights 1998		
Interferes with absolute or limited rights	Interferes with qualified rights	No interference
Art. 2: Right to life	Art. 8: respect for private and family life	
Art 3: Freedom from torture	Art 9: manifest thought, conscience, religion	
Art 4: Freedom from slavery	Art. 10: freedom of expression	
Art. 6: Right to a fair trial	Art. 11: Assembly and association	
	Right to education, right to property	

The specific criteria for justification are that:

- The interference has a proper legal basis;
- It is necessary in a democratic society;
- It has to pursue a legitimate aim;
- The interference has to be proportionate.

### Further reading

*Human Rights: Human Lives*, first published by the Ministry of Justice in 2006 and updated in May 2014 by the Equality and Human Rights Commission.

*Human Rights Review 2012: How fair is Britain? An assessment of how well public authorities protect human rights*. Equality and Human Rights Commission, 2012.

## Section 4: Activity 1 – Planning Application

The Moray Council receives a planning application for a change of use of a former council office building. The application is for permission to change the use to allow the premises to be used as a place of worship and religious instruction for the Muslim community in Moray.

Once the application has been submitted, it will be posted on the Moray Council website, for people to comment on or to raise objections.

The following background information was made available to the participants.

- At the last census there were 236 Muslims in Moray;
- At the European elections in May 2014 there were 305 votes for Britain First and 200 for the British National Party;  
Britain First is an offshoot of the English Defence League. In July 2014 the founder of Britain First left the group because he was unhappy with the groups provocative invasions of mosques in various parts of the UK.  
The British National Party has a website dedicated to stopping planning applications for mosques;
- In June 2014, shortly after the decision by Policy and Resources Committee to approve the selling of a Moray Council property to a local Islamic group, the following post was sent to the Moray Council's facebook page and immediately taken off. Expletives have been removed;  
*I have just learned today that the moray council building has been sold and being turned in to a mosque this xxxxxx infuriates me as we cannot do this in their countries why do take this xxxx moray council should be disgusted with themselves giving these monsters a place to commute, plot a rallye their beliefs and ram it Down out throats and tell us how we live in sin what's the matter with this xxxxxx place;*
- The nearest mosque is in Inverness or Aberdeen, approximately 40 and 60 miles.
- 

### Questions to be answered<sup>3</sup>

1. Which of the public sector equality duties are likely to be involved?
2. Which of the protected characteristics are likely to be involved?
3. Which of the human rights need to be considered for the different groups involved?
4. How do we need to manage the process of commenting/objecting to the planning application?
5. Which of the community planning partners will need to be involved?

<sup>3</sup> There were some minor differences between the questions for the morning session and those for the afternoon. The answers given here cover both sessions.

## Answers

1. In this case, the activity is relevant to all three elements of the public sector equality duty: the need to eliminate discrimination, harassment, victimisation; the need to promote equality of opportunity and the need to foster good relations.
2. The main protected characteristic involved in this would be religion or belief.
  - a) In relation to the need to eliminate discrimination, harassment and victimisation, the potential issues are:
    - Discrimination regarding the provision of places of worship and religious education. This affects more than 200 people, according to the latest census. The nearest mosque is about 40 miles away. This will need to be considered when it comes to the decision about whether or not to grant planning permission.
    - Discrimination and harassment. People may want to use the planning application process as a vehicle for expressing racist or islamophobic opinions. Throughout the process consideration will need to be given to whether these constitute unlawful conduct, amounting to discrimination or harassment. If the Moray Council intervenes, the Council itself may be targeted with further messages, either through social media or other means of communication, these messages may amount to victimisation on the grounds of religion, even if this is aimed at officers who themselves are not Muslim. These issues need to be considered when thinking about how to manage the application process in this instance.
  - b) In relation to advancing equality of opportunity, this is an opportunity to advance the opportunities for the Muslim community in Moray to practice their religion. This is an issue which will need to be considered in the decision to grant or withhold planning permission.
  - c) Because of the issues highlighted in relation to discrimination, harassment and victimisation, the application process and how this is managed has a high degree of relevance to the duty to foster good relations between groups who share a protected characteristic (Islam as a religion) and those who don't.
3. The following human rights are potentially engaged:
  - a) Article 6: right to a fair trial. In this instance it means that the applicants have a right to a reasoned decision about whether to grant or withhold permission so that applicants know the basis for the decision sufficiently clearly to decide whether they can challenge it further.
  - a) Article 8: Right to respect for private and family life. This involves freedom from harassment on religious or racial grounds for the Muslim community. It also involves respect for people's correspondence, for example those that post objections to the application. These examples show that it may not be possible to steer completely clear of interfering with someone's right in this instance. When considering how to manage the application process a balance has to be struck and there

will be a need for an objective justification, whatever decision is made in this regard.

