

## ABERDEEN CITY COUNCIL

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|---------------------------|------------------------------------|
| <b>COMMITTEE</b>          | Audit, Risk and Scrutiny Committee |
| <b>DATE</b>               | 12 February 2024                   |
| <b>EXEMPT</b>             | No                                 |
| <b>CONFIDENTIAL</b>       | No                                 |
| <b>REPORT TITLE</b>       | Public Sector Equality Duty        |
| <b>REPORT NUMBER</b>      | COM/24/005                         |
| <b>DIRECTOR</b>           | Gale Beattie                       |
| <b>CHIEF OFFICER</b>      | Vikki Cuthbert                     |
| <b>REPORT AUTHOR</b>      | Vikki Cuthbert                     |
| <b>TERMS OF REFERENCE</b> | 4.4                                |

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### 1. PURPOSE OF REPORT

To provide management assurance on the Council's compliance with its statutory duties under the Equality Act 2010, specifically in relation to our Public Sector Equality Duty.

### 2. RECOMMENDATION(S)

That the Committee –

- 2.1 note the management assurance on the controls in place for managing the Council's compliance with the Public Sector Equality Duty; and
- 2.2 note that the Annual Governance Statement, reported to this Committee as part of the annual accounts audited by Audit Scotland, will assess the effectiveness of our controls in this area, any residual risk and how we manage it, and that this will be reported here in April.

### 3. CURRENT SITUATION

- 3.1 This report responds to the following Convener statement in the Annual Effectiveness Report for this Committee in November 2023:

“I have instructed a management assurance report to the February meeting of the Committee on the Council's compliance with the requirements under the Equalities Act 2010 to meet our Public Sector Equality Duty. It is then the role of our auditors to undertake their own scrutiny through internal and external reports. Together, these will help us to understand the extent of any control weaknesses in relation to the closing of libraries and Bucksburn pool, and provide assurance to that we are transparent about lessons to be learned as a result.”

- 3.2 Local authorities have legal obligations under the Equality Act 2010 relating to the Public Sector Equality Duty (PSED), as part of which they must give due regard to the need to eliminate unlawful discrimination, victimisation and harassment, advance equal opportunity and foster good relations in respect of protected characteristics. They must also assess the equality impact of proposed and revised policies and practices.
- 3.3 For a number of years now, this duty, in regard to decision making, has been evidenced by the Council through the use of Integrated Impact Assessments (IIA). These accompany committee reports which recommend a decision requiring the “due regard” referred to above to be taken into account. Equality impacts, as well as impacts of the UN Convention on the Rights of the Child, Human Rights impacts and socio-economic impacts are all captured with the IIA, although the only requirement with a legislative duty is the equality duty and the socio-economic duty.
- 3.4 More recently, officers have reviewed the measures in place to support members to consider the possible impacts of recommendations on protected characteristics. This has been partly in response to the judicial review of Council decisions following the closure of libraries and Bucksburn Swimming Pool in the 2023 budget process, and ensures that we are satisfied that we are fully compliant with the Public Sector Equality Duty. In addition, it is clear that the financial challenges faced by local authorities place considerable pressure on our ability to deliver the services we are responsible for, the impacts of which must be understood and mitigated for in future annual budget decision making processes.
- 3.5 The Accounts Commission’s 2023 report *Local Government in Scotland: An Overview*, recommends that there is a need to “be open and clear with communities and staff about the need for change, what that means for future service delivery and involve communities in making difficult decisions”. Also, councils “should have a clear plan for strengthening their use of data to understand needs, make decisions and direct resources. This includes equalities data and learning from those with lived experience”. This has sharpened the focus of local authorities in refining the processes which support compliance with the Public Sector Equality Duty.
- 3.6 [Guidance for public authorities](#) has recently been updated by UK Government and replaces guidance from 2010. As well as providing practical advice on how to comply with the duty and how to demonstrate compliance, the guidance provides useful balance on when the duty should be met – including some operational decisions, strategic decisions – and when it is not likely to be required.
- 3.7 A Steering Group was established in July 2023 and chaired by the Interim Chief Officer – Governance (Assurance) to oversee an improvement plan, the primary purpose of which was to ensure that the full impacts of officer recommendations are clear to members at the point of decisions being taken. This would include the mitigations which officers propose to manage any risk of discrimination, victimisation or harassment.

