

<b>Title of meeting:</b>	The Governance and Audit and Standards Committee
<b>Date of meeting:</b>	27 September 2012
<b>Subject:</b>	Update on the Council's compliance with its Equality Duty and Equality Impact Assessment Process
<b>Report by:</b>	City Solicitor
<b>Wards affected:</b>	All
<b>Key decision:</b>	No
<b>Full Council decision:</b>	No

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## 1. Summary

- 1.1. The Equality Act 2012 came into force in October 2010 and it introduced the Public Sector Equality Duty requiring the council to consider the impact of its policies, strategies, projects and services on people with any of the nine 'protected characteristics': These are age, race, disability, sex, gender reassignment, sexual orientation, religion, pregnancy and maternity, marriage or civil partnership.
- 1.2. This report monitors compliance of the council services with the Equality Duty on a quarterly basis. Although the majority of the services continue to be 100% compliant, Children's Social Care, Adult Social Care and Housing Management Services have a few outstanding Equality Impact Assessments. These services have been informed of the need to complete these.
- 1.3. This report also provides an update on the upcoming changes to the equality law. The Government has decided to introduce the age discrimination ban in the provision of services and the performance of the public functions in October 2012, which means that all age related discrimination in services will be come unlawful.
- 1.4. The Government is proposing some specific exceptions to the ban including age-related concessions, but no special exceptions are proposed to apply to health and social care.

## **2. Purpose of report**

- 2.1.** To update the Governance and Audit and Standards Committee on the compliance of council services with the Equality Duty and the Equality Impact Assessment process since the last report dated 28<sup>th</sup> June 2012.
- 2.2.** To update the Governance and Audit and Standards Committee on the age discrimination ban in the provision of services and performance of public functions.

## **3. Recommendations**

- 3.1.** That the Committee notes the contents of the report;
- 3.2.** That the Committee continues to monitor the compliance of the Council services with the Equality Duty and the Equality Impact Assessment process adopted by the Council, on a quarterly basis.
- 3.3.** That the City Solicitor continues to report on such compliance to the Committee on a quarterly basis.

## **4. Update on the Council's compliance with the Equality Duty and the Equality Impact Assessment (EIA) process**

### **4.1. Background**

- 4.1.1. A report updating members on the recent changes in the Equalities legislation was considered by the Committee on 10 November 2011.
- 4.1.2. The report outlined the Council's legal responsibilities under the Equality Act 2010, which introduced the Public Sector Equality Duty. The main points made by the report are:
- 4.1.3. The Equality Duty requires public bodies, including local authorities to carry out an equalities analysis of any proposed new or changed policy, service, function or strategy as part of their decision-making and performance of their functions.
- 4.1.4. Non-compliance can lead to costly, time-consuming and reputation-damaging legal challenge by individuals or pressure groups.

4.1.5. The Council has a well-established Equality Impact Assessment process which ensures compliance with the Public Sector Equality Duty.

#### 4.2. Table showing compliance of individual services with the Equality Impact Assessment process

The table below measures the individual services' compliance with the council's 3 yearly rolling Equality Impact Assessment (EIA) process as at 31<sup>st</sup> August 2012. This process sets deadlines for EIAs to be completed on the major services, policies, and functions of the council that have been identified by the management and the Equality & diversity team as having a potential present or future impact on people because of their age, disability, gender, race, sexual orientation, transgender, pregnancy & maternity, religion, and marriage and civil partnership, the characteristics which are protected under the Equality Act 2010. All completed non-exempt EIAs are published on the equality pages of the council website.

The table does not take account of the additional EIAs being undertaken on other proposed new or changed projects, policies, services and strategies that are placed before relevant decision-makers. These are monitored by the equality & diversity team regularly through the Future Work Programme. Council services are overall pro-active in planning for equality analysis as part of their project processes and / or contacting the Equality & diversity team for advice and support. The Team are currently working with Learning & development services to refresh the equality & diversity training courses available to the council staff.

The table below illustrates that most of the services continue to be 100% compliant. However, Adult social care, Children's Services and Housing Management services now have a few EIAs outstanding and they have been informed of this. The equality & diversity team will work with these services to ensure that the outstanding EIAs are completed without further delay.

