

## PFCC Decision Report

<p><b>Report reference number:</b> 2019/166</p> <p><b>Classification:</b> Not protectively marked</p>
<p><b>Title of report:</b> Equality, Diversity and Inclusion</p>
<p><b>Area of county / stakeholders affected:</b> Police, Fire and Crime Commissioner for Essex and their staff Essex Police, Fire and Crime Commissioner Fire and Rescue Authority</p>
<p><b>Report by:</b> Pippa Brent-Isherwood (Chief Executive and Monitoring Officer) Darren Horsman (Assistant Director for Communications and Public Engagement)</p> <p><b>Date of report:</b> 16 December 2019</p> <p><b>Enquiries to:</b> Pippa Brent-Isherwood (Chief Executive and Monitoring Officer) Darren Horsman (Assistant Director for Communications and Public Engagement)</p>

### 1. Purpose of the report

The purpose of this report is to agree steps to strengthening the Commissioner's approach to equality, diversion and inclusion (EDI). The report outlines activity to be undertaken in both the current and coming financial year in order to ensure and evidence the Commissioner's compliance with their current and forthcoming statutory responsibilities in this regard.

### 2. Recommendations

- That the Commissioner accepts the proposal from Essex County Council attached at Appendix 1, including:
  - the evaluation and assessment of the Commissioner's current EDI policies and procedures against best practice;
  - the development of an Equality, Diversity and Inclusion (EDI) Strategy for the Police, Fire and Crime Commissioner;
  - the development of an updated Equalities Statement;
  - the development of improved processes for undertaking Equality Impact Assessments (EIAs); and

- development and delivery of EDI training and development for the Commissioner's staff.
- That, through the ongoing policy review and development process, all the Commissioner's policies and procedures are updated as appropriate to take into account and record EDI considerations.
- That the Assistant Director for Communications and Public Engagement leads on working with colleagues to ensure that:
  - Relevant information demonstrating the Commissioner's compliance with the Public Sector Equality Duty during 2019/20 is published by the end of the financial year, and at least annually thereafter, and
  - Proportionate steps are taken to fill any identified gaps in the equality information held and published by Commissioner.

Going forward, it should be noted that the requirement to publish such information annually does not mean that the Commissioner needs to wait until the end of each financial year to publish information. It is good practice to publish such information as soon as possible after it becomes available and to keep it up-to-date thereafter.

- That monitoring of performance against the Equality Act 2010 by Essex Police and the Essex County Fire and Rescue Service is added to the forward plans for the respective Performance and Resources Boards. In respect of the Fire and Rescue Service, this should include performance against the Fire and Rescue Services Equalities Framework (FRSEF).
- That the Assistant Director for Commissioning considers whether equality considerations and impacts are adequately considered within the PFCC's commissioning and grant-giving functions and, if not, reports back to SMT on any proposed improvements.

### **3. Benefits of the proposal**

The broad purpose of the general equality duty is to integrate consideration of equality and good relations into the day-to-day business of public authorities. It requires equality to be considered in decision-making, in the design of policies and the delivery and commissioning of services, including internal policies in relation to employees. It encourages public bodies to understand how different people will be affected by their activities so that policies and services are appropriate and accessible to all and meet different people's needs, thus making them more likely to be efficient and effective and therefore to lead to better outcomes and satisfaction with public services.

The associated Equality Act 2010 (Specific Duties) Regulations 2011 (which came into force in 10 September 2011) are intended to assist public bodies to discharge the general equality duty. Amongst other things, they require public bodies to publish relevant, proportionate information showing compliance with the Equality Duty at least annually, and to set themselves at least one specific, measurable equality objective that will help them to further the three aims of the Equality Duty, at least every four years.