- b) Article 9: Freedom of thought, conscience and religion. Again, this involves different groups and potentially conflicting interests. When considering how to manage the application process, the Moray Council should aim to remain neutral and impartial, and promote mutual tolerance rather than conflict between those holding different beliefs. It may, as with article 8, not be possible to not intervene with someone's right in this instance and therefore a balanced approach and objective justification will be needed.
  - c) Article 10: Freedom of expression. Similar issues arise as those discussed under b and c. Offensive language, insulting to particular racial or ethnic groups is an example of where a lawful restriction on expression might be imposed.
  - d) Article 11: Freedom of assembly and association. This is a matter to be considered for the Muslim community in the final decision to grant or withhold planning permission. It may also become relevant if local groups decide to organise demonstrations against allowing planning permission for a Mosque.
  - e) Protocol 1, Article 1: Protection of property. This applies to the Muslim community and includes the right to use, develop, sell, destroy or deal with its property in any way they please, unless there is a proper legal basis for a public authority to interfere with it and this interference is justified.
  - f) Article 14: Prohibition of discrimination. Because there are various articles engaged in this instance, this article becomes relevant in the planning application process as well as the final decision. It applies to religious groups as well as political or other opinion.
4. Managing the application process involves a balanced consideration of all the convention rights that are potentially engaged and all individuals/groups that they relate to. The convention rights here are articles 8, 9 and 10. On the one hand we have the various rights (articles 8, 9 and 10) of the Muslim community in Moray and on the other the rights of those who, for one reason or another, have strong anti-Islamic feelings. Allowing comments and objections to be published unedited could interfere with the article 8 rights of the Muslim community. Protecting these rights by redacting or removing comments which are strongly islamophobic would interfere with some people's rights to respect for correspondence (article 8), and freedom of expression (article 10).

Redacting or removing comments which contain islamophobic language has a legal basis, not only under the Equality Act 2010 which makes discrimination and harassment unlawful, but also under section 38 (threatening or abusive behaviour) of the Criminal Justice and Licensing (Scotland) Act 2010 which states that:

A person (A) commits an offence if:

- (a) A behaves in a threatening or abusive manner;
- (b) The behaviour would be likely to cause a reasonable person to suffer fear or alarm, and

- (c) A intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.

Redacting or removing comments in this instance are necessary to prevent the occurrence of acts which are unlawful under the above legislation. Furthermore, it is necessary in order for the Moray Council to discharge all three elements of the public sector duty.

5. Any comments which may constitute an offence under the above legislation should be reported to Police Scotland. It is also recommended that an Equality Incident Monitoring Form is completed and sent to the Equal Opportunities Officer.

## Section5: Activity 2: School uniform policy

A school is developing a uniform policy which will set out what is and what is not acceptable in terms of dress for all pupils attending the school. The draft policy, once completed, will be subject to a consultation. The policy includes:

### Recommended dress:

Upper clothing can be either black or white, skirts and trousers are plain black. Belts should be dark self-coloured with no studs, buckles or chains which might present a health and safety issue. No logos, names, designs or top stitching should be visible on any clothing. Please note that jackets and scarves must be removed in classes.

### Unacceptable dress:

Any dress which is likely to be hazardous either to the wearer or to others. Any dress which is likely to cause offence to others or to provoke others. Specific Examples - Football strips and scarves, T-shirts or sweatshirts with slogans likely to cause offence. Low cut or vest tops. Baggy trousers which trail on the ground. Baseball caps, hats. On health and safety grounds, children are not allowed to wear jewellery in school.

### Enforcement:

A failure to comply with the policy could potentially lead to disciplinary action, including exclusion.

