

## **Equality duties and ‘due regard’ – the Brown Principles**

Case law known as the ‘Brown Principles’<sup>1</sup> sets out a broad indication of what public sector organisations need to do to in respect of to the aims set out in the general equality duties. While indicating how courts interpret the duties, they are not additional legal requirements. (The Brown case pre-dated the current Equality Act, but the principles remain unchanged.)

The following are some key parts of the Brown Principles:

- Decision-makers must be made aware of their duty to have ‘due regard’ to the aims of the duty.
- ‘Due regard’ involved a conscious approach. Attempts to justify a decision as being consistent with the exercise of the duty, when it was not considered before the decision are not enough to discharge the duty. General regard to the issue of equality is not enough to comply with the duty.
- The duty must be exercised in substance, with rigour, and with an open mind in such a way as it influences the final decision.
- The duty has to be integrated ... it is not a question of ‘ticking boxes’.
- The duty cannot be delegated.
- It is good practice for those exercising public functions to keep an accurate record showing that they had actually considered the general equality duty and pondered relevant questions. If records are not kept it may make it more difficult, evidentially, for a public authority to persuade a court that it has fulfilled the duty.

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<sup>1</sup> R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 paras 90-96. See: <http://www.edf.org.uk/blog/?p=18320>