- 3.8 As a Council that adopts a continuous improvement methodology, work to further improve our processes and ensure compliance with our Public Sector Equality Duty is both **structural** - having the right policies, templates and processes in place; and **cultural** – having the right mindsets, training, support and social pressure/expectations for our workforce. So to embed IIA compliance, improve quality of consultation and engagement and improve proposals/decision making, we are following our approved change management methodology.
- 3.9 Following this approach, and accompanying gap analysis, a comprehensive and holistic action plan has been developed and progress has been made at pace since July 2023. The main improvements already put in place over recent months are listed below, amongst others which are planned in the first quarter of 2024:

### Cultural Improvements:



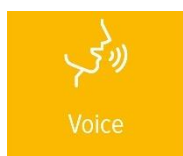
- Chief Officers have been trained in Public Sector Equality Duty by external legal specialists so that they understand the Equality, Diversity & Inclusion agenda and current best practice – and actively champion this within their own cluster and across the organisation.
- A Director hosted the Leadership Forum event for 120 senior leaders across the council to demonstrate corporate leadership of Public Sector Equality Duty.



- New Sharepoint site (Equality, Diversity and Inclusion Hub) has been established for officers and members including resources such as FAQs, worked case studies and guidance on how to engage with people with protected characteristics.
- Improved accessibility to online IIAs for elected members and the public.



- A Leadership Forum event delivered on the importance of the Public Sector Equality Duty and tools and guidance available for officers when developing proposals requiring an IIA.
- Committee Business Planners will prompt report authors well in advance of the drafting of reports as to the requirements for IIAs.

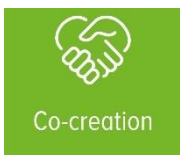


- A Budget Protocol was approved by Council in June 2023 which incorporates the need for stakeholder engagement on budget options as they are developed, with a clear requirement for these to be equality impact assessed from the very outset and updated throughout their development. External legal specialists were consulted in the development of the Protocol.
- Engagement sessions held with stakeholder groups to understand impact of budget options, and possible mitigations.



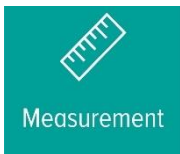
Training

- Self-learning resources developed and available through SharePoint site.
- Equality Ambassadors are identified to support the organisation in learning about protected characteristics groups and the Public Sector Equality Duty.
- Pitstop sessions scheduled for officers to learn more about the importance of and process for, assessing impacts and putting mitigations in place.
- Training for elected members on their responsibilities with PSED.
- We will continue the journey of improvement through training and comms to staff and members, to embed our understanding of these duties in our day-to-day approach to developing policies
- Using digital technology to transform the Integrated Impact Assessment process and governance, using design thinking methodology and co-design approaches.



Co-creation

- Workshops delivered with managers to understand current experience of IIA process. As a result a revised IIA template combining stage 1 and 2 and providing additional links to authors to support them with their assessment, has been effective since 1<sup>st</sup> January 2024. This will mean that officers need to identify mitigations at the same time as any impacts are identified.



Measurement

- It is intended to introduce a service standard for approval as part of the Council Delivery Plan and this will be monitored by the Performance Board and through the relevant Committee.
- An Equality, Diversity and Inclusion Policy will be presented to Staff Governance Committee in the first half of 2024, including measures for performance.

3.10 The Council was subject to four petitions for judicial reviews in 2023 relative to budget decisions on the closure of six libraries and Bucksburn swimming pool. These petitions have now been withdrawn following on from the consultation exercises undertaken and updated IIAs presented to Council in December. The process of legal challenge has provided valuable learning for us as a Council, and the improvements outlined above address the gaps which led us to judicial review. We will of course continue to monitor our journey. The Council's Annual Governance Statement, being reported as part of the annual accounts, will also assess the effectiveness of our controls in this area and any residual risk and how we manage it. This is scheduled to be reported to this Committee in April, and to a subsequent meeting, at the conclusion of the external audit process carried out by Audit Scotland and presentation of their Annual Audit Report for financial year 2023/24.

