

Equality Impact Assessment Review – Cardiff Council

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Equality Impact Assessment Review

Report summary

Exhibit 1: report summary

Exhibit 1 summarises the focus of our audit, our key findings, and recommendations.

Why Equalities Impact Assessments (EIAs) are important.

As set out in our national report, Equality Impact Assessments: more than a tick box exercise?¹, an Equality Impact Assessment (EIA) is an important part of the approach to tackling inequality in Wales. EIAs help public services meet their legal duties to avoid discrimination in the decisions they make and to promote equality of opportunity and foster good relations in relation to people sharing protected characteristics. Done well, EIAs are more than a means to show compliance. They support the growth of a mind-set and culture that put issues of equality at the heart of decision-making and policy development.

The focus of our audit

We reviewed the Council's arrangements to ensure that it completes EIAs in line with its Equalities and Inclusion Strategy 2020-2024. We had previously identified some weaknesses in this area.

During our work, we identified some concerns around the Council's approach to consultation, as well as in relation to the particular assessment and engagement requirements of the Welsh Equality Regulations², so we have extended the scope of our work slightly.

Our key findings

We found that the Council has arrangements to ensure EIAs are now completed with a range of support in place for officers completing EIAs. However, we also found that the Council's EIA guidance and its Equality and Inclusion strategy do not accurately reflect parts of the Welsh Equality Regulations, and it does not have arrangements to monitor the quality of the EIAs. More broadly, we found that the Council's approach to engaging and consulting raises a risk that it is not always involving and engaging people in a timely and meaningful way to help shape its decision-making.

¹ Audit Wales, <u>Equality Impact Assessments: more than a tick box exercise?</u>, September 2022.

² Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011/1064.

Our recommendations for the Council

We have made five recommendations to the Council to strengthen aspects of its EIA process. This includes ensuring that, in undertaking EIAs, it involves persons who represent the interests of people who share protected characteristics and have an interest in the way the Council carries out its functions, and that it has regard to the need to involve or consult such people, in a timely and meaningful way.

What we looked at - the scope of this audit

- We focussed on the Council's arrangements to ensure staff complete Equality Impact Assessments (EIAs) that comply with the Council's Equalities and Inclusion strategy 2020-2024(3) (the strategy). We did not review the delivery of the whole strategy.
- We looked at the arrangements from the beginning of the EIA process up until the point of decision-making.
- We looked at a small sample of completed EIAs. We did not review all EIAs supporting Cabinet decisions. Neither did we look at the consideration of the EIAs in member or officer decision-making.
- In reviewing the sample of EIAs, we had some concerns in relation to the Council's approach to the particular assessment and engagement requirements of the Welsh Equality Regulations. This relates to the need to engage with persons who represent the interests of people who share protected characteristics and have an interest in the way the Council carries out its functions.
- We also identified some wider concerns around the Council's approach to consultation during our work. These concerns relate to whether the Council's consultation is sufficiently timely and meaningful to properly inform the Council's decisions. We recognise that consultation, as may be required by other statute, public law and good practice, is not the same thing as the **involvement** required by the Welsh Equality Regulations, but there are connections between the two and sometimes overlap. Consultation was not specifically part of our original scope. However, given the connections between consultation and Welsh Equality Regulation involvement, and given the Auditor General's statutory role as the Council's auditor and his duty to be satisfied that the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources, as well as his duties relating to the Wellbeing of Future Generations Act, we consider that it would be remiss of us not to raise these broader concerns that we identified during our work.
- 6 Our findings are based on:
 - document reviews;

³ Equality and Inclusion Strategy 2020-2024 (cardiff.gov.uk).

