

BRENT HOUSING PARTNERSHIP BOARD

Meeting: Main Board	Date: 28th July 2011
Report Author: Linda Footer	Title: Equalities Act 2010
Contact Officer: 020 8937 2356	Classification: For Decision
Contains Private and Confidential Information:	No

1. Matters for Consideration

The Equalities Act 2010

- 1.1 The Equalities Act 2010 came into force on 1st October 2010 and brought together nine separate pieces of legislation into one single Act simplifying the law and making it stronger to help tackle discrimination and inequality. For example since 1st October 2010 employers are no longer allowed to ask questions about health or disability before offering a job or before they include applicants in a pool of people to be offered a job.
- 1.2 The Equalities Act 2010 has extended the number of protected characteristics covered by an equality duty. The protected characteristics are now age, disability, race, gender, sexual orientation, religion or belief, pregnancy and maternity, gender reassignment and civil partnerships.

The Public Sector Equality Duty

- 1.3 Within the Act there is also a 'Public Sector Equality Duty' that applies to all organisations providing a service to the public or a section of the public (service providers). This includes private companies carrying out public functions on behalf of a public authority such as BHP and community and voluntary organisations such as residents associations. It also applies to anyone who sells goods or provides facilities to the public whether or not a charge is made for them so this would apply for example to all contractors employed by BHP. The Public Sector Equality Duty came into effect on 5th April 2011. Within the Act there are 'General' and 'Specific' duties.

General Equality Duty

- 1.4 The general Equality Duty is a requirement on organisations providing services to the public or a section of the public e.g. BHP, its contractors and residents associations to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

1.5 The aim under the 'General' duty is for public bodies to consider the needs of all individuals in their day to day work, in developing policy, in delivering services, and in relation to their own employees.

1.6 Under the 'General' duty, all public bodies must also take account of direct and indirect discrimination in relation to their day to day work, in developing policy, in delivering services, and in relation to their own employees. For example:

If BHP had a policy of reminding tenants of forthcoming repair appointments by telephone it would put deaf people who cannot use the telephone at a disadvantage, as they do not receive a reminder of their appointment. Unless BHP can justify its policy of making contact only by telephone as being a proportionate means of achieving a legitimate aim, this is likely to amount to indirect discrimination.

1.7 In addition to the 'General' duty, the Equalities Act 2010 provides a power to make regulations imposing 'Specific' duties on public bodies to support better performance of the 'General' duty.

Specific Equality Duty

1.8 The 'Specific' equality duty applies to all public bodies listed in Schedule 19 of the Equalities Act (**Appendix 1**). Although ALMOs are not listed, London local authorities are included in Schedule 19 and having taken advice from Brent's Principle Lawyer ALMOs who carry out services on behalf of a local authority are included within the Specific Equality Duty.

1.9 The requirement under the specific duties are to:

- a) Publish equality objectives every four years
- b) Publish information annually to demonstrate compliance with the General Equality Duty
- c) In particular publish information relating to their employees (for bodies with 150 or more staff) and others affected by their policies and practices such as service users
- d) All information must be published in a way that is accessible to the public

1.10 The 'Specific Duty' regulations are currently in draft form due to the government carrying out consultation in the latter part of 2010. However the requirements as shown in paragraph 1.9 are the draft amended version of the regulations following the consultation exercise. Publication of the final regulations is expected shortly although it is anticipated that the regulations will come into force in either December 2011 or April 2012.

- 1.11 The main changes to the ‘Specific’ Duties following consultation are the removal of requirements on public bodies to publish details of the:
- engagement they have undertaken when determining their policies;
 - engagement they have undertaken when determining their equality objectives;
 - equality analysis they have undertaken in reaching their policy decisions; and
 - information they considered when undertaking such analysis.
- 1.12 The Government have said they are proposing to remove these requirements from the Specific Duty because they want public bodies to focus more on outcomes and less on bureaucratic processes.
- 1.13 It is the Government’s intention that public bodies should take responsibility for how they go about responding to their obligations. They say that challenge from the public will be the key means of holding public bodies to account for their performance on equality. The Government are developing tools and mechanisms to support organisations and individuals to challenge public bodies effectively to ensure they publish the right information and deliver the rights results.

Demonstrating Compliance with the Equality Duties

- 1.14 As described in paragraph 1.11, the Equality Duty does not impose a legal requirement to conduct an Equality Analysis (previously called an Equality Impact Assessment). However the guidance produced by the Government Equality Office and the Equalities and Human Rights Commission indicate that it is good practice to keep a written record of how decisions were reached to demonstrate how public bodies considered the Equality Duty and will be essential in protecting BHP from any future legal challenges. The Council’s Principle Lawyer has also informed us that it will be important to keep an audit trail of how decisions were reached.
- 1.15 Compliance with the Equality Duty involves consciously thinking about the three aims of the Equality Duty as part of the process of decision-making. That will entail understanding the potential effects of BHP’s activities on different people, but there is no prescribed process for doing this. Producing an Equality Analysis after a decision has been reached will not achieve compliance with the Equality Duty. Although there is no requirement to do so, it does seem to be good practice to complete an Equality Analysis.
- 1.16 In order to avoid inconsistency of approach in considering the Equality Duty, it is recommended that a standard user friendly format be implemented across BHP by all Officers to document the decision making process in relation to the Equality Duty. The attached simple to use Equality Analysis toolkit (**Appendix 2**) has been prepared which assists staff through every step of the process and has been formatted to ensure that only the most relevant information is documented. The EA form would be attached to all Board and Sub Committee Reports that require a decision, to assist Board Members in taking the Equality Duty into consideration in reaching their decision on the report.

- 1.17 The template for board reports was last amended in October 2009, the main change being the deletion of the heading for 'Equalities/Diversity Issues'. This was due to most officers inserting 'There are no equality/diversity issues arising from this report.' In future it will be essential that all Officers pay due regard to the General and Specific Equality duty and a revised Board Report template is attached (**Appendix 3**) which will require an EA Form to be attached to the Board Report. The Board decision will need to be minuted on the basis that the Board have taken into consideration the information supplied by Officers in the EA.
- 1.18 Attached at (**Appendix 4**) is a report which was presented to the Senior Management team on 14th July detailing the work carried out to date, including staff training, to ensure compliance with the requirements of the Equalities Duties.

2. Financial and/or Legal Implications

- 2.1 All staff, Directors, Board Members, residents associations and contractors employed by BHP have a legal duty to comply with the Equalities Act 2010 and the Public Sector Equality Duty which came into force on 5th April 2011, particularly with regard to individuals being affected by our day to day work, and the decision making process affecting policy development, in delivering services, and in relation to our employees.

3. Recommendations

- 3.1 Board Members are requested to
- a) Note the contents of this report
 - b) Approve the requirement that officers will attach an Equality Analysis form to all future board reports which require decisions on policy or service delivery which affects residents to assist the Board in taking into account the legal requirements of the Public Sector Equality Duty in their decision making process.
 - c) Approve an amended template for Board Reports to include Equalities information

4. Access to Information

- 4.1 No restrictions apply