

## **Traffic Regulation Orders and the Public Sector Equality Duty (PSED)**

1. Section 149 of the Equality Act 2010 provides that a public authority must, in the exercise of its functions have due regard to the need to:
  - a. **eliminate discrimination**, harassment and victimisation and prohibited conduct;
  - b. **advance equality of opportunity** between persons who share a relevant protected characteristic and persons who do not share it;
  - c. **foster good relations** between persons who share a relevant protected characteristic and persons who do not share it.
  
2. Looking at key concepts:
  - a. **“due regard”**
    - i. In making a decision, an authority must consciously consider the need to eliminate discrimination, advance equality and foster good relations. The duty is not a duty to achieve a result but to consider the need to achieve the overall goals of the legislation.
    - ii. Having ‘due regard’ involves having regard to the need to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic, take steps to meet the needs of those people and encourage people from protected groups to participate in public life or in other activities where their participation is disproportionately low (Section 149(3)).
    - iii. How much is ‘due’ is to be assessed by the authority as that appropriate in the context of the function which the authority is exercising.
    - iv. The test whether there has been ‘due regard’ is one of substance and not ‘mere box ticking’. The duty must be performed “with vigour and an open mind”. It is essential that the duty is considered before and at the time a decision is made.
    - v. However, the weight to be given to countervailing factors is a matter for the authority, not the courts.
    - vi. The duty is a continuing duty.
  - b. **“relevant protected characteristic”**
    - i. The Act lists a number of characteristics which are protected. The most relevant for the purposes of traffic management are disability. ‘Disability’ does not require a person to be registered disabled but is defined as where a person has a mental or physical impairment that has a substantial and long term adverse effect on that person’s ability to carry out normal day-to-day activities.
    - ii. In the context of disability, the duty is to have ‘due regard’ to the need to take steps to take into account of disabled person’s disabilities. This includes a duty to make reasonable adjustments where a provision or practice puts a disabled person at a substantial disadvantage.
  - c. **“foster good relations”**

- i. This set out in section 149(5) and (6) as tackling prejudice and promoting understanding between different groups (even if it means treating some groups more favourably than others)
- 3. Equality Impact Assessments
  - a. As the test whether a decision maker has had due regard is one of substance, not form, it is not necessary to refer to the Act or an EIA. This does not in itself show that the duty has (or has not been performed). An EIA can be considered along with other means of gathering information about the impact of disabled people. This has been confirmed by many subsequent judgements (the latest being reported in February 2014).