

## Appendix 2.

**Legal Note: This identifies the relevant legal principles regarding the Public Sector Equality Duty, with reference to the case law cited.**

### Legal principles

This document seeks to summarise the key principles to be established by the cases, rather than go through each case cited by the participants individually.

### Task for the Panel

It is for a Court (rather than the Panel) to determine whether there has been compliance with the Duty.

The Panel is not tasked with determining whether the Mayor has complied with his Public Sector Equality Duty.

The Panel's task is to conduct the Examination in Public and make a written report to the Mayor (section 338(5) Greater London Authority Act 1999; regulation 8(7) Town and Country Planning (London Spatial Development Strategy) Regulations 2000/1491).

### What "due regard" means

1. The regard that is "due" (i.e. appropriate) will differ from case to case, depending on the function being exercised and the facts. (*Powell v Dacorum Borough Council* [2019] EWCA Civ 23 [44]; *R(Hotak) v London Borough of Southwark* [2015] UKSC 30 [73-74]; *R (Baker) v Secretary of State for the Communities and Local Government* [2008] EWCA Civ 141 [36])
2. The Duty is procedural. It does not require a particular result to be achieved. (*R (Baker) v Secretary of State for the Communities and Local Government* [2008] EWCA Civ 141 [31]; *R (Adath Yisroel Burial Society) v Inner North London Coroner* [2018] EWHC Civ 969 [148])

3. It is for the decision maker to decide what weight equality implications should be given. (*R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 [77-78])

#### The level of detail

4. Equalities duties are fundamental to public sector decision-making. The decision-maker must be aware of the Duty and appreciate what the likely equality impacts will be. (*R (Coleman) v L B Barnet* [2012] EWHC 3725 [77,80]; *R (MA) v Secretary of State for Work and Pensions* [2014] EWCA Civ 13 [91]; *R (Carmichael and Rourke) v Secretary of State for Work and Pensions* [2016] UKSC 58 [67-71]; *R (Hurley and Moore) v Secretary of State for Business Innovation and Skills* [2012] EWHC 201 [77-78, 89-90]; *R (Hajrula) v London Councils* [2011] EWHC 448 [160]; *R (Elias) v Secretary of State for Defence* [2006] EWCA Civ 1293 [274])
5. However, he is not required to identify or consider all possible impacts on equalities. That would be unduly onerous. A relatively broad-brush approach is appropriate. (*R (West Berkshire DC ) v Secretary of State for the Communities and Local Government* [2016] EWCA Civ 441 [83, 87]; *R (McCarthy & Stone) v GLA* [2018] EWHC 1202 [81, 89]; *R (Coleman) v L B Barnet* [2012] EWHC 3725 [83]; *R (Johnson) v Secretary of State for Work and Pensions* [2019] EWHC 23 [148])

#### Evidence of compliance with the Duty

6. The fact that a public authority has produced an equality impact assessment in advance of a decision is, usually, convincing evidence that it has complied with the Duty (*R (Diocese of Menevia) v City and County of Swansea* [2015] EWHC 1436 [98]).
7. The public authority must gather some, but not all, relevant information. (*R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345

[89-90]; *R (Buxton) v Secretary of State for Work and Pensions* [2018] EWHC 2196 [83])

8. The Duty is a matter of substance rather than form. What does all the relevant evidence suggest the decision-maker took into account? (*R (Baker) v Secretary of State for the Communities and Local Government* [2008] EWCA Civ 141 [36]; *R (McCarthy & Stone) v GLA* [2018] EWHC 1202 [78-81])

### Timing

9. “Due regard” should be had before making a decision. (*R (Elias) v Secretary of State for Defence* [2006] EWCA Civ 1293 [274]; *Kaur & Shah v L B Ealing* [2008] EWHC 2062 [20, 24]).
10. However, it is a continuing duty. (*Kaur & Shah v L B Ealing* [2008] EWHC 2062 [19])
11. The Duty must also be met by other public bodies when making planning decisions, including those affected by the London Plan. (*R (Buckley) v Bath and North East Somerset* [2018] EWHC 1551 [39-40])

### List of cases referred to

#### Cases cited by participants

1. *R (Baker) v Secretary of State for the Communities and Local Government* [2008] EWCA Civ 141 [31, 36]
2. *R (Hotak) v London Borough of Southwark* [2015] UKSC 30 [73-74]
3. *R (Elias) v Secretary of State for Defence* [2006] EWCA Civ 1293 [274]
4. *R (MA) v Secretary of State for Work and Pensions* [2014] EWCA Civ 13 [91] and *R (Carmichael and Rourke) v Secretary of State for Work and Pensions* [2016] UKSC 58 [67-71] (two decisions in the same case)
5. *R (Kaur & Shah) v London Borough of Ealing* [2008] EWHC 2062 [19, 20, 24]

6. *R (Hurley and Moore) v Secretary of State for Business Innovation and Skills* [2012] EWHC 201 [77-78, 89-90]
7. *R (Hajrula) v London Councils* [2011] EWHC 448 [160]
8. *R (Buckley) v Bath and North East Somerset* [2018] EWHC 1551 [39-40]
9. *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 [25, 60-69, 77-78, 89-90]

Additional cases cited on behalf of the Mayor

10. *Powell v Dacorum BC* [2019] EWCA Civ 23 [44]
11. *R (Adath Yisroel Burial Society) v Inner North London Coroner* [2018] EWHC Civ 969 [148]
12. *R (McCarthy & Stone) v GLA* [2018] EWHC 1202 [78-81, 89]
13. *R (Johnson) v Secretary of State for Work and Pensions* [2019] EWHC 23 [148]
14. *R (Buxton) v Secretary of State for Work and Pensions* [2018] EWHC 2196 [83]
15. *R (Diocese of Menevia) v City and County of Swansea* [2015] EWHC 1436 [98]
16. *R (West Berkshire District Council) v Secretary of State for the Communities and Local Government* [2016] EWCA Civ 441 [83, 87]
17. *R (Coleman) v London Borough of Barnet* [2012] EWHC 3725 [77, 80]