

Due Regard (Equality Analysis) Guidance and Toolkit

The Public Sector Equality Duty Organisational approach:

Showing due regard to the equality duty in how we develop our work and in our decision making.

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Equality Statement

Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 & the Human Rights Act 1998 and promotes equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation.

In carrying out its functions, LPT must have due regard to the different needs of protected equality groups in their area. This applies to all the activities for which LPT is responsible, including policy development, review and implementation.

1.0 Introduction

Every day, decisions are made within Leicestershire Partnership NHS Trust (LPT) that affects the lives and relationships of our service users and staff.

This guidance is to help you understand and carry out Due Regard (equality analysis) at Leicestershire Partnership NHS Trust (LPT) and to direct you to further sources of information and support. It has been written in an effort to make the process simple and accessible. Throughout this document we use the word 'policy' in its broadest sense to include the different things that we do, including strategies, functions, procedures, practices, decisions, projects and services including commissioning and decommissioning).

2.0 Public Sector Equality Duty (PSED)

The [Equality Act 2010](#) requires us to pay 'Due Regard', when considering the effects on different groups protected from discrimination ([protected characteristics](#)). Due regard can be demonstrated by carrying out an equality analysis.

The aim of the PSED is to embed equality considerations into the day to day work of public authorities, so that they tackle discrimination and inequality and contribute to making society fairer.

The Equality duty covers the following protected characteristics:

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

It also applies to marriage and civil partnership, but only in respect of the requirement to have due regard to the need to eliminate discrimination. For a more detailed overview of each protected characteristic [click here](#).

The PSED consists of a **general duty**, and **specific duties**.

2.1 The General Duty

The Equality Duty requires public bodies to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Equality Act explains that the second aim (advancing equality of opportunity) involves, in particular, having due regard to the need to:

- Remove or minimise disadvantages suffered by people due to their protected characteristics.
- Take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people.
- Encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

It states that meeting different needs includes (among other things) taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It explains that compliance with the general equality duty may involve treating some people more favourably than others.

2.2 Specific Duties

In addition to the general Equality Duty, set out above, Section 153 of the Equality Act gives the Government a power to impose specific duties on certain public bodies to enable them to perform the Equality Duty more effectively.

The specific duties are intended to support compliance with the General Duty. The specific duties focus on **reducing burdens** and bureaucracy on public bodies, and moving away from a process-driven approach to focus on transparency. No longer a 'tick box exercise'.

The specific duties require organisations like the Trust too;

- publish information to demonstrate their compliance with the Equality Duty, at least annually; and
- set equality objectives, at least every four years.

2.3 Compliance information

The Trust publishes annually (31 January) a range of equality information covering our workforce and our service delivery areas. This information addresses two main categories:

2.3.1 Information that we used to identify our equality objectives

(This includes information about our workforce, service user's satisfaction rates, access to our services, details of engagement and outcomes)

2.3.2 Information demonstrating the steps we have taken to show due regard to the three aims of the general duty in our decision making processes.

(This includes information about how the Trust has reached certain conclusions and made certain decisions. For example published board reports and how due regard has been shown.)

View equality information on our [website](#).

2.4 Equality Objectives

View our latest equality objectives on our [website](#).

3.0 What is Equality Analysis?

The Trust is responsible for making a wide range of decisions. This spans decisions about Trust policies and strategies, budget setting and service redesign right through to everyday decisions that affect individuals. Equality Analysis is a way of considering the effect of these decisions on our staff and service users who belong to different protected groups.

An Equality Analysis is a risk assessment tool that helps us to examine whether different groups of people are, or could be, disadvantaged by the decisions we make.

It involves using equality information, and the results of engagement with people from protected groups and others, to understand the actual effect or the potential effect of our functions, policies or decisions. It can help us to identify practical steps to tackle any negative effects or discrimination, to advance equality and to foster good relations.