As well as helping the organisation to plan services more effectively, the collection and use of equality information should help the Commissioner and their staff team to:

- Identify if they are inadvertently discriminating unlawfully when carrying out any functions, and therefore take steps to address this
- Identify any steps that can be taken to assist in furthering the three aims of the equality duty
- Identify the key equality issues for the organisation
- Benchmark local performance and processes against those of similar organisations, nationally or locally

The setting of suitably challenging but achievable equality objectives is intended to help focus attention (and, where appropriate, resources) on the priority equality issues within an organisation in order to achieve improvements. Publishing equality objectives and other information is intended to make public bodies more transparent in their decision-making processes and more accountable to their service users and, in this context, to the electorate. As such, the information and equality objectives published should be easily accessible to the public, free of charge. The increased transparency of the Commissioner's approach to EDI issues proposed within in this report, alongside the proposed increased scrutiny of Essex Police's and Essex County Fire and Rescue Service's performance in this area should improve confidence in the Commissioner, the force and the service.

Finally, the proposal provides an opportunity for the Commissioner's team to develop its understanding and capabilities in this area.

#### **4. Background and proposal**

The PFCC and the PFCCFRA are both subject to the Equality Act 2010 (and the Public Sector Equality Duty contained within it) as employers, service providers and commissioners. The Chief Constable is also subject to these provisions in their own right.

The Public Sector Equality Duty (PSED) ("the Equality Duty") set out in section 149 of the Equality Act 2010 stipulates that public authorities must, in the exercise of their functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

These are often referred to as the three aims of the general equality duty.

Having "due regard" means consciously thinking about the three aims of the equality duty as part of the decision-making process. This means that consideration of equality issues must influence the decisions reached by public bodies. This includes how they act as employers; how they develop, evaluate and review policy; how they design, deliver and evaluate services, and how they commission services and procure from others. Having "due regard" to equality considerations may also involve assessing the cumulative (or combined) impact of decisions made together, such as when setting budgets or making funding decisions.

In order for the Equality Duty to be fulfilled, public bodies must ensure:

- Knowledge – Those who exercise the public body's functions need to be aware and conscious of the requirements of the equality duty. Having general regard to the issue of overarching issue of equality does not constitute compliance.
- Timeliness – The equality duty must be complied with *before* and *at the time* that a particular policy is under consideration, as well as at the time a decision is taken and acted upon, i.e. in the development of policy options; in making a final decision, and in the implementation of this. It cannot be satisfied by justifying a decision after it has been taken.
- Real consideration – Consideration of the three aims of the equality duty must form an integral part of the decision-making process. Equality considerations must be considered alongside all other pressing issues, with rigour and an open mind, in such a way that it influences the final decision. The weight given to the equality duty compared to other factors will depend on how much that function affects discrimination, equality of opportunity and good relations and the extent of any disadvantage that needs to be addressed.
- Sufficient information – The decision maker must consider what information they have and what further information may be needed in order to give proper consideration of the equality duty. It is important to note that the duty is placed on the decision maker personally, in terms of what they knew and took into account. The decision maker cannot be assumed to have known the entirety of what any officials advising them on the decision may have known unless this is specifically set out for them during the decision making process.
- No delegation – Public bodies are responsible for ensuring that any third parties which exercise functions on their behalf are capable of complying with the equality duty; are required to comply with it, and that they do so in practice. It is a duty that cannot be delegated.
- Review – Public bodies must have regard to the aims of the equality duty not only when a policy is developed and decided upon, but also when it is implemented and reviewed. The Equality Duty is a continuing duty, and decision makers should review policies and decisions if circumstances change.

It is important to note that compliance with the requirement to publish information does not simply amount to demonstrating the sufficiency of the information held. More importantly, it requires the Commissioner to demonstrate how this evidence base was used to have due regard to the aims of the equality duty. The information published must therefore demonstrate how the Commissioner has used this evidence in making a particular decision or in how they have organised their service provision or delivered their functions. As a minimum, decision reports should set out the relevant equality considerations relating to the decision and consider steps to be taken to mitigate any adverse impacts identified. If it is deemed that a policy or decision is not relevant in terms of equality considerations, the decision maker must be confident of their reasons for doing this. The absence of information is not adequate to justify such a decision. The information published could also include any policies or programmes that have been put in place to address equality concerns, either from staff and / or in relation to service delivery. It might also include:

- The number or proportion of people with different protected characteristics who access and use services provided
- Service outcomes for people with different protected characteristics, particularly for functions that are relevant to the aims of the general equality duty

