

## Budgets and Section 75: a short guide

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he aim of this guidance note is to set out how Section 75 statutory equality and good relations duties and equality scheme commitments apply to budget processes.

*True equality is not delivered by treating everyone exactly the same but by treating all fairly. Decision makers who have to work with greatly reduced budgets have tough choices to make and people are sure to be disadvantaged as a result. It is even more important, in that context, that all possible steps are taken to protect the most vulnerable in our society and to ensure that the impact on them is a key consideration where cuts in services are being considered<sup>1</sup>.*

Section 75 does not prevent difficult decisions being taken, nor does it stop decisions which will affect one group more than another. It enables financial decisions which are informed by evidence of the impact they are likely to have, where mitigation and alternative policies have been considered, and which are transparent and accountable.

This advice should be read in conjunction with [Section 75: A Guide to Public Authorities \(2010\)](#), and other related guidance.

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<sup>1</sup> View from the Chair, ECNI, 6 July 2010.

## How does Section 75 apply to setting a budget?

The law requires that public authorities, in carrying out their functions, have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations. A public authority needs to consider not only its function of setting a budget for its operations, but also how that budget impacts to change its policies and service delivery.

These issues have been considered by the courts in England, in the context of similar statutory equality and good relations duties in the Equality Act 2010 (and its predecessors). The following example may be helpful to public authorities in Northern Ireland in planning their compliance with the requirements of Section 75.

Claimants challenged decisions taken by Birmingham City Council to terminate funding to advice services providers, pending new commissioning arrangements.

Having concluded that decisions taken by the Council on two occasions were unlawful for failure to comply with the Public Sector Equality Duties, and in considering remedies, Mr Justice Blake said: *“Even where the context of decision making is financial resources in a tight budget, that does not excuse compliance with the PSEDs<sup>2</sup> and indeed there is much to be said for the proposition that even in the 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.”*

[R \(Rahman\) –v- Birmingham City Council \[2011\] EWHC 944 \(Admin\), paragraph 46.](#)

Through application of their equality scheme arrangements, specifically through the methodologies for assessing the likely impacts of the budget proposals, public authorities will be able to fulfil their duties<sup>3</sup>, and make informed and fair decisions. In particular:

- To use the processes to ensure transparency and accountability in the decision making; and
- To provide evidence from an assessment that is sufficient for the decision maker to give the **appropriate consideration**, both to the need to promote equality of opportunity and the desirability of promoting good relations.

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2 Public Sector Equality Duties

Decision making by public authorities in all circumstances is grounded in the principles of UK administrative law. These principles prevail even when there is a pressurised or difficult decision making environment. A designated public authority must make decisions that are lawful, one element of which is through discharging its statutory equality and good relations duties.

In a case brought to the Court of Appeal in England and Wales, applicants sought to quash a decision by the Minister for Disabled People to close the Independent Living Fund. In the judgement, Lord Justice McCombe said:

*"...it seems to me that the [law] imposes a heavy burden upon public authorities in discharging the PSED and in ensuring that there is evidence available, if necessary, to demonstrate that discharge. It seems to have been the intention of Parliament that these considerations of equality of opportunity (where they arise) are now to be placed at the centre of formulation of policy by all public authorities, side by side with all other pressing circumstances of whatever magnitude.  
[emphasis added]*

*It is for this reason that advance consideration has to be given to these issues and they have to be an integral part of the mechanisms of government... There is a need for a "conscious approach" and the duty must be exercised "in substance, with rigour and with an open mind"... In the absence of evidence of a "structured attempt to focus upon the details of equality issues"... a decision maker is likely to be in difficulties if his or her subsequent decision is challenged."*

**R (Bracking & others) -v- Secretary of State for Work & Pensions [2013] EWCA Civ 1345, paragraphs 60 & 61.**

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<sup>3</sup> See [The public sector equality, disability and good relations duties: a short guide \(October 2014\)](#), confirming the principles which apply to "due regard" from legal cases.