The purpose of the EA process is to:

- Identify unintended consequences and mitigate them as far as possible, and
- Actively consider ways to advance equality and foster good relations

Equality analysis is NOT a tick-box process to be completed once a service function or policy 'activity' has been developed

Having due regard for advancing equality involves:

- removing or minimising disadvantages suffered by people due to protected characteristics
- taking steps to meet the needs of people from protected groups where these are different from the needs of other people
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low
- tackling prejudice and promoting understanding between different communities

The Trust's approach to Equality is highlighted within its [Equality, Diversity and Human Rights Policy](#) and **Single Equality Approach**.

3.1 Why carry out an Equality Analysis?

Equality analysis can help you to:

- Improve understanding of patients, staff, carers, different communities and their needs
- Identify the likely impact of proposed changes on different parts of the community and different groups of service users or employees of the Trust
- Deliver better services
- Improve access to services
- Integrate equality and diversity considerations into the everyday business of the Trust and enhance service planning
- Improve satisfaction with our services
- Improve the reputation of the Trust as an organisation that listens to all of its communities
- Encourage greater openness and public involvement.

3.2 The Equality Analysis Process

Equality Analysis must be carried out at the commencement of any service, function, policy review or development which will support your intelligence/evidence gathering and analysis.

Equality Analysis is designed to ensure that it is exercised in substance, with rigour and an open mind in such a way that influences decisions.

It highlights that any policy needs to be evidence-based, and that the evidence used should always be recorded and documented.

3.3 When should Equality Analysis be carried out?

Due regard (Equality Analysis) is an integral part of the decision-making process that should begin as soon as you start to formulate or develop an activity that directly or indirectly affects service users, or staff. It needs to be carried out in respect of the following activities:

- development of, or changes to a service, function or activity
- changes to the way a service or function is being delivered
- changes to employment practice

- financial decisions that affect services, functions or staff
- (de) commissioning and procurement of services.

3.4 A Proportionate Approach

The PSED means taking a proportionate approach to Due Regard. This means taking an approach that is suitable to the size of our organisation, its resources and functions and to the importance of the activity to equality and good relations.

The level of analysis required should be proportionate to the relevance the decision has to equality. When making this assessment, you should think about the following:

- Is this a major activity, significantly affecting how functions are delivered in terms of equality?
- Does the activity affect a large number of service users or staff, including those from protected groups?
- Does the activity have a significant effect on a small number of service users or employees who are in protected groups?
- Will the activity have a significant effect on how other organisations that provide services on our behalf operate in terms of equality (e.g. contractors)?
- Does the activity relate to functions that previous engagement or research (local or national) has identified as being important to particular protected groups?
- Does or could the activity affect different protected groups differently – for example could the change result in some groups being prevented from accessing the service?
- Does the activity relate to an area or issue where inequalities are known to exist?
- Does or could the activity impact on the relationships between different communities?
- Does or could the activity impact on the fairness, respect equality, dignity and autonomy shown towards service users or staff?
- Does the activity help us to meet any of our equality objectives?

4.0 Getting Started

4.1 Who should take the lead for due regard (Equality Analysis)?

Equality analysis is an integral part of policy development and service improvement. It needs to be integrated into day-to-day policy-making, business planning and decision-making processes. This means that the policy writer or manager responsible for the service under consideration is the person responsible for ensuring that an EA is carried out

EAs are best done by a small team rather than by one person on their own. Try to get a balance of skills and experience by involving external partners as well as mix of staff at different levels. For some (smaller) assessments, it may be easier to have a “virtual team” with one or two people taking responsibility for the analysis but drawing on the knowledge and expertise of others as and when necessary.

The aim is to get a small number of people involved in the assessment who can give a balanced view on the possible impacts for people with protected characteristics.

Before starting you should refer to the Due Regard toolkit which can be found on page 15.

4.2 What Information should be used in Equality Analysis?

Equality Analysis should be a challenging process but **not** overly complicated. When carrying out equality analysis you should try to put yourself in other people’s shoes - think about things from a range of different stakeholder perspectives. For example – how would I access or carry out this service if I had a physical disability? Would I be able to benefit from this change if I had to care for someone with a disability?