- Any formal or informal feedback from service users with different protected characteristics and how this has been responded to
- Customer satisfaction and complaints from people with different protected characteristics, or about discrimination
- Recommendations from inspections or audits that identify concerns about equality matters from regulators and “critical friends”
- Other evidence used to inform policy development and decision-making, such as local or national research on equality issues
- Themes emerging from exit interviews with staff who leave the organisation

The objective(s) set should be designed to achieve improvements in service delivery and / or the way in which the Commissioner employs staff. They should be based on robust information and evidence of need (so should relate to the organisation’s published equality information and other data), rather than just a collection of ideas from colleagues across the organisation. Objectives that are too vague (e.g. “We will ensure that we meet all our legal obligations relating to equality”; “We will train our staff on equality”, or “We will continue to engage with diverse groups”), too narrow in scope, or which fail to address the most significant equality issues facing the organisation or sector could potentially leave the Commissioner open to challenge by the public and / or legal challenge by the Equality and Human Rights Commission. An initial workshop was held at the whole team meeting in June 2019 to develop the organisation’s equality objectives, which will be built upon through the work undertaken with ECC. It may also be helpful to engage with members of the public and / or relevant stakeholder groups regarding the proposed objectives before finalising these.

As noted above, public authorities (including the PFCC and PFCCFRA) are legally responsible for complying with the generally equality duty in their timing and undertaking of procurement (including commissioning) activity, and also when de-commissioning services. The requirement to comply applies to all procurement, regardless of the value, although the value of the contract may impact on the proportionality of equality considerations. Where public functions are contracted out, the external supplier will also be subject to the general equality duty in carrying out a public function, but the Commissioner remains responsible for meeting the duty. This requires the Commissioner to build into equality considerations into the appropriate stages of their procurement and commissioning processes, where it would be relevant and proportionate to do so. If it is not already the case, the AD for Commissioning, on behalf of the Commissioner, should therefore consider including obligations relating to equality, diversity and inclusion in service specifications, tender documents, grant application and evaluation processes, contracts and grant funding agreements, where it would be relevant and proportionate to do so. This could consist of funding / contract conditions as basic as prohibiting the contractor / recipient from discriminating unlawfully under the Equality Act 2010, and requiring them to take all reasonable steps to ensure that staff, suppliers and sub-contractors meet their obligations under the Act. Commissioning staff also need to consider what monitoring information contractors should be required to collate and submit in order to assist the Commissioner in discharging their statutory duty to publish equality information.

Legal advice on a recent case file review carried out in relation to a specific issue highlighted the recording and evidencing of the Commissioner’s compliance with the requirements set out above as an area of potential weakness. There is therefore a clear need to enhance the Commissioner’s practice in this regard. To this end, a proposal (attached at Appendix 1) has been received from Essex County Council (ECC) to provide

capacity to assist the Commissioner to strengthen their approach to equality, diversion and inclusion.

In line with the recommendations contained within the report on Complaints Management to SMT on 3 October 2019, it is recommended that, as well as accepting this proposal, ECC is requested to provide support to ensure that equality, diversity and inclusion considerations are adequately reflected in the PFCC's full range of policies and strategies, including those relating to procurement, commissioning and grant giving. This work would form part of the policy review process identified as recommendation 2 above and would be costed separately as part of the ongoing policy review process. This would assist in embedding equality, diversity and inclusion into all the Commissioner's activities; not just within a stand-alone strategy.

Looking forward to the new financial year, additional work will be required to ensure the PFCC's compliance with the new Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 by the deadline of September 2020. The planning and any cost implications associated with this will be subject to further reports to SMT and / or decision reports as appropriate.

The Essex County Fire and Rescue Service has also been having discussions with ECC regarding the potential provision of EDI support, and also to work towards excellence against the Fire and Rescue Service Equalities Framework (FRSEF).

## **5. Alternative options considered and rejected**

The alternative option to do nothing to enhance the Commissioner's approach to the equality, diversity and inclusion agenda is not recommended because, as set out above, the recording and evidencing of the Commissioner's compliance with their statutory duties in this regard has already been highlighted as an area of potential weakness in respect of one specific case.