The following background information was made available to participants:

Scotland's Census 2011 - National Records of Scotland Table KS209SCa - Religion (UK harmonised) Moray									
All people	Christian	Buddhist	Hindu	Jewish	Muslim	Sikh	Other religion	No religion	Not stated
93,295	46,576	178	45	47	236	3	611	38,450	7,149

## Religion

### Dress codes:

- **Christian:** there are no dress codes as a religious requirement. Some Christians manifest their religion, for example by wearing a cross or a purity ring;
- **Buddhist:** There is no specific dress requirement;
- **Hindu:** There is no specific dress requirement;
- **Jewish:** The main points of Jewish orthodox dress are:
  - Women are required to cover certain parts of their body. Skirts must be below the knee; tops should not be low cut and sleeves below the elbows;
  - Clothing should also not be designed to reveal the full extent of the female figure even if it falls within the boundaries listed above;
  - Men should also wear modest clothing that is respectful and smart;
  - Men wear *kippah* on their heads at all times, married women are required to cover their heads as well;
  - For both sexes, clothing that contains a mixture of wool and linen (*Sha'atnez*) cannot be worn;
- **Muslim:** The overriding principle is that of modesty which includes behaviour as well as dress for both males and females. Modesty rules are open to a wide range of interpretations, for example headscarves or full-body garments that expose only the eyes;
- **Sikh:** Around the age of 14 Sikh boys and girls can choose to undergo a baptism after which they have to wear the 5 articles of faith, known as the 5 Ks. These are:
  - **Kesh**, uncut hair;
  - **Kara**, a steel bracelet;
  - **Kanga**, a wooden comb;
  - **Kaccha**, cotton underwear;
  - **Kirpan**, a ceremonial sword. There is no prescribed style or length of the kirpan. The requirement can be met by wearing small, kirpan-shaped pendants or a small symbolic kirpan attached to the comb.

## Gender reassignment

NHS Gender reassignment protocol states:

Teenagers who are 16 and 17 years of age are entitled to consent to their own treatment and follow the standard adult protocol, and this consent cannot be overruled by their parents. Children who are under 16 years old can consent to their own treatment if it is thought that they have enough intelligence, competence and understanding to fully appreciate what is involved in their treatment.

Individuals who wish to undergo gender reassignment surgery are required to undergo a 12-month experience of living in an identity-congruent gender role. In order to experience and socially adjust in their desired gender role, before undergoing irreversible surgery.

## Questions to be answered

1. Is there potential for indirect discrimination? If so, on what grounds?
2. Which human rights articles are potentially engaged?
3. What can be done to address any concerns arising from the above (mitigating actions)?
4. Can there be an objective justification for the policy?

## Answers

1. The policy has potential for indirect discrimination on the grounds of:
  - a) Religion. Some religions (eg Sikhism, Judaism and some forms of Islam) have dress codes which should be regarded as genuine religious requirements. Others, such as Christianity, have no such strict dress codes, but within Christianity there are various traditions which encourage its followers to wear certain articles of faith as an expression of an individual's religious feelings. Although these may not carry the same weight that genuine religious requirements have, they will need to be considered when developing the policy;
  - b) Race;
  - c) Sex. Strict adherence to a gender specific dress code may lead to increase cost on the basis of sex;
  - d) Gender reassignment. A strict adherence to a gender specific dress code may prevent a pupil who wishes to undergo gender reassignment from fulfilling the criteria set out in the NHS gender reassignment protocol, particularly the 12-month pre-op experience;
  - e) Disability;
  - f) Socio-economic status was mentioned in quite a few of the group discussions, in relation to affordability of the dress code. Although this element of the Equality Act 2010 did not come into force, it will need to be considered if any of the convention rights are engaged.
2. The convention rights that are possibly engaged are:
  - a) Article 8: right to respect for private and family life. This right encompasses the freedom to choose how one looks and dresses, freedom to choose one's own sexual identity and freedom to develop one's own personality. If the dress code is gender specific, this could affect pupils on the basis of sex and gender reassignment.
  - b) Article 9: Freedom of thought, conscience and religion. Some religions (eg Sikhism, Judaism and some forms of Islam) have dress codes which should be regarded as genuine religious requirements. Others, such as Christianity, have no such strict dress codes, but within Christianity there are various traditions which encourage its followers to wear certain articles of faith as an expression of an individual's religious feelings. Although these may not carry the same weight that genuine religious requirements have, they will need to be considered when developing the policy.
  - c) Article 10: Freedom of expression. There is a substantial overlap in this case with the article 9 rights.