This will help you to decide what information will be useful in the equality analysis, who you need to engage or consult with, and what issues need to be explored in greater depth.

Ideally, you should use a range of data that is both qualitative (verbal, in-depth data) and quantitative (numerical/statistical). Please refer to list of various questions you may wish to consider under each protected characteristic available [here](#).

4.3 Types of Information

4.3.1 Qualitative

Examples include:

- Conversations/feedback/consultation with those affected by, or benefiting from the activity
- Feedback from individuals or organisations representing the interests of key target groups
- The knowledge and experience of the staff implementing the activity
- Advice from internal or external experts or specialists
- Outcome of local consultation exercises (even if they were not explicitly addressing the issues you are considering, they may still be a useful source of information)
- Relevant previous research (can be national, regional or local)
- Previous Equality Analyses (or Equality Impact Assessments) – these will be published on the Trust’s website. You could also use ones produced by other NHS organisations
- Complaints, comments and compliments
- Press coverage

4.3.2 Quantitative

Examples include:

- Performance, service, survey, or workforce data
- Local area demographics
- Joint Strategic Needs Assessment (this includes both qualitative and quantitative information)

If there is not enough information available to provide a clear picture of how the activity is impacting on different communities, where practical, further research or consultation should be undertaken with guidance from your engagement/involvement team or the Equality and Human Rights team.

If there are major gaps in information that cannot be addressed immediately, these should be highlighted in any final action plan.

4.4 What does the information tell you about the impact on Equality?

The information you gather should help you make a reasonable and informed judgement about the likely impact of the activity on protected and other vulnerable groups i.e. homeless, ex-prisoners etc). Your analysis should identify opportunities to advance equality and social inclusion, as well as any potential for adverse or different effects on

protected and other vulnerable groups – i.e. the activity is less beneficial for one or more communities or protected groups.

There are occasions when a difference in impact can be justified – for example, where we are proposing to take positive action to support or provide services for groups who are known to be under-represented.

4.5 Consultation and Involving

4.5.1 Duty to involve

You have a duty to involve persons you consider:

- to represent the interests of persons who share one or more of the protected characteristics; **and**
- have an interest in the way that you carry out your functions.

You can also use your discretion to involve other persons you consider appropriate.

Engagement should take one of two forms:

4.5.2. Consultation – listening to person’s views and feedback and taking their opinions into account when developing the activity.

4.5.3. Involving – working with stakeholders including community representatives (all relevant equality groups) as part of the decision making processes.

You must include a mechanism of feedback for participants, detailing what elements of their engagement has informed the decision making process.

Involve and consult stakeholders to address any negative impacts in the policy/ practice – look at wider data collection

The Public sector equality duty encourages opinions should be sought from relevant stakeholders about the ‘activity’ on how these fit their needs, (equality groups).

The Equality team can advise or help with the co-ordination of the involvement and consultation process, where required. We recognise there is a risk of ‘consultation fatigue’ with protected characteristic groups and would like to keep this to a minimum i.e. proportionate.

There are many ways to consult and involve stakeholders, suggested examples of involvement would be:

- Conducting students or staff survey
- Focus groups
- Face to face interviews
- Web forums
- Workshops
- Discussion with equality champion (internal/external)
- Staff Support Groups and E forum
- Staff side groups
- Via email

The above list is not exhaustive.

4.6 Types of Impact

4.6.1 Positive impact

A positive impact – where the impact could have a positive impact on one or more of the protected groups or improve equality and/or relationships between different sections of the community. This positive impact may be differential, where the positive impact on a protected group is likely to be greater than on another.

Example: A targeted health improvement campaign for young men between the ages of 15-21 would have a positive differential impact on this age group, compared with its impact on other age groups and women. It would not, however, necessarily have an adverse impact on the other age groups or on women.

4.6.2 Negative or adverse impact

A negative or adverse impact – where the impact could disadvantage one or more of the protected groups. This disadvantage may be differential, where the negative or adverse impact on a protected group is likely to be greater than on another.