- interviews with officers;
- a focus group of officers from across the Council who are responsible for completing EIAs;
- a demonstration of the Council's Impact Assessment Screening Tool; and
- a review of a sample of completed EIAs.
- We set out to answer the question 'Does the Council have effective arrangements to ensure that Equality Impact Assessments are made in accordance with its Equality and Inclusion Strategy?'
- 8 We did this by exploring the following questions:
 - Does the Council have an approach to making Equality Impact Assessments which is clear and understood by staff?
 - Does the Council have arrangements to effectively support officers to undertake Equality Impact Assessments?
 - Are Equality Impact Assessments completed to a sufficiently high standard in line with the Council's approach and strategy?
 - Is the Council strengthening its approach to Equality Impact
 Assessments building on any learning and ensuring quality in line with agreed quality standards?
- 9 Appendix 1 sets out the questions along with the audit criteria we used to arrive at our findings.
- We undertook the fieldwork for this review during April and May 2023. We gave Council officers the opportunity to comment on our findings during the summer and again in the autumn.
- 11 We shared our draft findings with the Equality and Human Rights Commission.

Why we undertook this audit

- This audit was undertaken to help fulfil the Auditor General's duty to be satisfied that the Council has made proper arrangements for securing economy, efficiency, and effectiveness in its use of resources⁴. The audit also helps fulfil the Auditor General's function of assessing the extent to which the Council has acted in accordance with the sustainable development principle when setting and taking steps to meet well-being objectives⁵.
- As part of our 2021-22 performance audit work at the Council, we issued reports on Leisure Services⁶ published in October 2022, and Springing Forward Workforce and Assets⁷ published in November 2022. In these reports, we highlighted some weaknesses with the Council's adherence to its Equality and Inclusion Strategy.

⁴ Under section 17(2)(d) of the Public Audit (Wales) Act 2004.

⁵ Under section 15 of the Well-being of Future Generations (Wales) Act 2015.

⁶ Cardiff Council, Leisure Services Follow-up Review, November 2022.

⁷ Cardiff Council, Springing Forward: Combined Report on Workforce and Assets, January 2023.

The Council's Strategy states, 'It is good practice when developing a policy or strategy or a new initiative to anticipate the likely effects it may have and to take steps to prevent or minimise any likely harmful effects especially on persons who share any of the characteristics that are protected under the Equality Act.' (It should be noted that while this statement reflects Equalities and Human Rights Commission guidance, on its own it does not fully reflect the specific requirements of the Welsh Equality Regulations.) However, we had found that the Council had made strategic decisions in the absence of an EIA. We issued recommendations in both reports for the Council to comply with its Equality and Inclusion Strategy 2020-2024 by completing EIAs.

In September 2022, we published our national report Equality Impact
Assessments: more than a tick box exercise?8. Contained in that report is a
recommendation for public bodies to review their current approach for conducting
EIAs.

⁸ Audit Wales, Equality Impact Assessments: more than a tick box exercise?, September 2022.

Detailed report

What we found: While the Council has arrangements to ensure equality impact assessments (EIA) are now completed, there is a risk that it is not always involving the necessary persons and not undertaking such engagement and consulting more broadly at a sufficiently early stage to inform decision-making

The Council responded positively to our previous recommendations to put in place corporate oversight arrangements to ensure EIAs are available to support Cabinet decisions

In response to the EIA recommendations in our Leisure Services and Springing Forward reports, and our national report, the Council put in place arrangements in April 2023 to strengthen Senior Management Team (SMT) oversight of the EIAs that accompany Cabinet reports. SMT now receives monthly reports highlighting whether an EIA is needed for each Cabinet report and whether it is available. This approach enables SMT to check that EIAs are available at the point of decision-making or, if not, to delay a decision or ensure an EIA is completed where necessary.

The Council has arrangements to help officers understand its approach to EIAs, but its Equality and Inclusion strategy and EIA guidance do not accurately reflect parts of the Regulations made under the Equality Act 2010

- The Council has the following arrangements to help officers understand its approach to completing EIAs:
 - Equality and Inclusion strategy 2020-24
 - EIA guidance
 - Impact Assessment screening tool
 - EIA training
 - Equality officers
- 17 The Council's Impact Assessment screening tool is a valuable resource for officers. When completed, the tool should help officers determine whether there is a need to complete an EIA. The screening tool includes advice and guidance about what to do next and who to contact for further help.
- At the time of our fieldwork, the equality officers were attending directorate and service team meetings to promote the importance of completing EIAs and

