**[*Insert Committee name*]**

**Public Sector Equality Duty**

**(a) Summary**

The University is considered a “public authority” for the purposes of the Equality Act 2010 and must therefore have “due regard” to the Public Sector Equality Duty (PSED) when formulating policies and taking individual decisions. This will enable the University better to embed equality considerations into its day-to-day work, improving decision-making and fostering a more supportive culture. On the other hand, failure to consider the PSED may result in regulatory action by the Equality and Human Rights Commission or legal claims as well as reputational harm and wasted resources. Please see [edu.admin.ox.ac.uk/legal-framework](https://edu.admin.ox.ac.uk/legal-framework) for further information on the Public Sector Equality Duty.

**(b) Action for the committee**

The committee is asked to **note** the information in this paper and to **take the steps set out below** in exercising its remit.

**(c) Key Issues**

**1. Role of Committees in respect of the PSED**

A committee has the following role in respect of the PSED:

* The Committee is responsible for ensuring that “due regard” has been had to the equality duty throughout the process of policy development and at the point decisions are made.
* The Committee’s papers should contain PSED analysis and points for consideration or explain why these are not relevant. Responsibility for carrying out equality analysis lies with the individual or team developing the policy proposals. The Chair should ensure that all papers include sufficient information on equality impact to inform the Committee’s decision. There is detailed guidance for policy teams and committees at [edu.admin.ox.ac.uk/equality-analysis](https://edu.admin.ox.ac.uk/equality-analysis) (under “Resources”).
* Committees should scrutinise PSED analysis and raise any concerns before approving the proposals in a paper.
* Committees should be prepared to request further explicit PSED analysis if it appears to be insufficient or missing before approving proposals in a paper.
* Committees should agree a process for maintaining a record of their decisions and recommendations in relation to equality impact.

Guidance on how to carry out equality analysis is provided in the rest of this paper.

**2. The Three Aims of the PSED**

As a public authority, the University must, in the exercise of its functions, have due regard to the need to:

1. eliminate discrimination, harassment, victimisation or any other prohibited conduct;
2. advance equality of opportunity between persons who share a relevant protected characteristic[[1]](#footnote-1) and those who do not, by:
	1. removing or minimising disadvantages suffered by people with various protected characteristics;
	2. taking steps to meet the needs of persons with a relevant protected characteristic where they are different from the needs of other people; and
	3. encouraging persons with a relevant protected characteristic to participate in public life or other activities where their participation is low;
3. foster good relations between persons who share a relevant protected characteristic and those who do not, by:
	1. tackling prejudice; and
	2. promoting understanding between different groups.

**3. When does the Duty apply?**

“In the exercise of its functions” means that – in theory – the PSED applies to any and every decision made by a public body. In the context of the University it should be considered for all decisions which are likely to directly or indirectly affect staff, students or others, and both to new decisions and to those being reviewed. We have used the word “decision” but this must be understood broadly – the duty applies for any policy / practice / decision / function etc implemented at all levels of the University.

**4. Relevance**

As the application of the PSED could therefore be extremely broad, policy developers should take a proportionate approach. “Due regard” means the level of consideration that is appropriate in all the circumstances and depends on both relevance and significance. Policy developers should make a preliminary judgement as to whether the PSED is relevant to the decision in question, the likely risk and the level of scrutiny required. This can be done by considering whether a positive or negative impact on equality is likely under any of the three separate aims of the equality duty, and by having regard to any relevant contextual factors, for example:

1. Will the decision involve the allocation of significant financial or other resource or a major policy change?
2. Will the decision have an impact on people? How many, and how significantly? Is it likely to affect people with particular “protected characteristics” differently?
3. Does it relate to a major and/or sensitive policy area (e.g. recruitment, student admissions, redundancy, harassment, health and safety, staff or student welfare services)?
4. Does it relate to an area with known under-representation or differential outcomes (e.g. admissions, assessment, recruitment)? Is there a risk of triggering new equality gaps in these areas?

If the PSED is considered irrelevant to the decision, the policy developer should make a note of their assessment and include a brief summary of their conclusions in the relevant section of the committee paper. This will be of particular importance in sensitive or high-risk policy areas which are more likely to be subject to challenge. Policy notes and the summaries for committee papers should be retained in case the University is required to provide evidence of its compliance with the equality duty and/or to inform subsequent policy development and review.