Example: A policy that the Trust will only accept complaints in writing would have a negative or adverse impact on some people. This may include people with learning disabilities, people who do not use English as their first language and people for whom written communication is not a strong cultural norm such as British Sign Language users.

4.6.3 No impact (Equality Neutral)

This would mean the activity has no relevance to protected characteristic groups, and is therefore equally applicable to all.

Examples of no impact could be:

- Relocation Policy for staff – accessible to everyone who is appointed at the qualifying grade at the Trust.

4.7 Decision making

As a minimum the following information should be provided to enable the decision maker to demonstrate that he/she has had 'due regard' to the three aims of the duty when making a decision.

- Equality information used to understand the needs/outcomes/experiences of each protected group in the context of the activity being considered: what data gaps existed across the protected groups and what you intend to do close those gaps. How you used other sources of information to understand the impacts
- Opportunities and challenges identified with regard to the three aims of the general duty and the protected group(s) affected.
- How you used those findings to develop the activity under consideration
- Plans for monitoring and review actions

4.8 Overall Assessment

Once you have considered the findings of your Equality Analysis, you can make a judgement about what it means for your activity. There are four likely courses of action:

- 1) **Go ahead as planned:** Where there is no potential for unlawful discrimination or adverse impact on equality, you can continue as planned
- 2) **Adjust:** If you have identified actions or adjustments that will ensure no adverse impacts on equality, or that will enhance any benefits for protected or vulnerable groups, you can make changes accordingly
- 3) **Continue regardless:** If you have identified that there are adverse impacts, or missed opportunities to advance equality, you can continue, providing you are certain that the impact can be justified and does not constitute unlawful discrimination
- 4) **Stop:** If there are adverse impacts that cannot be justified or mitigated and therefore constitute unlawful discrimination, you must not proceed with the activity. If you do, you will leave the Trust open to legal challenge.

4.9 Documenting Due Regard (Equality Analysis)

It is important that you can 'document a trail' of how due regard has been shown throughout the development of your work and how it then informs the final decision making, (refer to due regard templates). This recording trail can be mainstreamed into your project plans through minutes of meetings and as a summary in relevant governance reports.

However to support a consistent approach to recording due regard, staff must use the due regard recording options highlighted below to capture the 'journey/story' of how due regard has been carried out. These options have been developed to capture the essential principles of using appropriate information and how the findings have informed the Trust's decision making processes.

Documenting the Equality Analysis is extremely important in order to show that we are meeting our equality duty, and that our decision making process is transparent.

There are three options for documenting the Due Regard process; These are highlighted in a Due Regard flow chart which can be accessed [here](#).

- Equality Neutral statement outlining rationale
- [Initial Screening template](#)
- [Full Due Regard and Equality Analysis template](#)

In the case of a policy, strategy, guidance etc you must include a **Due Regard** section in the body of the document which sets out which due regard option you have undertaken and include a hyperlink to the relevance evidence such a screening or full due regard template or as an appendices. (Refer to the Trusts 'Policy for policy management', which provides further guidance).

The templates highlighted above provide an opportunity to

- Document your reasons and the information that you have relied on
- Documenting the impact of your policy on equality and the decisions taken will enable you to show that you have complied

- with the general duty
- Develop an action plan where applicable to ensure changes to the proposal identified during the analysis are managed effectively.

4.10 Action Planning

Use the Action Plan to outline what you are going to do as a result of the analysis. If there are gaps in evidence, state what you will do to fill them. Also include any general actions to be taken to address specific equality issues and data gaps that need to be addressed through consultation or further research.

Please note any adverse impact should be addressed as soon as possible and no later than 6 months from completion date of the Equality Analysis.

Actions must be linked to service planning so that equality issues become embedded within our mainstream business activities.

Case law has stated that records serve to demonstrate that a genuine assessment has been carried out at a formative stage.

4.11 Sign off and Publishing

The final stage of the equality analysis is to formally sign off the document as being a complete, rigorous and robust assessment.

The analysis must be signed off by the person responsible for conducting the analysis.