- signposting the Council's EIA arrangements. This should help ensure there is a clear understanding of the Council's EIA process.
- The Council has set out its approach to EIAs in its strategy and guidance documents. These documents clearly promote the need to start EIAs at an early stage of policy, strategy or service development or change. This is consistent with good practice identified by the Equality Impact in Wales Practice Hub⁹ and our national report. During our review, we saw examples where the Council had developed EIAs at the early stages and that it had reviewed and updated its EIA during the process.
- We found that there were inconsistencies between the Council's EIA guidance and Equality and Inclusion Strategy. These documents do not accurately reflect aspects of the Regulations ¹⁰ made under the Equality Act 2010. The inconsistencies raise the risk of the Council not complying fully with the engagement provisions of the Regulations. This could lead to the Council making decisions without fully understanding the impact of its decision particularly on those persons sharing protected characteristics.
- To comply with the Regulations, it is important to understand the detail of the Regulations. Regulation 8(1) requires the Council to make impact assessment arrangements 'as it considers appropriate'. However, Regulation 8(3) restricts the flexibility in arrangements by requiring the Council to comply with the 'engagement provisions' of Regulation 5 when undertaking impact assessments. Regulations 5(2) and 5(3) of the Engagement Provisions require the Council to comply with the engagement provisions in carrying out any activity; compliance with those provisions means that in carrying out that activity the authority:
 - (2)... (a) must involve such persons as the authority considers—
 - (i) represent the interests of persons who share one or more of the protected characteristics; and
 - (ii) have an interest in the way that the authority carries out its functions;
 - (b) may involve such other persons as the authority considers appropriate;
 - (c) may consult such persons as the authority considers appropriate.
 - (3) In reaching a decision under paragraph (2)(b) or (c) the authority must have regard to the need to involve or consult (as the case may be), so far as is reasonably practicable to do so, persons who—
 - (a) share one or more of the protected characteristics; and
 - (b) have an interest in the way that the authority carries out its functions.
- Therefore, while the Council has considerable flexibility to set its own arrangements (and this is appropriately reflected in its screening tool), when it has determined to undertake an EIA, it must comply with the engagement requirements

⁹ Public Health Wales (nhs.wales), <u>Equality Impact Assessment in Wales Practice Hub – Public Health</u> Wales

¹⁰ Legislation.gov.uk, <u>The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011</u>

of Regulation 5. However, the Council's Equality and Inclusion Strategy does not fully reflect these requirements. It omits to explicitly stipulate that the Council must involve persons who represent the interests of people who share protected characteristics and have an interest in the way the Council carries out its functions, and it does not stipulate that in making decisions on whom to consult, that it must have regard to the need to consult such people. It only 'advises' officers to seek the views of people who share protected characteristics.

- The Council's EIA guidance also falls short of correctly setting out these requirements. The guidance states that 'consultation and engagement on proposals that have the potential to result in a significant negative impact is a requirement of the Equality Act'. This is not correct. Engagement is a requirement of the Regulations not the Equality Act 2010. More importantly, however, the requirement for engagement as set out in the Regulations is not confined to proposals that have the potential to result in a significant negative impact. In fact, the requirement for engagement applies to any impact assessment.
- The Council's EIA guidance explains that when undertaking consultation and engagement, officers can speak with generic third sector bodies or specialist equalities charities. However, this falls short of the Regulations as it does not clearly stipulate that the Council must engage with persons considered representative of persons who share one or more of the protected characteristics and who have an interest in the way that the authority carries out its functions (see text of Regulation 5 quoted at paragraph 21 above). The Council needs to ensure that it is involving such representative persons. Aside from not fully meeting the Regulations, failure to involve such representative persons could lead to the Council making decisions without a good understanding the impact of its decisions.
- The Council needs to ensure that it accurately reflects and promotes the need to engage as per the Regulations through its guidance and strategy. In line with the intentions underlying the Regulations ie helping bodies to perform the public sector equality duty of section 149 of the Equality Act 2010 the Council needs to ensure it uses its EIA arrangements to support decision-making to help promote equality of opportunity and fostering of good relations in relation to people sharing protected characteristics, rather than just focusing on any negative impacts.
- In addition, as there is a degree of commonality between the requirements of the Regulations and the 'Involvement' way of working required by the Well-being of Future Generations (Wales) Act 2015¹¹, the deficiency in the Council's EIA arrangements may undermine the extent to which the Council is following the Sustainable Development Principle of that Act. If the Council is not fully meeting

¹¹ See s5(2)(d) of the Well-being of Future Generations (Wales) Act 2015, which requires bodies to take account of 'the importance of involving other persons with an interest in achieving the well-being goals and of ensuring those persons reflect the diversity of the population of (i) Wales or (ii) the part of Wales in relation to which the body exercises functions.