- d) Article 2 of protocol 1: Right to education. Under this article, parents have a right to make sure that their religious and philosophical beliefs are respected when public authorities provide education. This applies only insofar as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure. It does not prevent schools from imposing disciplinary measures such as exclusion, provided that it pursues a legitimate aim and is proportionate.
  - e) Article 14: Prohibition of discrimination. In addition to the groups protected under the Equality Act, consideration needs to be given to the question whether a school uniform policy could be financially prohibitive to low-income families. Factors that can increase costs are the type of clothes that are prescribed as well as restrictions on providers of school clothing.
3. Consultation with parents to gauge whether there are issues around genuine religious requirements which prohibit their children from complying with the policy.

Consider whether the enforcement element of the policy can and should be contained.

Demographics of the area can change. It is recommended that the implementation of the policy is monitored and that the policy, where necessary is reviewed and amended.

4. If the policy is to go ahead, there will be a need for an objective justification and this will need to be considered before the decision is made. Part of the justification can be made with reference to the duties arising from the Equality Act, depending on how strict the prescribed dress code is and how strictly it will be enforced. For example, with reference to eliminating discrimination and harassment and to promoting equality of opportunity, an argument has been made that school uniforms can reduce bullying in schools and raise attainment levels in school. This could be included in monitoring arrangements when implementing the policy.

If the policy is sufficiently flexible to accommodate the various needs whilst maintaining a sense of pride and community it could assist in the duty to foster good relations by demonstrating that diversity does not need to be divisive. This can also apply to restrictions on clothing with slogans.

Further justification can be based on:

- a) Health and safety considerations. For example, PE, science, home economics and classes involving technology may need to put restrictions on clothing (for example loose clothing) and jewellery for health and safety reasons.
- b) Public order, maintaining a sense of safety and security and compliance with the Criminal Law (Consolidation) (Scotland) Act 1995 could justify a restriction on certain religious artefacts such as ceremonial knives.

- c) Earlier this year the European Court of Human Rights upheld the French government's ban on the burqa in public life on the grounds of social cohesion. It could be argued that being able to read someone's body language and facial expression are an essential part of social interaction in the class and necessary for the provision of efficient instruction and training.

It must be stressed that some of these justifications have not been tested in court and that any such justification will need to be carefully formulated and thought through before more stringent measures are introduced as part of a school uniform policy.

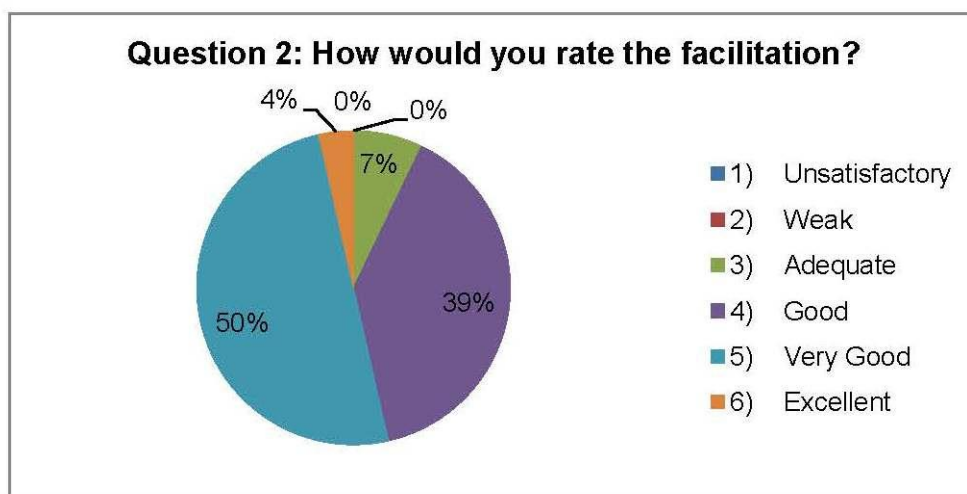
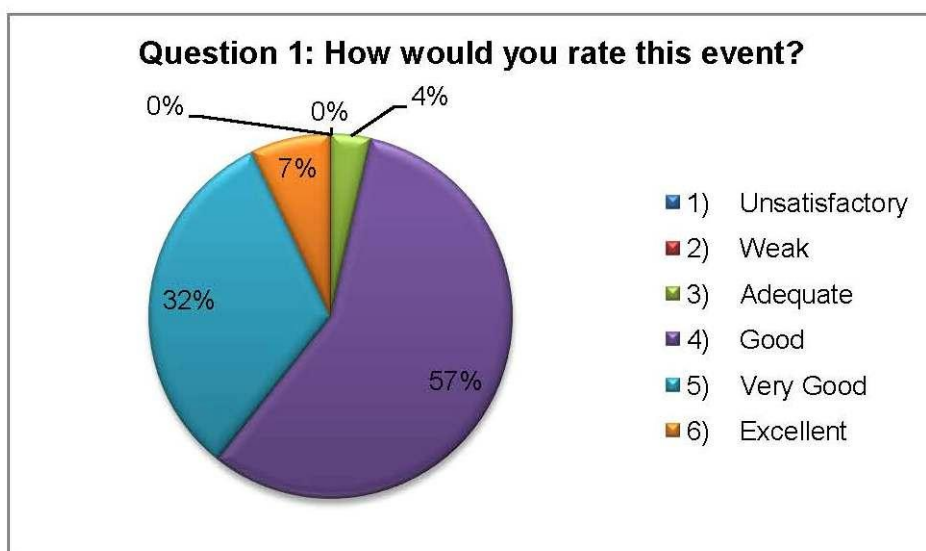
## Section 6: Feedback and evaluation