If the PSED is deemed relevant, further analysis should be carried out to assess the nature and extent of the potential impact on equality. The EDU and LSO have provided a checklist to guide policy developers through their consideration of each aspect of the PSED and to serve as a record of their findings. This checklist could be included as an annex to the committee paper to provide evidence of due regard and inform the committee’s decision-making process.

Where the equality impact is likely to be significant and/or negative, a more detailed assessment will be required. This is likely to involve the collection and analysis of equality data and other evidence. Policy developers are advised to record their assessment on the PSED checklist and to seek advice from the EDU if required: contact equality@admin.ox.ac.uk

The checklist and committee paper templates are provided (under “Resources”) at: [edu.admin.ox.ac.uk/equality-analysis](https://edu.admin.ox.ac.uk/equality-analysis)

**5. Evidence & Consultation**

In assessing the decision’s potential impact on equality and people with different protected characteristics, it may be necessary to draw on available evidence, which could be any combination of local, national, international or sectoral. See [edu.admin.ox.ac.uk/equality-analysis#tab-1140041](https://edu.admin.ox.ac.uk/equality-analysis#tab-1140041) for advice on accessing equality data.

If the decision is likely to have a significant impact on staff and/or students and/or groups with protected characteristics, it may be advisable to undertake targeted consultation. The EDU can advise on and help with this: contact equality@admin.ox.ac.uk

**6. Assessing equality impact**

Questions that should be considered, and recorded where appropriate, include:

1. Which protected groups might be affected – either positively or negatively – by the decision?
2. Are there issues of “intersectionality” between different protected characteristics – e.g., could the impact be greater on older or younger people of different sexes and ethnicities?
3. Are there any means of remedying or mitigating a potential negative impact?
4. If there are no remedies, can the negative impact be justified?
5. If the negative impact is justifiable, what evidence is there to support that conclusion?
6. Could the decision have a positive impact on equality and, if so, what steps would need to be taken to achieve this and would it be proportionate to do so?

**7. Recording the outcome**

A record of the assessment of equality impact should be kept from the earliest stages of policy formulation and relevant analysis included in committee papers and minutes (templates available at [edu.admin.ox.ac.uk/equality-analysis](https://edu.admin.ox.ac.uk/equality-analysis) under ‘Resources’). Committees are advised to discuss and agree a process for maintaining an accessible record of their decisions on equality impact and of their recommendations for mitigating negative impact, promoting positive impact, and for reviewing the impact of implementation.

These records may be required in the event of a legal or other challenge and may be disclosable under Freedom of Information legislation.

**8. Due Regard**

Case law has set out the following principles for determining if “due regard” has been had to the PSED:

* “Due regard” is the level of consideration that is appropriate in all the circumstances.
* Equality issues should be treated as equally important as financial and other considerations.
* Each of the three aims of the equality duty must be considered consciously, separately and equally.
* The duty must be exercised in substance, with rigour and an open mind in such a way that it could have an influence on the outcome – not as a retrospective or tick-box exercise.
* The consideration must be based on sufficient evidence.

The PSED is described as “a continuing duty”, meaning that it must be considered throughout the process of policy development, at the point at which a decision is made, and during implementation. The policy or decision may need to be reviewed and, potentially, amended in response to challenge or new information on equality impact.

**(d) Further information**

Further resources, including guidance, a checklist and templates for committee papers and minutes prepared by the EDU and LSO are available at [edu.admin.ox.ac.uk/equality-analysis](https://edu.admin.ox.ac.uk/equality-analysis). Further information on the PSED can be obtained from the Equality & Diversity Unit (equality@admin.ox.ac.uk) or Legal Services (lsoweb@admin.ox.ac.uk).

1. **Protected Characteristics** include: Age, Disability, Gender Reassignment, Marriage and Civil Partnership (only in relation to eliminating discrimination in employment), Pregnancy and Maternity, Race (including colour, nationality and ethnic or national origins), Religion or Belief (including lack of belief), Sex, Sexual Orientation [↑](#footnote-ref-1)