- the involvement requirements of the Regulations, then the Council would seem likely to also fall short in terms of the involvement required by the 2015 Act.
- The Council is due to review its Equality and Inclusion Strategy during 2023-24. The Council should use this review to ensure that its EIA arrangements fully meet the Regulations made under the Equality Act 2010. This would reduce any potential misunderstanding of the requirements to involve when completing EIAs and in relation to consultation. It would also help provide the Council with assurance it is meeting all the Regulations that are intended to help it perform the public sector equality duty of section 141 of the Equality Act 2010.

The Council's approach to equality impact assessments raises a risk of not involving persons who represent the interests of people who share protected characteristics and have an interest in the way the authority carries out its functions, and of not engaging with such people and consulting them and others in a timely way to inform decision-making

- During our work, we reviewed a small sample of completed EIAs. We appreciate that the Council makes lots of decisions and that our findings from reviewing this sample may not be representative. However, from the sample of EIAs we reviewed, we identified some concerns about the quality and completeness of some of the Council's EIAs.
- In connection with the statutory requirements that apply to EIAs, we also identified broader concerns about whether the Council's **consultations** on some of its service changes had been timely and meaningful and in line with the Gunning Principles ¹². The Gunning Principles are four principles which help guide whether consultation has been fair. One of the principles is that consultation must take place when the proposal is still at a formative stage.
- We recognise that the statutory engagement provisions for EIAs set out in Regulation 5 of the 2011 Regulations do not of themselves require the Council to carry out consultation in line with the Gunning Principles. However, we do note that there is a connection between such regulatory engagements and broader consultation, in that the Regulations make provision in relation to consultation, as noted in paragraph 22 above, to require authorities making decisions on whom to consult, to have regard to the need to consult persons who represent the interests of people who share protected characteristics, and have an interest in the way the authority carries out its functions.
- In any event, we consider that by following the Gunning Principles in relation to both equality-regulation-required involvement and in consultation, the Council will help ensure that such activities are timely and meaningful. The Council recognises

¹² Local Government Association (extract), <u>The Gunning Principles</u>.

this within its draft Participation Strategy 2023-2027. The main thrust of this strategy is to promote civic participation and to give the people of Cardiff a voice in shaping the decisions that affect their lives and on engaging and collaborating with communities. The Participation Strategy refers to the National Principles for Public Engagement in Wales and the Gunning Principles.

- As the Council's external auditor, we have received several pieces of correspondence from service users raising concerns that the Council was not engaging with them early enough in the decision-making process. These service users were concerned that engagement was being done in a tokenistic way as they felt that the Council had effectively already made its decisions.
- 33 We found examples of completed EIAs that stated that engagement would happen after the Council has decided 'in principle' to a course of action. We also found examples of decisions, which the Council has described as 'in principle' decisions, being taken without the Council having sight of a completed EIA. We recognise that Regulation 8 gives the Council discretion as to its arrangements for EIAs (subject to complying with the Regulation 5 engagement provisions when it does undertake EIAs) and that this gives the Council the scope to take 'in principle' decisions without a prior EIA. However, we consider that care is needed to ensure that 'in principle' decisions are just that and do not effectively amount to substantive decisions, such as by proceeding with activity that makes other options impractical or unduly expensive. For example, in the case of one of the decisions we reviewed, Council officers had been given delegated authority to enter into negotiations with the preferred supplier. We consider that particular care is needed to ensure that members' minds are truly open to other options if negotiations are at an advanced stage on a particular option, and considerable effort and expenditure would effectively be written off for any other option to be pursued.
- In each of the examples we reviewed, the Council is of the view that as the final decision had not been taken, proposals were still at a formative stage and that decision-makers' minds were still open to change and influence from future consultation and engagement. In its view, when members did make its final decisions, EIAs including the results from engagement were provided, thus giving the members the opportunity to assess the likely impact of its proposed policy or practice on the Council's ability to meet the public sector equality duty. However, in our view, in some cases, as the Council had already made considerable progress pursuing its preferred option, the influence of the EIA was perhaps less weighty than it should have been.
- Overall, we consider that the Council's tendency to do both statutory equality engagement and broader consultation at the latter stages of its decision-making process poses several risks for the Council, including:
 - by not understanding community and service users' needs early in developing its proposals could lead to the Council to design a service change or policy that may not meet the needs of the community and users.
 This also raises a risk to value for money as the Council may have spent and

