

**MATTER 2 – Equality of Opportunity**

*M2. Does the Integrated Impact Assessment and Addendum Report (NLP/CD/04 & 05) indicate that the Plan will help to advance equality of opportunity between people who share a “protected characteristic” as defined in the Equality Act 2010 and those that do not share it and further the other two aims of the Act? In particular, which policies of the Plan will achieve this?*

**Failure to discharge the Public Sector Equality Duty (PSED).**

The Integrated Impact Assessment (IIA) is not an Equalities Impact Assessment (EqIA).

The Mayor considers that he has discharged his duty under s.149 of the Equality Act 2010 (“the PSED”) by means of the IIA accompanying the draft New London Plan (“NLP”). The IIA, comprises the IIA (November 2017) and the IIA addendum (July 2018) (together “the IIA”) which incorporates the changes following the consultation on the draft NLP and contains the impact assessments on those changes. The IIA is said to include an EqIA which purports to identify and analyse the NLP’s impacts on persons and groups with protected characteristics. In both the IIA and the addendum the consideration of equalities impacts in respect of each policy in the NLP comprises two elements (a) a description of the policy and its effects (“the narrative assessment”) and (b) a matrix/table assessing the effects by reference to the 24 objectives of the NLP using a colour coded key<sup>1</sup>. Part of each matrix describes itself as an “EqIA” and refers to the short, medium and long term impacts and direct, temporary/permanent effects and the spatial scale of those effects.

However, the matrix does not purport to consider the particular effects of the policy in question on persons with protected characteristics. There is no reference in any of the matrices to impacts (positive or negative) on age, sex, sexuality, race, religion, maternity etc. (s.149 protected characteristics) The approach taken in the matrices is, apparently, to aggregate all of impacts on persons with protected characteristics to come up with an (almost invariably) overall positive assessment. In short, there is no information in the matrices to assist the decision maker about the equalities impacts which the policies in the plan have on particular groups. With a couple of exceptions where the policy in question directly addresses a particular protected group (e.g. H16 Gypsy and Traveller Accommodation) this omission is not corrected by the narrative assessment of the IIA.

Examples of policies where no equalities impact has been undertaken

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<sup>1</sup> IIA, 34

The nature of the breach of the PSED and why the approach taken by the Mayor's consultants fails to analyse the policies' equalities impacts in a rigorous manner as required is best illustrated by way of a couple of examples:

- (i) **Policy H10** concerns Redeveloping existing housing and estate regeneration. The policy "supports the redevelopment of existing housing to achieve higher densities where possible". The policy focuses on the quality and quantity of replacement housing but offers some support for the loss of existing housing. Prior to consultation the IIA did not refer to any negative effects arising from such a policy. Following consultation, and in particular the response of JS, the IIA addendum reflected the policy's "potential to fragment community networks" "reduce the security of residents" and to "cause disruption to families and communities".<sup>2</sup> However, whilst the addendum recognises the potential for disruption *generally* to communities there was no due regard had, as required by the PSED of the *particular* impacts on protected groups. For example, there was no consideration of the particular impacts that the redevelopment of long-standing social housing would have on older people, the disabled and BAME groups who are disproportionately likely to live in housing which will be the subject of these policies. That people with such protected characteristics are likely to be disproportionately affected by redevelopment policies and forced relocation is reflected in case law.<sup>3</sup> However, none of those impacts are reflected in the Mayor's IIA. The scoring matrix in respect of policy H10 finds that all the policies impacts including short term impacts will be positive (for all groups) except in relation to objective of contributing to security which is found to be "neutral or minor negative". The EqIA IIA of policy H10 does not, in fact, consider the equalities impacts of this policy. The flaws in the consultants' approach mean they have completely failed to examine the policy's impacts on particular groups and the obvious impacts of policies such as H10 have been missed.
  
- (ii) The treatment of **policy H12** on Housing Size Mix offers a further illustration of the fundamental flaws in the IIA's approach to equalities impacts. The policy seeks a range of housing sizes from one to two bedrooms to family homes. The policy provides that Boroughs should not set policies or guidance that requires set proportions of different sized market or intermediate units to be delivered on the. Such an approach is regarded by the authors of the plan as inflexible.