### Morning session: attendance and evaluation

Number of employees registered: 39  
 Number of employees attended: 34

Department	Number of Representatives
Education & Social Care:	7
Chief Executive Office:	1
Corporate Services:	10
Environmental Services:	16

28 evaluation forms were completed and returned.

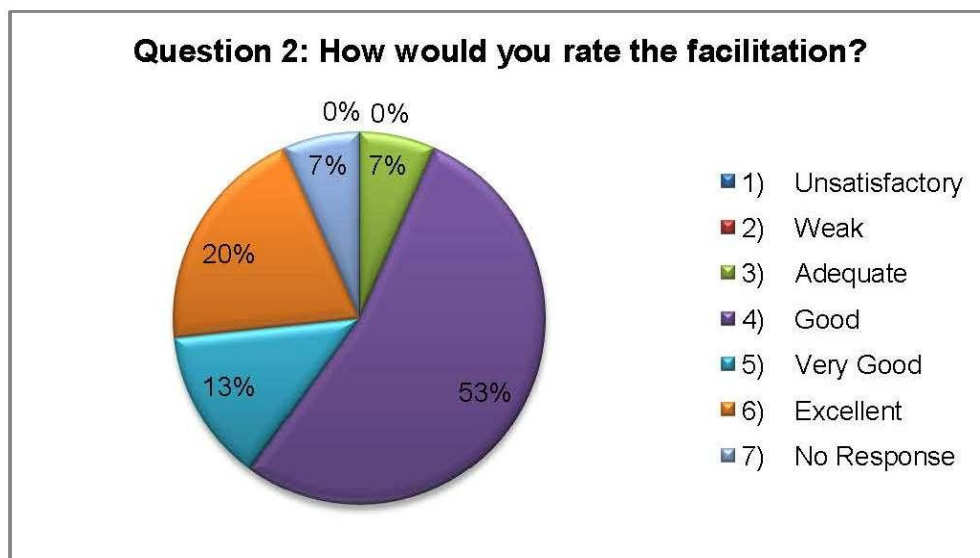
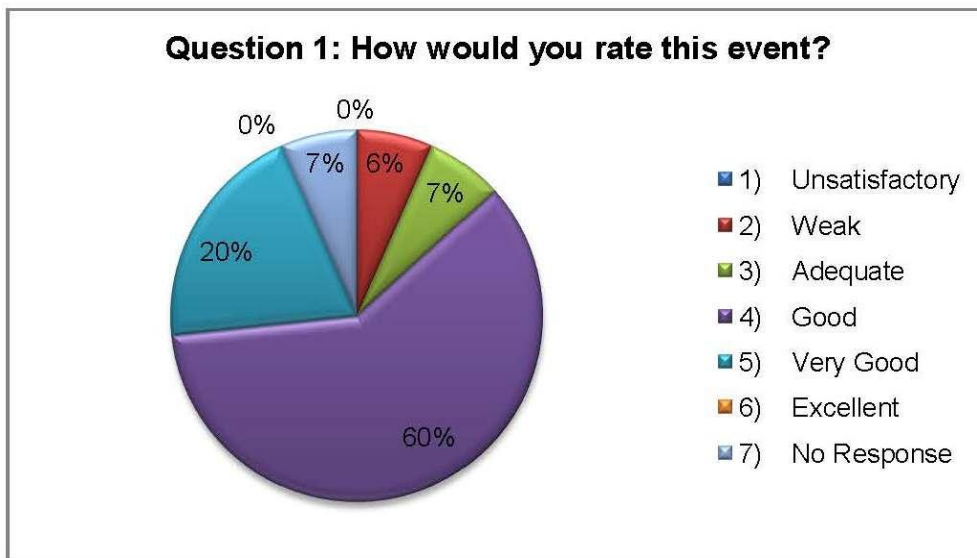