- committed resources in a certain direction, which it then may then need to decide to change.
- decision-makers may not be aware of the potential impacts of the Council's proposals on people sharing protected characteristics early enough to help determine how they can mitigate those impacts. This reduces the scope for the EIA to be used to genuinely shape the Council's policy or practice.
 Understanding potential impacts earlier would help the Council determine how it could mitigate those impacts while proposals were still at a formative stage.
- by engaging with service users and the public later in the decision-making process, the public are likely to be less aware of the reasons for the policy or service change. Engaging and consulting earlier provides an opportunity for the Council to inform service users and the wider public, including people sharing protected characteristics, of the rationale for a service change.
- the Council may be perceived not to be genuinely open to involving persons
 who represent the interests of people sharing protected characteristics and
 who have an interest in the Council's functions. And the same applies in
 respect of consulting broader communities and understanding and valuing
 their views and different ideas.
- We recognise that engagement with persons who represent the interests of people sharing protected characteristics and who have an interest in the Council's functions, and consulting broader communities are but particular sources of information, and that there are other considerations to decision-making, such as service demand and financial affordability. However, not sufficiently involving relevant persons and not consulting more broadly sufficiently as proposals are progressed, risks members and officers not being sufficiently informed of potential impacts.

The Council has arrangements to support officers completing EIAs but does not have arrangements to monitor the quality of the EIAs

- 37 The Council has two equality officers who are available to provide support to officers when completing an EIA. These officers attend team meetings to guide officers through the process and deliver regular EIA training and one-to-one training. The officers who attended our focus group were positive about the support they receive from the equality officers.
- At the time of our fieldwork, the equality officers were reviewing the EIA training attendance data to identify those directorates which have not had training. This will help the Council better target those services to ensure they are clear of, and adhere to, the Council's approach.
- 39 The Council does not seek feedback from those officers completing EIAs to understand whether they need any further training or support. Officers record their training, learning and development needs in the Council's Personal Development

- Review system. Without seeking feedback and interrogating the Personal Development Review system to identify any further EIA training needs, the Council cannot assure itself that training needs in this area are adequate.
- We also found that the Council does not have arrangements to monitor or assess the quality of EIAs. Nor does the Council have arrangements to monitor whether the EIAs are completed in line with the Regulations or the Council's EIA guidance and Equality and Inclusion strategy. The Council's guidance does not include any reference to assessing and monitoring the quality of EIAs. It is also not clear who is responsible for signing off EIAs.
- Therefore, the Council cannot be assured that each EIA has sufficient and appropriate information to enable decision-makers to understand the potential consequences of its decisions. Given our findings in this report, it is crucial that the Council develop arrangements to monitor and assess the quality of its EIAs. Monitoring the quality of EIAs could also help inform and update the content of its EIA training.
- While not a requirement of the Regulations themselves, it is good practice in line with Equality and Human Rights Commission guidance ¹³ for a completed EIA to identify action(s) to mitigate any impact on protected groups. The Council's EIA template states the relevant service business plan should include these actions for regular monitoring. However, there is a lack of corporate oversight to ensure the service(s) raise and deliver the actions necessary to mitigate adverse impacts.
- The Council's EIA guidance clearly states the importance of using data to identify potential impacts, and it signposts officers to many data sources when completing EIAs. However, the EIA template does not require the author to disclose the sources used. Including data sources within the EIAs would help the Council to assure itself that the EIA included a reasonable and sufficient range of data to help it better understand the potential impacts of proposals on those with protected characteristics.
- The Council's focus to date has been on ensuring that EIAs are completed and accompany Cabinet reports. But as highlighted in our national report, EIAs are an important part of the approach in tackling discrimination and promoting equality. Having stronger quality assurance and oversight arrangements would help strengthen the Council's approach to promoting equality.

