

Summary of Previous Legal Guidance

Public Sector Equality Duty

“The Council must comply with the Public Sector Equality Duty as set out in Section 149 of the Equality Act 2010. This means in relation to making a decision, the decision-maker must firstly understand their obligations under the PSED. This is a duty to have due regard to the need to:

1. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equalities Act 2010.
2. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
3. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Technical guidance provided by the Equality and Human Rights Commission assists public bodies in discharging the duty in practice and this is expressly brought to Members’ attention.

<https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>)

Secondly the decision maker must have sufficient relevant information and demonstrably take this information fully into account throughout the decision-making process.

The concept of due regard requires that there has been proper and conscientious focus on what the duty requires at 1-3 above. If that is done, a court cannot interfere with the decision simply because it would have given greater weight to the equality implications of than (*sic*) the decision maker did. However, the decision maker must be clear precisely what the equality implications are when they put them in the balance. A public body can lawfully conclude that other considerations outweigh the equality ones. This could include security concerns or available resources provided that the weight given to those countervailing factors is not irrational.

Thirdly, the courts have established that the potential impact of a decision on people with different protected characteristics is a mandatory relevant consideration. The manner of assessing that impact is discretionary. Often an Equality Impact Assessment is an appropriate

tool but is not the only Page 20 of 29 available tool. It is the quality of the assessment whether that is presented in an EIA or some other evaluative report which is important.” (Legal implications, November 2024 Executive report and October 2025 Executive report.)

ATTRO Powers

“An ATTRO is a counter terrorism measure pursuant to the provisions of the Civil Contingencies Act 2004. Under Sections 22C and 22D of the Road Traffic Regulation Act 1984 (as amended), the Council is granted a power to make an ATTRO in response to a Chief Constable recommendation. However, this remains a discretionary power, and the recommendation of the Chief Constable does not mandate the Council to introduce an ATTRO. The Council does, therefore, retain the legal ability to decline to make the ATTRO, but this would be an unprecedented approach, and very strong defensible legal grounds would be required for doing so.” (Paragraph 3, October 2025 Executive Report)

“The making of the order remains a discretionary power, with the recommendation of the Chief Constable not mandating the Council to introduce an ATTRO. Refusal to implement an ATTRO after receipt of a compliant recommendation from a Chief Constable would be an unprecedented event nationally. The Council does, therefore, retain the legal ability to decline to make the ATTRO, but would need very robust and defensible legal grounds for doing so. These legal grounds could include that the Council does not consider that there is a genuine terrorist threat, that less restrictive measures would be sufficient to adequately mitigate risk, or that the restrictions are not proportionate to the ends desired. It is suggested, however, that given the justification put forward by the Chief Constable, and informed by officer review of the specific circumstances of this matter, the identified legal grounds are absent in this case.” (Paragraph 24, October 2025 Executive Report)

Human Rights Act 1998

“In considering the issue, the Executive are asked to note the balancing exercise already carried out by NYP in their consideration of whether or not to make a recommendation for an ATTRO; it should be noted that the final paragraph of the Chief Constable’s letter clearly states: “These measures are proportionate and necessary to support the safety and effective management of the event and these restrictions form a critical element for the collective approach to avoid and reduce the likelihood of

danger connected with terrorism.” It is suggested that the Chief Constable’s balancing exercise forms a reasonable basis for Executive to agree to the implementation of the ATTRO, balancing as it does the rights under Articles 2, 8, and 14 of Schedule 1 of the Human Rights Act 1998.” (Paragraph 12, October 2025 Executive report.)

“The Executive are asked to consider both the ‘absolute’ right to life and the ‘qualified’ protection from discrimination. Neither of these duties take precedence, although a public body can lawfully conclude that other considerations outweigh the equality ones, and it is clear that the Chief Constable has carried out that balancing exercise in making his recommendation. The Executive will need to make a decision proportionately, having regard to all impacts, to reach a balanced decision including the Council’s responsibilities under the Public Sector Equalities Duty. The Executive should, however, give significant weight in that exercise to the Chief Constable’s recommendation.” (Paragraph 13, October 2025 Executive report.)