## Afternoon session: attendance and evaluation

Number of employees registered:	29
Number of employees attended:	21

Department	Number of Representatives
Education & Social Care:	1
Chief Executive Office:	1
Corporate Services:	4
Environmental Services:	1
Economic Development, Planning & Infrastructure:	1
Elected Member:	13

15 evaluations were completed and returned.



## Knowledge questions

The evaluation included some knowledge questions to gauge to what extent the main messages from the seminar had been put across successfully.

The first question was:

Which of the following does not describe what the purpose of an EIA is?

The reason for this question was to see if the message came across that equal opportunities does not mean that we treat everybody the same. The correct answer was B: the purpose of an EIA is not to ensure that everyone receives the same service.

There were 39 valid responses to the question and 77% of them were correct.

The second question was:

Which of the following are duties that local authorities need to consider when making decisions?

The correct answer to this was to tick three options:

- Ensure that consultations on controversial issues do not become a platform for racial or religious intolerance. This option follows from the duty to have due regard to the need to foster good relations and, to a lesser extent, the anti-discrimination duty;
- Ensure that the interests of minority groups are considered. This follows from the anti-discrimination duty and the duty to advance equality of opportunity;
- Ensure that the interests of the wider community are considered. This recognises that decisions require a balanced approach and that, where there are impacts, there may be more pressing considerations, such as public health, security and public safety.

The option to implement the majority view in a consultation is incorrect. If, for example, the majority view is in conflict with existing legislation – whether they relate to equal opportunities, human rights or any other legislation – then implementing this should not be a consideration.

There were 43 valid answers to this question, of which 74% were correct.

Question 3 was a true or false question asking if a proposal should be rejected if it results in indirect discrimination. The correct answers were:

- B: False. It can still go ahead, provided there are sufficient mitigating actions
- C: False. It can still go ahead, even if it can't be mitigated, so long as there is an objective justification.

Again, there were 43 responses and 27 (63%) chose both options.

## **Section 7: Conclusion / Next Step**

Equality impact assessments help local authorities in meeting their duties under the Equality Act 2010 and the Human Rights Act 1998. Whether an assessment is needed, and the degree to which it should be done depends on the following questions:

- Are the proposed or existing policies, practices or procedures likely to be relevant to the Public Sector Equality Duties or any of the convention rights?
- Are they likely to impact on a large number of people?
- Are they likely to have a severe impact on any number of people?
- Are they likely to impact on a particularly vulnerable group?

If the answer to any of the above questions is yes, then an impact assessment must be carried out. Also, elected members must be made aware of the impacts and must consider the impacts in their final decision.

Sometimes it won't be possible to avoid impacts. There may be conflicting interests which cannot easily be resolved. Sometimes there may be overriding reasons why elected members will need to make a decision despite the impacts it may have. In these circumstances, the Equality Act 2010 or the Human Rights Act can influence a decision only up to a certain point. For example, if a decision results in direct discrimination on the grounds of any of the protected characteristics other than age, then such a decision will be unlawful. Similarly, if the decision results in an interference with absolute rights under the Human Rights Act, it will be unlawful. But beyond these constraints, there can be a range of possible decisions to be taken, each of which can be lawful.

The duty to consider impacts applies not only to new policies, practices and procedures, but also to those that have been established for some time. At the seminar, one of the group activities focused on a planning application. The nature of the application and recent events in Moray meant that, in this instance, applying established procedures had a high relevance to the Public Sector Equality Duties and the Human Rights Act. During the discussion it became clear that, whatever next steps were decided, there would be some interference with somebody's human rights. As a result, there was a need to objectively justify the decision. Such justification cannot be done retrospectively.