Consideration was given to developing our approach internally rather than seeking expert external support, however, having considered the potential benefits of taking advantage of external advice from a close partner, who has recently been independently assessed at having excellent EDI processes, it was felt that we could achieve more – and more quickly - with this additional support.

Although several external providers are available to provide support, having looked at a number of these, officers considered the attached proposal, offered by an already close partner, would provide the best fit. This was based on its tailored approach and its proposal to work with the Commissioner's staff to embed the necessary learning and skills within the organisation as improvements are made.

## **6. Strategic Plans**

Through the Police and Crime Plan 2016 - 2020 and Fire and Rescue Plan 2019 – 2024 the Commissioner has set a clear vision for both the force and the service. The Commissioner's vision is to create safe and secure communities which are the bedrock on which we build success and wellbeing for all. Working with, alongside and for local communities are also key themes within both Plans. The Commissioner, through his scrutiny programme, has worked hard with both the force and the service to embed these themes within their change programmes. This has included helping to attract and

maintain more diverse workforces that better reflect the communities they serve, improving the services provided and, as a result, increasing the confidence those diverse communities have in the force and the service.

## **7. Operational implications**

While there are no direct operational implications for Essex Police or the Essex County Fire and Rescue Service, this proposal will support and strengthen their drive to become more diverse organisations capable of better delivering against their obligations within the Equality Act.

## **8. Financial implications**

The work by Essex County Council is proposed to be charged at a day rate of £750. At this stage, it is estimated that the work will take between 11 and 13 days, thereby generating a maximum cost of £9,750 in the current financial year.

## **9. Legal implications**

The Equality Act 2010 replaced all previous equality legislation in England, Scotland and Wales with a single Act. The majority of the Act came into force on 1 October 2010. A policy or decision may be in breach of the Equality Act 2010 if it leads to direct or indirect discrimination, harassment or victimisation, or where there has been a failure to make a reasonable adjustment for disabled workers or service users.

The Public Sector Equality Duty set out in section 149 of the Equality Act 2010 (which came into force on 5 April 2011) replaced the three previous public sector equality duties (for race, disability and gender) and stipulates that public authorities must, in the exercise of their functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it – which involves having due regard, in particular, to the need to:
  - Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - Take steps to meet the needs of people who share a relevant protected characteristic that are different from the needs of people who do not share it, and
  - Encourage people who share a relevant protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.

This may require reasonable adjustments to be applied.

- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it – Which involves having due regard, in particular, to the need to tackle prejudice and promote understanding between people who share a protected characteristic and others.

The protected characteristics are:

- Age (including children and young people)

- Disability
- Gender reassignment
- Marriage and civil partnership (only in respect of the requirement to have due regard to the need to eliminate discrimination)
- Pregnancy and maternity
- Race (including ethnic or national origins, colour or nationality)
- Religion and belief (including lack of belief)
- Sex
- Sexual orientation

The ban on age discrimination in service and public functions which came into effect on 1 October 2012 does not extend to people aged under 18. This limits the scope of the duty to have due regard to the need to eliminate unlawful discrimination under the first aim, but does not limit the other two aims.

Compliance with the Public Sector Equality Duty may involve treating people differently or more favourably than others to support equality of opportunity and service, but only in as far as this is permitted under discrimination law. It may involve building positive action measures into the delivery of services or employment policies, as permitted by the Act. This is not to be taken as permitting conduct that would otherwise be prohibited by or under the Equality Act 2010.

It should be noted that equality information should not be published if doing so would breach the Data Protection Act or General Data Protection Regulation. In particular, it must be ensured that no individual can be identified from any published equality information without their express consent. It is also accepted that small organisations, in particular, will not be able to disaggregate information for every protected characteristic due to sensitivities around collection and / or low numbers in the cohort.

