

## Public sector equality duty - principles

Please read the following statements and then answer the following questions.

- (a) Does the statement accurately summarise a principle established by the courts in connection with the public sector equality duty (“PSED”)?
- (b) If ‘no’, how would you amend the statement so it accurately summarises a principle the courts have established?
  - (i) A decision may be unlawful for failing to have regard to the PSED duty despite referring to the PSED when notifying the decision.
  - (ii) Compliance with the PSED is not a rearguard action following a decision but an essential preliminary to a decision.
  - (iii) The court will assume the PSED was lawfully applied if the decision letter states it is applying the relevant statutory test (e.g. s.189(1)(c) or s.191 in relation to vulnerability or intentionality respectively) from Part 7 of the Housing Act 1996.
  - (iv) A decision letter need not explicitly refer to section 149 of the Equality Act 2010 for a decision to comply with the PSED requirements.
  - (v) The Council’s duties under the Equality Act 2010 apply even where it is not invited to consider an alleged disability.
  - (vi) Having due regard to the PSED means regard that is appropriate in all the particular circumstances in which the authority is carrying out its functions.
  - (vii) When reviewing compliance with the PSED in a decision concerning the suitability of accommodation secured for a person with a disability , including when reviewing letters offering settled accommodation, the court will wish to see that the decision letter explicitly addresses the following distinct issues:
    - (a) A recognition that the applicant is disabled and therefore had a protected characteristic under the Equality Act 2010.
    - (b) A focus on the specific aspects of the applicant’s impairments so far as relevant to the suitability of the accommodation.
    - (c) A focus of the consequences of the applicant’s impairments, in terms of the disadvantages he may suffer in using the accommodation, by comparison with the needs of people without such impairments.
    - (d) A focus on the applicant’s needs arising from those impairments, by comparison with the needs of persons without such impairments, and the extent to which the accommodation meets those needs.
    - (e) A recognition that the applicant’s needs may need him to be treated more favourably, in terms of the accommodation provided, than other persons not suffering from disability or other protected characteristics; and



**EXERCISE: Public sector equality duty**

(f) A review of the suitability which pays due regard to these matters.