The approach taken to Housing Size Mix may well be justifiable and the purpose the PSED is not to tie the hands of decision-makers. However, before examining and adopting a policy, the Mayor and the Panel need to know what the equalities impacts of that policy choice are. The IIA simply does not contain that information in order to enable the Panel to have due regard as required by s.149 of the Equality Act 2010. There is no consideration whatsoever either in the matrix or narrative assessment on policy H12 of equalities impacts.<sup>4</sup>

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<sup>2</sup> IIA Adendum, 59

<sup>3</sup> see R (oao Buckley) v Bath and North East Somerset [2018] EWHC 1551 (Admin)

<sup>4</sup> IIA, 159-160

Those equalities impacts are real rather than hypothetical. For example, as Trust for London note certain BME ethnic groups (e.g. Somali community, ultra-Orthodox Jewish community) are far more likely to have larger families and therefore need family-sized homes. Such groups are therefore impacted by the current scarcity of large family size homes and the policy decision not to specifically require their provision. The experience of such groups has been that, during regeneration, they are being asked to move from e.g. three bedroom properties to new-build properties with one or two bedrooms. Such impacts, and there are likely to be others, are simply not reflected in the IIA.

The failure to discharge the PSED and undertake a meaningful EqIA is thus a general failure and one that is evidenced by the absence of any, or any proper, equalities considerations of policies concerning housing, social infrastructure and cultural capital which plainly have significant equalities impacts. The effect of this flawed approach has been to produce a Panglossian IIA which bleaches out any negative effects arising from the policies because it fails to ask the right questions (namely, what is the likely differential impact of X policy on persons with protected characteristics) and to inquire after the right sort of information on which to base such an analysis.

#### Lack of equalities information

The PSED requires public bodies to be properly informed before taking a decision, which in turn gives rise to a duty of inquiry where a public authority does not already hold information on equalities considerations.<sup>5</sup> In this context this means that where there was a lack of information on the draft policies equalities impacts, the Mayor, through his consultants was required to obtain such information. In practice, this should have involved evidence gathering and consultation with stakeholder groups representing those with protected characteristics (for example old person's charities, mental health groups, LGBT+ and faith groups). The fact that the Mayor has generally consulted on the draft NLP does not discharge his duty of inquiry specifically in respect of discharging the PSED.

Indeed the flaws in the Mayor's approach are reflected in the responses to some of the comments from stakeholder groups at the start of the IIA addendum. Inclusion London, a disability group, specifically raised the lack of a detailed EqIA. The circular response they received was that the IIA Framework included an EqIA.<sup>6</sup> Stonewall housing, which represents the interests of the LGBT+ community, raised the fact that the policies did not address LGBT housing aspirations and needs. The response states that those needs have been considered in line with the 2010 Act and that LGBT people are specifically referenced within policies HC5 and HC7 which relate to cultural provision.<sup>7</sup> Such a response evidences the shallowness and, therefore the unlawfulness, of the IIA's analysis. The PSED is not

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<sup>5</sup> R (Bracking) v Secretary of State for Work and Pensions [2013] EWCA Civ 1345 McCombe LJ at [25]

<sup>6</sup> IIA Addendum, 12

<sup>7</sup> IIA Addendum, 8

discharged by the mere fact that it is said to be discharged and by the fact that certain policies within the NLP reference groups with protected characteristics.

#### Failure of the Plan to meet the three aims of the PSED

Due to a fundamental failure through the IIA to have due regard to the equalities impacts of the plan the three aims of the PSED (equality of opportunity, fostering good relations between persons with and without protected characteristics and eliminating discrimination) are not translated into the policies. JS has particular concerns around policies HC5 (culture) H10 (estate regeneration) H2 (small sites) and S1 (social infrastructure)

#### Conclusion

The Mayor, the Panel and the Secretary of State need to take into account equalities impacts prior to adopting this or any later version of the plan. However, the flawed approach taken in the IIA, the failure in either the narrative assessments or the matrices to consider the specific impacts of the policies on groups with protected characteristics and the lack of information on those impacts resulting from the failure to ask the correct question means that it is not possible to have due regard to the equalities impacts of the plan. Were the plan to proceed on the basis of the current IIA it would do so unlawfully.