

AILG

Association of Irish Local Government

Aontas Rialtas Áitiúil na hÉireann

AILG Elected Member Information Leaflet

Public Sector Equality and Human Rights Duty

Leaflet

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Public Duty – Introduction

The Public Duty, properly described as the Public Sector Equality and Human Rights Duty, is a statutory requirement for a public body to have regard to the need to eliminate discrimination, promote equality and protect the human rights of people with whom it comes in contact with in the performance of its duties.

The core elements of the Public Sector Equality and Human Rights Duty

There are three principles which are required to permeate the planning, operation and delivery of services by a public body such as a local authority:

- Eliminate discrimination;
- Promote equality of opportunity and treatment for staff and the public;
- Protect the human rights of staff and service users.

There are three actions which a local authority is required to implement as part of its programme towards fulfilling the Public Sector Equality and Human Rights Duty.

- **Assess** – set out in its Corporate Plan an assessment of the human rights and equality issues it believes to be relevant to the functions and purpose of the authority;
- **Address** – specify in its Corporate Plan the policies, plans and actions it proposes to put in place to address the issues identified;
- **Report** – report on progress towards fulfilling its Public Duty responsibilities in its Annual Report.

What is the scope of the equality and human rights protections which have to be considered for the purposes of the Public Sector Equality and Human Rights Duty?

The definition of equality and human rights is rooted in constitutional and statutory law in relation to non-discrimination and human rights.

Human rights are rights which are:

- Enumerated in the Constitution;
- Protected in the European Convention of Human Rights which is upheld by the European Court of Human Rights

Equality rights are grounded in a large body of domestic law such as the Employment Equality Acts 1998 – 2015 and the Equal Status Acts 2000-2015 in addition to international law which may derive from the Council of Europe, the European Union, the United Nations and general International Treaties.

A key set of protected characteristics – although not the only human rights protected – are the nine grounds set out under the Employment Acts and the Equal Status Acts 2000-2015 which are:

1. Gender
2. Civil Status
3. Family Status
4. Sexual Orientation
5. Disability
6. Age
7. Race
8. Religion
9. Membership of the Traveller and Roma communities.

Similarly, there are extensive rights under international law covering less specific but equally substantial areas of equality such as respecting diversity under cultural, religious and linguistic headings.

How can elected members be involved in promoting the principles of the Public Duty?

1

Under the Local Government Acts, elected members are required to adopt a Corporate Plan on a five yearly basis – the next iteration being in 2024. This is a strong vehicle in which to embed human rights policies which will inform the culture of the organisation over the following term.

2

In the meantime, elected members can be conscious that whenever they approve a plan or a document such as a development plan or a scheme of housing allocations, to be aware of human rights and equality considerations.

3

Some examples of an everyday kind might be promoting accessibility in design of public realm, in playgrounds, in public buildings, and the Council website for those with mobility problems.

4

Many local authorities are actively engaged with the Traveller community and this is a particular area where local government has to be sensitive and aware of cultural issues while at the same time working in harmony for the common good.

5

Elected members can make use of structures within the local government realm such as relevant SPCs, the LCDC and PPN to gain a greater understanding of cohorts of the population who are at risk of being adversely discriminated against or their right to equal treatment being compromised.

How is the Public Duty requirement monitored?

Under the Irish Human Rights and Equality Commission Act 2014, the Irish Human Rights Commissioner has the power to require a public body to carry out a review of its compliance with equality and human rights measures and/or to prepare an action plan to remedy any deficiency under human rights headings.

The Commission may carry out a review in its own right should a particular issue come to its attention and may report its conclusions and recommendations to the Minister and deposit its report with the Houses of the Oireachtas. Thus, any local authority found to be in consistent breach of human rights and equality criteria risks being “named and shamed” if it fails to demonstrate to the Commission that its performance is found wanting from a rights perspective.

Additional Notes

Working in compliance with human rights can be complex and challenging. Few rights – even those enumerated in the Constitution -- are unqualified.

For instance, freedom of expression is a zealously guarded right but it is qualified by prohibitions on the incitement of hatred.

Equally, discrimination in its own right is not necessarily in contravention of equality principles. Local authorities constantly discriminate in tests relating to, for example, the recruitment of specialist personnel. There is no discrimination involved in setting demanding physical standards for the

recruitment of a firefighter even if that discrimination would clearly militate against classes of society. The criteria are that the discrimination must be proportionate, transparent and reasonable in the particular circumstances.

Indeed, there are cases where positive discrimination would be appropriate. For instance, the common practice of designating disabled parking spaces close to amenities is discrimination in that such favoured spaces are not available to the general public. However, it is an example of a positive discrimination which is proportionate and reasonable in the circumstances.

Such examples aside, all must be wary of unconscious bias entering into the policy making process. It is human nature to make judgements about people because of externalities such as how they look and how they speak. A similar superficiality of judgement can be applied to whole groups of people based on long standing cultural prejudices. However elected members are counselled to look past the populist assumptions and to assess every person and every group on their own merits as equal citizens of the local authority.

Further information:

For extensive further reading material on the Public Duty, the website of the Irish Human Rights and Equality Commission www.ihrec.ie has resources which explain in more detail the concepts of the Public Duty and describe case studies where it is being implemented in public bodies.