## How are equality scheme arrangements applied?

1. The Executive and the Minister for Finance both have roles in agreeing the overall departmental settlement. Through its functions, the Department for Finance and Personnel, as a designated public authority, must comply with the statutory equality duties, and apply its equality scheme arrangements. The Departments and other designated public authorities have functional responsibility not only for contributing to the preparation of budget proposals, but also the allocation of their individual budget settlement. Similarly, they must fulfil these functions and make decisions having given the required consideration (i.e. due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations).
2. In the preparation of budget proposals, Departments and other authorities should ensure they can fulfil their statutory equality and good relations duties. The Commission recommends that early options are presented with screening or that options appraisal has incorporated screening.
3. In practice, the published budget information does not always provide clarity on which organisation is the decision maker<sup>4</sup>. However, in understanding that due regard/regard must be paid at the time of a decision, **an assessment of impacts must precede the decision and the information from that assessment be known to the decision maker**. The full application of equality scheme commitments, such as screening and the publication of templates and results, will enable authorities to provide greater **clarity and transparency** in the decision making. Maintaining consistency with the arrangements in the scheme aids clarity, using the methods understood and expected by consultees.
4. There should be assessments of overall budget proposals at a strategic level. This should provide evidence of the **cumulative impacts**, i.e. consideration of the overall range of proposals and what impacts they might collectively have on the Section 75 categories. It is important that this is presented alongside any draft budget consultations, to inform and enable consultees to fully contribute to the evidence that will be taken into account in decisions on the overall budget settlement<sup>5</sup>. The audits of inequalities which informed action measures and action plans should provide relevant information<sup>6</sup>.

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<sup>4</sup> See the Equality and Human Rights Commission's recommendations following their statutory assessment of HM Treasury's 2010 Spending Review: *Making Fair Financial Decisions (2011)*.

<sup>5</sup> Ibid.

<sup>6</sup> The Commission recommends that public authorities commit to develop action measures as part of their equality scheme arrangements. It further recommends these are based on an audit of inequalities.

See *Section 75: A Guide for Public Authorities (2010)*, chapter 8 for details.

5. Assessments should be **proportionate**. Public authorities should use the screening/EQIA methods to **tailor the scale of the assessment to the scale of the decision**. The assessment information must be **available to inform decisions**.
6. Decisions to change, reduce or withdraw services, particularly in times of budget reduction, whether on a temporary, interim or pilot basis should be treated as “policies” for the purposes of equality scheme commitments. **Applying the scheme arrangements for assessments to the full range of decisions will ensure transparent and evidence-based decisions** which demonstrate that due regard/regard has been given. The assessment for temporary decisions needs to be appropriate in the circumstances. The temporary arrangements could be used to gather evidence of likely impacts to inform permanent decisions; also impacts in the short term may be of a lesser scale than those which are permanent. These considerations will inform the scale of the assessment.
7. The re-formulation of policies and decisions that are needed, including about the reduction of services and funding, will need to be informed by the assessment: screening will enable the authority to identify whether the policy is relevant to the Section 75 duties and the degree of that relevance.
8. Both screening and EQIA methodologies prompt for the identification of mitigation and alternative policies. The consideration of both for the decision must be reported on. In circumstances of budget reductions, measures to mitigate adverse impacts and alternative policies which might better achieve the promotion of equality of opportunity will be important for consideration.
9. In the formulation and application of budget allocations and policy/service decisions, public authorities should also:
  - Ensure alternative policies and mitigation are outlined and presented to decision makers to contribute to the consideration;
  - Ensure compliance with Equality Scheme commitments on consulting upon the likely impacts;
  - Integrate future monitoring arrangements, to ensure that the evidence base to inform future actions is available: the duties are continuing duties.



10. All decision making could be subject to challenge or complaint. The equality scheme arrangements are the agreed framework for public authorities to fulfil their statutory equality and good relations duties and effective implementation of these arrangements helps demonstrate compliance with the duties.

### Further information and advice

For further information and advice on the public sector equality and disability duties please contact us at:

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