#### **4. FINANCIAL IMPLICATIONS**

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

4.2 The cost of defending the recent Judicial Reviews in relation to the libraries and Bucksburn Swimming Pool was £30,784 which includes external legal fees,

counsel fees, court outlays, met from contingencies for Council legal costs. Training fees were £624 plus VAT, met from the corporate training budget.

## 5. LEGAL IMPLICATIONS

- 5.1 The Public Sector Equality duty requires decision-makers to understand and take account of the consequences of their choices, having due regard to the aim of eliminating conduct prohibited by the act, advancing equality of opportunity and fostering good relations. At the same time, the duty is not a rubber stamp. It is a legal requirement. Making decisions without having due regard to the duty can be unlawful.
- 5.2 Responsibility for complying with the general duty falls on the decision-maker. It is therefore essential that the decision-maker is made aware of any work that others have done to comply with the duty.
- 5.3 The activities outlined should mitigate the risk of successful legal challenge against the authority. Provided the Council meets the requirement of “due regard”, including consideration of mitigations, it does not prevent members from making decisions which may impact negatively on some groups with protected characteristic. The Council has other legal duties that need to be met, and a decision that has some impacts can be proportionate, with appropriate mitigations, when balanced against the Councils other legitimate aims such as the duty to balance the budget each year.

## 6. ENVIRONMENTAL IMPLICATIONS

- 6.1 There are no environmental implications arising from the recommendations in this report.

## 7. RISK

| Category              | Risks  | Primary Controls/Control Actions to achieve Target Risk Level | *Target Risk Level (L, M or H)<br><br>*taking into account controls/control actions | *Does Target Risk Level Match Appetite Set? |
|-----------------------|--|---|---|---|
| <b>Strategic Risk</b> | None.  |   |   | <b>Yes</b>                                  |
| <b>Compliance</b>     | Risk that Equalities and Human Rights Commission can take enforcement action | Improvement plan to improve internal compliance.              |   | <b>Yes</b>                                  |

|                              |   |   |  |            |
|------------------------------|---|---|--|------------|
|                              | against the Council.  |   |  |            |
| <b>Operational</b>           | None.   |   |  | <b>Yes</b> |
| <b>Financial</b>             | Risk that Council will be subject to further Judicial Reviews which incur additional costs. | Improvement plan to ensure robust IIAs are available to inform decision makers. |  | <b>Yes</b> |
| <b>Reputational</b>          | Risk that the Council is not perceived as undertaking due diligence.                        | Improvement plan to ensure due diligence.                                       |  | <b>Yes</b> |
| <b>Environment / Climate</b> | None.   |   |  | <b>Yes</b> |

## 8. OUTCOMES

| <u><a href="#">COUNCIL DELIVERY PLAN 2023-2024</a></u>  |  |
|---|--|
|   | <b>Impact of Report</b>  |
| <b>Aberdeen City Council Policy Statement</b><br><br><u><a href="#">Working in Partnership for Aberdeen</a></u> | The proposals within this report support the delivery of the following aspects of the policy statement:- <ul style="list-style-type: none"> <li>Recognise that citizens and communities – rather than the City Council - are best placed to say what services they require and how these are provided and seek to give greater control over appropriate services and facilities to local communities.</li> </ul> |

## 9. IMPACT ASSESSMENTS

| <b>Assessment</b>                   | <b>Outcome</b>  |
|-------------------------------------|---|
| <b>Integrated Impact Assessment</b> | It is confirmed by the Interim Chief Officer – Governance (Assurance) that no Integrated Impact Assessment is required. |

|  |               |
|--|---------------|
| <b>Data Protection Impact Assessment</b> | Not required. |
| <b>Other</b>                             | None.         |

## 10. BACKGROUND PAPERS

10.1 [Public Sector Equality Duty: Guidance for Public Authorities – 18<sup>th</sup> December 2023](#)

10.2 [Public Sector Equality Duty: specific duties in Scotland | EHRC \(equalityhumanrights.com\)](#)

## 11. APPENDICES

None.

## 12. REPORT AUTHOR CONTACT DETAILS

|                      |  |
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