## **10. Staffing implications**

This proposal will impact on the way the Commissioner and their staff undertake their roles, the decisions they make and the way considerations leading to these decisions are recorded. It is important to note that the general equality duty applies to the exercise of all public functions; not just to policy development and high-level decision-making. It must be fully integrated into the day-to-day activities of all bodies to which it applies, including individual decisions, public appointments, service provision, the exercise of statutory discretion, the employment of staff and procurement of goods. To facilitate this (as set out above and within the proposal attached at Appendix 1), the proposed approach includes the delivery of mandatory training to all staff within the Commissioner's office. Managers have also recently received training from the HR department on their responsibilities to staff including, for example, the flexible working arrangements that can be put in place to support staff with caring responsibilities; how and when to make use of the Occupational Health service, and consideration of reasonable adjustments for staff returning from long term sick leave and / or suffering from disabilities or long term health conditions. To inform the development of a new Equality, Diversity and Inclusion Strategy for the Commissioner, it is also intended to include workshops facilitated by ECC on the agendas for the January team meeting and February away day.

As they number less than 150, the Commissioner is not required to publish equality information relating to the staff in their office, however they can choose to do so if they



wish. Regardless of whether the information is published or not, they must still collect and utilise sufficient workforce information to meet the general equality duty effectively.

## **11. Equality and Diversity implications**

This proposal will significantly strengthen the Commissioner's approach to equality, diversity and inclusion. This is set out in greater detail above and within the proposal attached.

## **12. Risks**

Failure to comply with the Equality Act 2010 (and with the Public Sector Equality Duty contained within it) could result in challenge to the Commissioner through the courts and / or Employment Tribunal, and / or enforcement action by the Equality and Human Rights Commission (EHRC), which is the statutory body responsible for assessing compliance with and enforcing the Equality Duty. The EHRC has powers to undertake assessments under section 31 of the Equality Act 2006, in order to ascertain whether a public body has complied with the equality duty or not. It can issue compliance notices to public bodies that it believes have failed to comply, requiring them to provide information about the steps they will take to comply, and can apply to the courts for an order requiring compliance. The general equality duty can also be enforced by Judicial Review, by either the EHRC or any individual or group of people with an interest. However the specific duties set out in the regulations cannot be enforced by Judicial Review.

Failure to achieve the three aims within the Equality Act will also increase the risk that the Commissioner will be unable to realise their vision for the county contained within the Fire and Rescue Plan 2019 - 2024 and Police and Crime Plan 2016 – 2020.

## **13. Governance Boards**

These proposals were considered and agreed in principle at the PFCC's Senior Management Team (SMT) meetings on 1 November and 16 December 2019.

## **14. Background papers**

Appendix 1 – Equality, Diversity & Inclusion for Essex OPFCC – a partnership proposal

[Equality Act 2010: Public Sector Equality Duty – What do I need to know? A quick start guide for public sector organisations.](#)

Equality Act 2010: Specific Duties to Support the Equality Duty – What do I need to know? A Quick Start Guide for Public Sector Organisations

The Essential Guide to the Public Sector Equality Duty - England (and Non-Devolved Public Authorities in Scotland and Wales) (Equality and Human Rights Commission, 2014)

Equality Information and the Equality Duty: A Guide for Public Authorities - England (and Non-Devolved Public Authorities in Scotland and Wales) (Equality and Human Rights Commission, 2014)

Meeting the Equality Duty in Policy and Decision-Making - England (and Non-Devolved Public Authorities in Scotland and Wales) (Equality and Human Rights Commission, 2014)

Objectives and the Equality Duty: A Guide for Public Authorities - England (and Non-Devolved Public Authorities in Scotland and Wales) (Equality and Human Rights Commission, 2014)

**Report Approval**

The report will be signed off by the OPFCC Chief Executive and Treasurer prior to review and sign off by the PFCC / DPFCC.

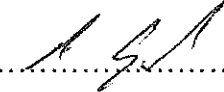
Chief Executive / M.O.

Sign: .....

Print: P. Bent-Ismael.....

Date: 23 December 2019.....

Chief Finance Officer / Treasurer

Sign: .....

Print: Alex Goslin.....

Date: 24/12/19.....

**Publication**

Is the report for publication?

YES

NO

If 'NO', please give reasons for non-publication (Where relevant, cite the security classification of the document(s). State 'None' if applicable)

.....  
N/A.....

If the report is not for publication, the Chief Executive will decide if and how the public can be informed of the decision.