It may not always be possible to know what the impacts may be, positive or negative. In these instances, the assessment should include arrangements for monitoring the impacts and, where necessary, review the decision. Such arrangements should include feedback from those likely to be affected.

The findings from the seminar will be incorporated into more in-depth guidance on Equality Impact Assessments. These will include guidance on how to consider Human Rights implications. The guidance is expected to be available early in 2015.

## Appendix 1: Lynn Welsh PowerPoint Presentation

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# The Public Sector Equality Duty

Lynn Welsh

Head of Legal

Slide Number 1

## The Public Sector Duty

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- Shifting emphasis from onus on individuals to placing onus on public authorities
- Mainstreaming equality into public sector culture in practical and demonstrated ways
- Taking a proactive and organised approach
- Tackling “institutional discrimination”
- Focuses on organisational change not individual adjustments

Slide Number 2

# General duty

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- Single duty covering 8 of the protected characteristics – age, disability, gender, sexual orientation, race, religion and belief, gender reassignment, pregnancy and maternity
- It covers marriage and civil partnership in relation to the non-discrimination duty only
- Covers all public authorities listed in Sch 19 – part 3 and accompanying regulations

Slide Number 3

# General duty applies to

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- You are covered when carrying out all of your functions
  - As service providers
  - As policy makers
  - As employers
- Also to services and functions which are contracted out

Slide Number 4

# General duty

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Duty to have **due regard** to the need to:

- **Eliminate** discrimination, harassment, victimisation or any other prohibited conduct
- **Advance** equality of opportunity by having due regard to
  - removing or minimising disadvantage
  - meeting the needs of particular groups that are different from the needs of others
  - encouraging participation in public life
- **Foster** good relations – tackle prejudice, promote understanding

Slide Number 5

# Due regard

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- Proportionate and relevant
- Requires more than just “thinking about” equality
- Needs “rigour and an open mind” and must influence the final decision
- Needs to be based on evidence
- Needs an assessment of impact and active steps to mitigate adverse impact
- Can’t justify actions after a decision has been taken
- Must be able to demonstrate that due regard was given both in development of a policy and when decision is made

Slide Number 6

# ***Specific Duties***

Slide Number 7

## **Overview**

- Mainstreaming equality
- Equality outcomes
- Assessment and review
- Employment information
- Gender pay gap information
- Equal pay statement
- Procurement
- Scottish Ministers duty
- Publication duty

Slide Number 8

# Assessment and review of policies & practices

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- First time there is an actual duty to assess – previously a duty to say how you will assess.
- You must, ***to the extent necessary to meet the PSD***, assess the impact of your ***proposed*** policies and practices as well as any changes to and revisions of your existing P&Ps

Slide Number 9

# Assessment and review of policies & practices

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- Any consideration of whether or not an assessment of impact is needed is **NOT** to be treated as the assessment itself.
- As part of the assessment you must consider relevant evidence relating to people with protected characteristics, including any evidence received from those people

Slide Number 10

# Assessment and review of policies & practices

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- You must take account of the results of any assessment
- If going ahead with the P&P you must also publish the result of any assessment within a reasonable time period
- You must also make arrangements you consider appropriate to review and if necessary revise your **existing** P&Ps to ensure they comply with the PSD

Slide Number 11

# Assessment and review of policies & practices

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- ❖ There is a different focus for assessing impact in this duty
- ❖ Previous duties:
  - Race – assess the impact on the promotion of race equality
  - Disability – assess impact on equality for disabled persons
  - Gender – assess the impact on equality between women and men

Slide Number 12

# Assessment and review of policies & practices

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- ❖ A listed authority must assess the impact against the 3 parts of the PSD:
  - Eliminate unlawful treatment
  - Advance equality of opportunity
  - Foster good relations
- ❖ Within those, consider each protected characteristic

Slide Number 13

## Purpose

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- ❖ Compliance with the duty should result in:
  - better-informed decision making and policy development
  - a clearer understanding of the needs of service users, resulting in better quality services which meet varied needs
  - more effective targeting of policy and resources
  - better results and greater confidence in, and satisfaction with, public services
  - a more effective use of talent in the workforce
  - a reduction in instances of discrimination and resulting claims.