¹³ Equality and Human Rights Commission – Promoting and upholding equality and human rights ideals and laws across England, Scotland, and Wales.

Recommendations

Exhibit 2: recommendations

- R1 The Council should strengthen its Equality and Inclusion Strategy and supporting EIA guidance so that these accurately reflect the requirements of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.
- R2. The Council should provide members with EIAs which incorporate the results of involvement of persons who represent the interests of people who share protected characteristics and have an interest in the way the Council carries out its functions. The Council should also provide members with the results of consultations that it has undertaken, following regard to the need to involve or consult people who share protected characteristics and have an interest in the way the Council carries out its functions. The Council should ensure that it provides members with such EIAs and consultation results when proposals are at a formative stage, ie while decisions remain genuinely open. In addition to ensuring legal compliance, such information should improve members' understanding of the risks and impacts the proposals may have and so should better inform decision making.
- R3 The Council should put in place arrangements to review the quality of its EIAs to assure itself that it is meeting the requirements of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. Reviewing the quality of its EIAs should also then be used to focus its training and support.
- R4 The Council should put in place arrangements to ensure that EIAs include the relevant data sources so decision-makers can assure themselves that EIAs consider a reasonable and sufficient range of data to better understand potential impacts on protected characteristics.
- R5 The Council should put in place arrangements to ensure the action(s) identified to mitigate any impact on people with protected characteristic(s) are delivered and mitigate adverse impact.

Appendix 1

Audit questions and audit criteria

Below are the questions we sought to answer in carrying out this audit, along with the audit criteria we used to arrive at our findings.

Main audit question: Does the Council have effective arrangements to ensure that Equality Impact Assessments are made in accordance with its Equality and Inclusion Strategy?

Exhibit 3: audit questions and audit criteria.

| Level 2 questions | Criteria |
|--|--|
| Does the Council have an approach to making Equality Impact Assessments, which is clear and understood by staff? | The Council has set out a clear approach for making EIAs. There is a clear approach to determining if an EIA is required. Staff have a clear understanding of the Council's approach and what they need to do when developing EIAs. Senior officers take ownership of, and drive implementation of the Council's approach, so that EIAs are used as a tool to promote equality, rather than as an add-on 'tick box' exercise. |
| 2. Does the Council have arrangements to effectively support officers to undertake Equality Impact Assessments? | There is guidance to support those conducting an EIA, setting out what they need to do and when, in line with the duties and the Council's chosen approach. There is specialist support and expertise available in the Council to those conducting EIAs. Training on conducting an EIA is available for staff involved in developing EIAs and those that use them for decision-making. Staff make use of the support and guidance available. The process of developing an EIA is started at an early stage to inform the development of a policy/strategy. There is use of a range of evidence to support the assessment, including the views of those likely to be impacted and data on lived experience. There is some consideration of cumulative impacts on the same group or groups and how different protected characteristics combine. |

| Level 2 questions | Criteria |
|--|---|
| 3. Are Equality Impact Assessments completed to a sufficiently high standard in line with legal requirements? | Based on the sample of EIAs reviewed, these are completed in line with legal requirements. There are clear recommendations for mitigating negative impacts that have been acted on before the decision is made. The completed EIAs would help decision-makers to assess how important the likely impacts are and if any mitigating measures proposed would be sufficient. |
| 4. Is the Council strengthening its approach to Equality Impact Assessments building on any learning and ensuring quality in line with agreed quality standards? | The Council has a clear approach to ensuring the quality of the EIA process. The Council monitors the EIAs against a set of agreed quality standards. The Council monitors its own arrangements to ensure EIAs are available for officers/members when making policy and strategic decisions. The Council identifies and applies lessons to further strengthen its approach to EIAs. The Council is responding to the relevant recommendation contained in our National Study – Equality Impact Assessments: more than a tick box exercise? |



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