**Redaction**

If the report is for publication, is redaction required:

1. Of Decision Sheet? YES   
NO

2. Of Appendix? YES   
NO

If 'YES', please provide details of required redaction:

.....  
..... N/A .....

Date redaction carried out: .....

**Treasurer / Chief Executive Sign Off – for Redactions only**

If redaction is required, the Treasurer or Chief Executive is to sign off that redaction has been completed.

Sign: .....

Print: .....

**Chief Executive/Treasurer**

**Decision and Final Sign Off**

I agree the recommendations to this report:

Sign: *J Gardner* .....

Print: JANE GARDNER .....

**PFCC/Deputy PFCC**

Date signed: 24 December 2019 .....

I do not agree the recommendations to this report because:

.....  
.....  
.....

Sign: .....

Print: .....

**PFCC/Deputy PFCC**

Date signed: .....



## Equality, Diversity & Inclusion for Essex OPFCC – a partnership proposal

November 2019, Kate Crofts, Essex County Council

### Context & Background

Essex County Council (ECC) established an Equalities & Partnerships team in 2018 which is located at the heart of our Strategy, Insight & Engagement function. OPFCC are in discussion with ECC, exploring opportunities for ECC to provide capacity to OPFCC to strengthen their Equality, Diversity & Inclusion (EDI) approach and work towards excellence against the Fire & Rescue Service Equalities Framework (FRSEF).

OPFCC uses a similar assessment framework to ECC (Equality Framework for Local Government) as a structure for peer review and self-assessment every 3 years. ECC most recently completed the process, being re-accredited as 'Excellent' in June 2019. ECC has a principle of including EDI objectives in all of our work and organisational strategies, building EDI into all we do rather than as a stand-alone Equalities Strategy.

ECC's EDI offer includes advice and guidance on development of strategies and policies that accord with ED&I principles; development and maintenance of a process for Equality Impact Assessment (EqIA) and work in partnership with learning providers to shape and deliver an extensive EDI learning offer, both face-to-face and via e-learning.

### ECC Offer

1. **Learning** – ECC can scope a programme of EDI learning to offer OPFCC employees, using both face-to-face and e-learning tools. This programme can include general EDI briefings as well as more specific input on the cognitive basis of inclusive practice, unconscious bias, EQIAs and so on.
2. **Policy/good practice**– ECC can provide policy, practice and research on current EDI thinking.

**Scoping Work Packages**

On 30<sup>th</sup> September 2019 ECC & OPFCC officers held an initial meeting to scope a possible work package (below).

ECC and OPFCC officers will follow up with OPFCC colleagues to explore requirements for similar work and whether the packages could be delivered in tandem.

**Proposed work package for OPFCC**

<b>Description of Work Element</b>	<b>Dependencies</b>	<b>Days</b>
Review of OPFCC Equality Statement and estimate of work required to update.	Statement to be shared with ECC and OPFCC to be available for context/relevance discussions.	1 day
Design of Equality Impact Assessment process for OPFCC.	Initially as a flexed version of ECC approach, subject to OPFCC systems and governance.	2 days
Production of OPFCC ED&I statement/strategy to incorporate all above elements.	Optional further to audits of existing arrangements.	Minimum 5 days
Design & deliver 2 training sessions to enable all OPFCC employees to attend re all new ED&I policies and processes.		3 days

## **Appendices – Details of ECC ED&I offer**

### **Session synopsis**

Session content includes:

- Definitions - what are we talking about? (Includes the business benefits of getting this right.)
- Our demography, customers and employees in OPFCC.
- The legal context – we protest to be heard.
- Thinking about our early memories.
- Our values and unconscious bias – prejudice v discrimination.
- Impact of language.
- Action planning – As leaders, what next?
- Resources available, internally and externally (take away slide).

### **Timings**

ED&I awareness raising/briefing sessions such as the above could be delivered to groups of 12 employees per session, each session lasting 3 hours. EqIA sessions take 2 hours but require an existing EqIA infrastructure which can be used to tailor the sessions in advance.

### **Costs**

All above ED&I services via ECC's Equalities & Partnerships team are chargeable at a £750 day rate.