Slide Number 14

# Case Law

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- *R (Hajrula) v London Councils* [2011] EWHC 448 – ‘due regard’ very high where vulnerable groups affected
- *R (Harris) v Haringey LBC* [2010] EWCA Civ 703 – decision makers need to be aware of duty
- *R (W, M and others) v Birmingham CC* [2011] EWHC 1147 - some consideration of impact of cuts on disabled people but not on the effect it would have on the aims of the equality duty

Slide Number 15

# Case Law

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## ***R. (Brown) v. Secretary of State for Work and Pensions*** **[2008] EWHC 3158**

- Those who have to take decisions that affect people with different protected characteristics must be made aware of their duty to have ‘due regard’ to the needs of the duty.
- Due regard applies before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.

Slide Number 16

## Brown cont

- You cannot justify a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision. The duty has to be integrated within the discharge of the public functions of the body subject to the duty. It is not a question of 'ticking boxes'.
- The duty is a non-delegable one.
- The duty is a continuing one.
- It is good practice for those exercising public functions to keep an accurate record showing that they had actually considered the duty and pondered relevant questions.

Slide Number 17

## Case Law

### ***Bracking v Secretary of State for Work and Pensions [2013] EWCA Civ 1345***

- The equality duty is an integral and important part of the mechanism for ensuring the fulfilment of the aims of anti-discrimination legislation.
- The duty is upon the decision maker personally. What matters is what he or she took into account and what he or she knew.
- A body must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy.

Slide Number 18

# Case Law

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## ***R. (W) v. Birmingham City Council [2011] EWHC 944***

In this case the court said that even where the context of decision making is financial resources in a tight budget, that does not excuse non-compliance with the duty and 'indeed there is much to be said that in straitened times the need for clear, well informed decision making when assessing the impacts on less advantaged members of society is as great, if not greater'.

Slide Number 19

# Case Law

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## ***Pieretti v. Enfield Borough Council [2010] EWCA 1104***

The Court of Appeal stated that the duty not only applies to general formulation of policy but also applies to decisions made in applying policy in individual cases.

Slide Number 20

# Case Law

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## ***Miller v Fife Council***

Fife Council breached their Equality Impact Assessment duty when they failed to assess the effect of a refusal to fund a young persons education beyond age 18, on a disabled young person.

Slide Number 21

# Commission's Role

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The Commission works with the public sector, including intermediary bodies and inspectorates to:

- develop, monitor and spread good practice;
- provide practical guidance; and,
- monitor progress and compliance with the duty
- enforce the duty where necessary.

Slide Number 22

## **Public Sector Duties**

### **Equality Act 2010**

Ensure that proposed new or revised activity

- Does not discriminate unlawfully
- Where possible advances equality of opportunity
- Helps foster good relations

### **Human Rights Act 1998**

Ensure that proposed new or revised activity does not breach the human right principles set out in the European Convention on Human Rights

# Discrimination

## **Equality Act 2010:**

Protected characteristics:

- Age
- Religion
- Sex
- Race
- Disability
- Sexual orientation
- Pregnancy and maternity
- Gender reassignment

## **Human Rights Act (art. 14):**

Protected characteristics + other status, such as:

- Rural isolation
- Born inside or outside marriage
- Homelessness
- Trade union membership
- Property
- Socio-economic status
- Political opinion

### Equality Act 2010

Unlawful		Potentially lawful, if mitigated or justified		Lawful
Direct discrimination	Direct discrimination on grounds of age	Indirect discrimination	No discrimination	

### Human Rights Act 1998

Unlawful	Potentially lawful, if justified	Lawful
Interferes with absolute rights	Interferes with qualified rights	No interference
Article 2: Right to life	Article 8: Right to respect for private and family life	
Article 3: Freedom from torture	Article 9: Freedom to manifest thought, conscience and religion	
Article 4: Freedom from slavery	Article 10: Freedom of expression	
Article 6: Right to a fair trial	Article 11: Freedom of assembly and association	
Article 9: Freedom to hold a thought, conscience and religion	Article 14: Prohibition of discrimination	

# Justification

- Proper legal basis
- Necessary in a democratic society
- Serve a legitimate aim
  - Protection of Public safety
  - Prevention of disorder or crime
  - Protection of national security
  - Economic wellbeing of the country
  - Protection of health or morals
  - Protect rights and freedoms of others

## Equality and Human Rights Impact Assessment Toolkit

- <http://www.scottishhumanrights.com/eqhria/eqhriahome>