In the case of policies these will be sent to the Policy group for quality assurance (check that the analysis is robust and meets our equality duties). For all other activities analysis these will be signed off by the person with responsible for the activity. It is recommended that the Equality and Human Rights Coordinator with responsibility and oversight for due regard is given the opportunity to review the process (as part of the activity development and not at its conclusion) in order to provide advice and support.

4.12 Review

Once you have concluded the due regard for the new, refreshed or redesigned activity the process does not stop there, You must continue to show due regard.

This is likely to be achieved through continued effective use of information in respect of service users or staff demographics across the relevant protected groups.

5.0 Do's and Don'ts

Do's	Don'ts
Do involve the right people – don't try to do it on your own	Don't panic!
Do focus on finding real improvements in your services, functions or policies, rather than trying to get the form completed and off your desk.	Don't treat it as a form-filling exercise; think of it as an 'audit trail' of a service improvement exercise.

Do build contacts and relationships with colleagues in other departments, and even from other NHS organisations, to assist and challenge the process	Don't use the process as a 'last-minute check'. Develop plans that include time to make changes to a service, function or policy as identified by Equality Analysis
Do know your service users and staff, their needs, the barriers they face and focus on improving the service they receive.	Don't be daunted by the information gathering element. Find out if research or data already exists, or consult directly with representatives of relevant equality groups or specialist organisations

6.0 Monitoring and review

Whilst equality analysis can help you anticipate the effects of your 'activity', you will only know the actual impacts of the proposal once it has been put into practice.

Appropriate ongoing monitoring and review can allow you to pick up on any negative consequences or areas where it is not creating the intended results, and make alterations as appropriate.

Equality analysis is an ongoing process that does not end once proposals are agreed and implemented. Monitoring and review is essential, although it will not be necessary to repeat a full equality analysis unless significant changes are made.

7.0 Case Study (Due Regard)

Southall Black Sisters

Southall Black Sisters (SBS) provides specialist services to Asian and African Caribbean women, particularly in relation to domestic violence issues.

In June 2007, Ealing Council announced proposals to move away from funding particular organisations (such as SBS), towards commissioning services (including domestic violence services) following a competitive bidding exercise.

Despite concerns raised during consultation that plans had not been equality impact assessed, and that commissioning could disadvantage grassroots community initiatives, Ealing decided to press ahead with its proposals.

During discussions about criteria for commissioning domestic violence services, SBS had highlighted the adverse impact the criteria could have on pre-existing domestic violence services provided to women from ethnic minority communities, and so an equality impact assessment should be carried out.

Ealing carried out belated impact assessments on proposals before deciding to proceed with the existing domestic violence services commissioning criteria, resulting in two SBS service users launching a judicial review of the decision.

Ultimately, Ealing conceded these submissions and withdrew from the case. However, in an oral judgment, 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.

The ruling stresses the need to carry out an equality analysis before formulating policies or processes

8.0 Help and Support

If you require any additional help, guidance or information about Due Regard (Equality Analysis) or any other equality related issue, please contact the Equality and Human Rights Team.

Telephone 01162 95 7680 or email equality@leicspart.nhs.uk or visit [e source](#)

9.0 Useful Links

The following websites provide useful information about Equality and Human Rights:

- [Equality Human Rights Commission - Equality Analysis Guide](#)
- [Equality Human Rights Commission - Human Rights Section](#)
- [NHS Employers](#)
- [ACAS main website](#)
- [East Midlands Public Health Observatory](#)
- [Leicestershire Statistics and Research Online \(LSRO\)](#)
- [Leicester City Joint Strategic Needs Assessment \(JSNA\) reports](#)
- [Leicestershire County Joint Strategic Needs Assessment Web Portal](#)

Next Review February 2015

Due Regard Toolkit

Due Regard Flow
Chart

Due Regard
factsheet

Protected
Characteristics
Descriptors

Due Regard
E source

Frequently Asked
Questions

Ensuring legal
compliance

Due Regard
Screening
Template

Sample Screening
Template

Full Due Regard
Template

Due Regard PPT

Briefing for Policy
Authors

Things to think
about when
undertaking Due
Regard

Frequently Asked Questions