Directorate	Service	Compliance
Adult Services	Community Safety	100% - no change
	Health Improvement and Development	100% - no change
	Social Care	82% - down by 18%
	Housing Management	80% - down by 20%
	Customer, Community and Democratic Services	100% - no change

	Revenues and Benefits	100% - no change
Young People	Education	100%
	Children's Social Care	50% - down by 50%
	Audit and Performance Improvement	100% - no change
Regeneration	Planning	100% - no change
	Community Housing and Regeneration	100% - no change
	Traffic and Transportation	The service is currently undergoing a restructure and a list of EIAs to be completed is being revised.
	Culture	100% - no change
Performance / Support Services	Information Services	100% - no change
	Finance	100% - no change
	Legal, Licensing and Registrars	100% - no change
	Asset Management	100% - no change
	Human Resources	100% - no change

## 5. Age discrimination ban in services and public functions

### 5.1. Background

5.1.1. The Equality Act 2010 includes provisions banning age discrimination against people aged 18 and over in the provision of services and the exercise of public functions. The basic principle of the ban on age discrimination is that everyone should be treated the same regardless of their age. .

5.1.2. Unlawful age discrimination occurs when someone is treated unfavourably because of their age, without justification, (direct discrimination), or because of a provision, criterion or practice that puts them and others of their age group at a particular disadvantage because of their age (indirect discrimination).

5.1.3. Following consultation in 2011 on specific exceptions to the ban on age discrimination provisions, the Government has announced that it is intending to bring the ban and the related exceptions into force on 1 October 2012. From this date, therefore, any discrimination because of age will be unlawful, unless one of the exceptions listed below applies.

5.1.4. The Equality Act 2010 already contains certain provisions which permit differential treatment because of age in the employment context, and it is

expected that these provisions will apply equally in service provision. Differential treatment that would otherwise amount to age discrimination can be justified:

- If it is a proportionate means of achieving a legitimate aim; or
- If the council takes positive action to address any disadvantage suffered by people of certain age(s), or to increase their representation (where there is evidence that they are under-represented in take up of particular services or activities) or to meet their specific needs; or
- If it meets the 'statutory authority' exception, i.e. the law requires differential treatment on the basis of age. For example, legislation providing for age entitlement for the state pension or restriction on sale of alcohol on the basis of age.

5.1.5. The Government Equalities Office has undertaken an impact assessment of the introduction of the age discrimination ban and it has predicted that there will be 25-49 cases brought against service providers in the first year, and 20-39 from year two onwards. These estimates are based on the number of age discrimination cases brought in Irish Equality Tribunals under similar legislation. There will be on average 7 significant age discrimination cases brought against NHS bodies each year, at an average cost of £50,000-£70,000 each. We shall, of course, through timely advice to the services endeavour to ensure that the Council is not the subject of such challenges.

## **5.2. Specific exceptions proposed by the Government**

### **5.2.1. Age-based concessions**

The Government is proposing to introduce an exception to the ban on age discrimination in services by allowing public bodies and businesses to offer concessions to people because of their age. This means that the Council can continue offering age-related concessions to its residents and visitors, such as reduced charges for use of its leisure facilities to children and older persons.

### **5.2.2. Health and social care**

No specific exceptions to the ban are proposed to apply to Health and social care services. This means that health and social care professionals and service providers will be able to continue applying different treatment to people because of their age, as long as they have a good reason, i.e. their differential treatment can be objectively justified.

Examples of such justifiable or beneficial age specific initiatives are:

- Public health programmes such as breast screening for women aged 50-70,
- Age-appropriate services and facilities such as specialist dementia day services for older people, and
- The individual assessment of need.

The Government is of the view that such approach will help ensure that health and care services are high quality, dignified, compassionate and based on need.

However, any arbitrary treatment of people of specific age or age group (e.g. 18-25 or older people) would be prohibited under the Equality Act 2010, for example making assumptions about whether an older patient should be referred for treatment based solely on their age, rather than on the individual need and fitness level, or failing to consider the wellbeing or dignity of older people using the service.

The age ban provisions are expected to benefit particularly older people who have been identified by various public and private organisations as suffering ageist treatment when trying to access health and social care services.

### **5.2.3. Impact on the current EIA process**

The current Equality Impact Assessment process already takes into account age as a protected characteristic in the provision of services and performance of public functions. Therefore no new process will need to be developed to ensure that the council complies with the age discrimination ban. The Equality & diversity team will ensure that relevant information on the age discrimination ban is cascaded to the council services to ensure that staff is aware of new legislative changes.

## **6. Reasons for recommendations**

6.1. To ensure that the Council complies with its legal obligations under the Equality law.

## **7. Equality impact assessment (EIA)**

7.1. This report does not require an Equality Impact Assessment as it does not propose any new or changed services, policies or strategies.

**8. Head of legal services, comments**

8.1. Legal advice and the effect of non-compliance is set out in this report.

**9. Head of finance's comments**

9.1. There are no financial implications arising from the recommendations in this report.

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Signed by:

**Appendices: Nil**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

<b>Title of document</b>	<b>Location</b>
Nil	

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Signed by: