

CLASS DISMISSED? IMPLICATIONS OF THE SOCIOECONOMIC DUTY COMING INTO FORCE

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S1 PUBLIC SECTOR DUTY REGARDING SOCIO-ECONOMIC INEQUALITIES – WHO DOES THE DUTY APPLY TO?

- Applies to:
- (a) a Minister of the Crown;
- (b) a government department (other than the Security Service, the Secret Intelligence Service or the Government Communications Headquarters);
- (c) a county council or district council in England;
- (d) the Greater London Authority;
- (e) a London borough council;
- (f) the Common Council of the City of London in its capacity as a local authority;
- (g) the Council of the Isles of Scilly;
- [...]
- (k) a police authority established for an area in England (*s1(3) EqA 2010*)

NATURE AND SCOPE OF THE DUTY

- (1) An authority to which this section applies must, when making **decisions of a strategic nature about how to exercise its functions**, have **due regard** to the **desirability** of exercising them in a way that is designed to reduce the **inequalities of outcome** which result from socio-economic disadvantage.
- [(2)/(2) and (2A) - In deciding how to fulfil a duty to which it is subject under subsection (1), an authority **must take into account** any guidance issued by [a Minister of the Crown/the Scottish Ministers/Welsh Ministers as relevant].
- [...]
- (6) The reference to inequalities in subsection (1) **does not include any inequalities experienced by a person as a result of being a person subject to immigration control** within the meaning given by section 115(9) of the Immigration and Asylum Act 1999

DECISIONS OF A STRATEGIC NATURE ABOUT HOW TO EXERCISE FUNCTIONS

- Such as **deciding priorities** and **setting objectives** (para 44, Explanatory Notes)
- **Health** [now defunct]: The Department of Health decides to improve the provision of primary care services. They find evidence that people suffering socio-economic disadvantage are less likely to access such services during working hours, due to their conditions of employment. The Department therefore advises that such services should be available at other times of the day
- **Education**: a local education authority, when conducting a strategic review of its school applications process, may be led to analyse the impact of its campaign to inform parents about the applications process, looking particularly at different neighbourhoods. If the results suggest that parents in more deprived areas are less likely to access or make use of the information provided, the authority could decide to carry out additional work in those neighbourhoods in future campaigns, to ensure that children from deprived areas have a better chance of securing a place at their school of choice.

‘INEQUALITIES OF OUTCOME WHICH RESULT FROM SOCIO-ECONOMIC DISADVANTAGE’

- Not defined or closed in the statute
- Could include inequalities in education, health, housing, crime rates, or ‘other matters associated with socioeconomic disadvantage’
- It will be for public bodies subject to the duty to ‘determine which socio-economic inequalities they are in a position to influence’ (para 44, EN)

SOCIO-ECONOMIC DUTY VS PSED: AUTHORITIES AND FUNCTIONS

- S1 - An **authority to which this section applies** must, when making decisions of a **strategic nature about how to exercise its functions**, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.
- S149(1) - A **public authority** must, **in the exercise of its functions**, have due regard to the need to—(a) eliminate discrimination, harassment, victimisation...(b) advance equality of opportunity...(c) foster good relations...
- s149(2) A person who is **not a public authority but who exercises public functions** must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

SOCIO-ECONOMIC DUTY VS PSED: DESIRABILITY VS NEED

- S1 - An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the **desirability** of exercising them in a way that is **designed** to reduce the inequalities of outcome which result from socio-economic disadvantage.
- S149(1) - A public authority must, in the exercise of its functions, have due regard to the **need** to—(a) eliminate discrimination, harassment, victimisation...(b) advance equality of opportunity...(c) foster good relations...

SOCIO-ECONOMIC DUTY VS PSED: LESS PRESCRIPTIVE

- S1(1) - An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.
- S149(3)-(6):
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to **the need to—**
- (a) **remove or minimise disadvantages** suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) **take steps to meet the needs** of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
- (a) tackle prejudice, and
- (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

S2 POWER TO AMEND AUTHORITIES/RESTRICT THE DUTY TO CERTAIN FUNCTIONS

- S2 (1) A Minister of the Crown may by regulations amend section 1 so as to—
 - (a) **add** a public authority to the authorities that are subject to the duty;
 - (b) **remove** an authority from those that are subject to the duty;
 - (c) make the duty apply, in the case of a **particular authority, only in relation to certain functions** that it has;
 - (d) in the case of an authority to which the application of the duty is already restricted to certain functions, **remove or alter the restriction**.
- (2) In subsection (1) “*public authority*” means an authority that has functions of a public nature.
- (3) Provision made under subsection (1) may not impose a duty on an authority in relation to any devolved Scottish functions or devolved Welsh functions.

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ENFORCEMENT OF THE DUTY (S3)

- A failure in respect of a performance of a duty under section 1 does not confer a cause of action at private law (s3).
- EN, para 53: This means that individuals will not be able to claim damages for breach of statutory duty for a breach of this duty. However, this clause does not prevent an individual from bringing judicial review proceedings against a public body which is covered by the duty, if he or she believes the public body has not considered socio-economic disadvantage when taking decisions of a strategic nature

CONSIDERATIONS FOR CLAIMANTS

- **Who can Be Challenged and When?**

- Exclude non-specified public bodies such as health bodies
- Bites at the stage where the authority is making a 'decision of a strategic nature about how to exercise its functions' – upstream

- **Possible Grounds of Challenge**

- Was there due regard to the desirability of exercising functions in the proper way?
- *Tameside* duty of inquiry and relevant consideration challenges: Did the authority gather sufficient information on relevant inequalities of outcome? Were some inequalities of outcome overlooked, which ought to have been considered?
- Were the conclusions reached on how the strategic decision may by design reduce the identified inequalities rational, in both an 'outcome' and 'process' sense?
 - *56. Process rationality includes the requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but is not limited to that. In addition, **the process of reasoning should contain no logical error or critical gap**. This is the type of irrationality Sedley J was describing when he spoke of a decision that “does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic”: R v Parliamentary Commissioner for Administration ex p. Balchin [1998] 1 PLR 1, [13]. In similar vein, Saini J said that the court should ask, “does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?”: R (Wells) v Parole Board [2019] EWHC 2710 (Admin), at [33] (KP [2025] EWHC 370 (Admin) at 56)*
- Has there been a failure to take any aspect of the Guidance into account?

AGENDA

- Limits on the scope and content of the socio-economic duty
- Lessons from similar provisions
- Practical suggestions
- Defendant-focussed

SOCIO-ECONOMIC DUTY VS PSED: LESS PRESCRIPTIVE

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COMPARABLE PROVISIONS

NHS Act 2006

13G Duty as to reducing inequalities

NHS England must, in the exercise of its functions, have regard to the need to—

- to (a) reduce inequalities between [persons]³ with respect to their ability access health services, and
- (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services

R(HUTCHINSON) V DHSC, NHSE [2018] EWHC 1698 (ADMIN)

97... In the main the duties are to "*promote*" some broad object, or to act "*with a view to*" achieving some target, or to "*have regard to*" some identified factor. They are drafted in broad and un-prescriptive language. In my judgment, based upon the manner in which Parliament has framed these duties, it has accorded to CCGs a wide discretion as to their *modus operandi* ie how the functions are to be performed.

R(A) V SOUTH KENT COASTAL CCG AND ORS [2020]

EWHC 372 (ADMIN)

- 74...the particular duties on which the claimants and interested party rely are part of a suite of high level duties under the 2006 Act. The range and scope of these duties...include (for example) the duty to exercise functions effectively and economically; the duty to promote integrated health services; and the duty to assist in ensuring the continuous improvement in the quality of primary medical services.
- 75. The 2006 Act therefore imposes a number of different duties relating to a wide range of factors, reflecting the complexity of decision-making in an advanced healthcare system such as the NHS. The defendants' decision was therefore multi-factorial, involving the allocation of limited resources between competing needs. The 2006 Act duties engage socio-economic interests and do not all pull in the same direction. In balancing the competing factors, the 2006 Act clearly involves the exercise of substantial discretion, judgment or assessment...

OTHER SIMILAR PROVISIONS

Crime and Disorder Act 1998, s.17

17.— Duty to consider crime and disorder implications.

(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent

- (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and
- (b) the misuse of drugs, alcohol and other substances in its area; and
- (c) re-offending in its area; and
- (d) serious violence in its area.

OTHER SIMILAR PROVISIONS

Armed Forces Act 2006, s.343AA

(1) In exercising in relation to England a relevant function, a person or body specified in subsection (3) must have due regard to—

- (a) the unique obligations of, and sacrifices made by, the armed forces,
- (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces, and
- (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.

(2) In this section "*relevant function*", in relation to a person or body specified in subsection (3), means—

- (a) a relevant housing function,
- (b) a relevant education function, or
- (c) a relevant healthcare function.

EHRC RESEARCH REPORT (AUGUST 2025)

“Most organisations had a process, template or framework for implementing the Duty, often combining assessments for multiple duties. However, duty bearers were concerned about the number of duties they are subject to. They were also concerned about how these duties can overlap or conflate with the socio-economic duty, which can lead to the Duty being less effective.”

EHRC RESEARCH REPORT (AUGUST 2025)

“Financial pressures, or a lack of capacity and resource, was an important issue for duty bearers when implementing the Duty. This meant that aspects like community engagement were sometimes not possible, or decisions could not be deferred when potential negative impacts were identified.”

EHRC RESEARCH REPORT (AUGUST 2025)

“Survey respondents had a strong desire for more guidance, training and resources to help duty bearers improve their understanding of the Duty and promote better compliance. Duty bearers were particularly interested in examples of good practice, case studies and developing networks with other duty bearers. Duty bearers also expressed a need for more forms of accessible, reliable and robust data on socio-economic disadvantage and its outcomes.”

EHRC RESEARCH REPORT (AUGUST 2025)

- Duty bearers were asked how their organisation records or evidences due regard to the Duty when making strategic decisions. Common methods included:
 - effective and proportional use of Equality Impact Assessments, Integrated Impact Assessments and Combined Impact Assessments
 - having evidence available in Council, Cabinet, Board or Committee papers or reports
 - having evidence available in Corporate Plans and annual reports and accounts
- Duty bearers also mentioned using other impact assessments in their methods, such as:
 - Well-being Impact Assessments
 - Equality and Socioeconomic Impact Assessments
 - Equality, Fairness and Rights Impact Assessments
 - Equality, Human Rights and Fairer Scotland Impact Assessments
 - Fairness and Equality Impact Assessments
- Some duty bearers noted that that they published reports online. One duty bearer was developing an Integrated Impact Assessment which aimed to give more prominence to the Fairer Scotland Duty.

EHRC RESEARCH REPORT (AUGUST 2025)

Examples of where the duty had made a difference:

- relocating health facility premises because of community engagement requiring contractors to have living wage employer status accreditation
- delivering library services which included supporting applications for cost-of-living payments, addressing digital exclusion and lending items such as musical instruments
- allocating funding to local partners and community projects
- the equality of access to emergency fire cover
- in poverty strategies
- in keeping a meals on wheels service open
- in relation to violence against women and girls
- to enhance a school holiday enrichment programme

EHRC RESEARCH REPORT (AUGUST 2025)

Reported difficulties in implementation:

- lack of senior-level awareness, understanding and support, made worse by a high turnover of senior staff
- resource constraints and budget pressures which mean strategic decisions are taken that may have a negative impact on lower socio-economic groups
- using integrated impact assessments, which means that connections between socio-economic inequality and protected characteristics are not joined up
- issues locating reliable, robust evidence, particularly for smaller groups
- a desire for more guidance to improve understanding of and compliance with the Duty