

Rt Hon David Lidington CBE MP
Minister for the Cabinet Office

Our ref: Legal/CC/JG
11 April 2018

By email only:

david.lidington.mp@parliament.uk



Dear Minister

Voter ID pilots and the Public Sector Equality Duty

The Commission is Great Britain's national equality body, a regulator responsible for enforcing the Equality Act 2010 (the 2010 Act). We have a mandate to encourage equality and diversity and monitor, promote and enforce compliance with equality law. As an "A" status National Human Rights Institution, we are tasked to protect and promote human rights.

I am writing to you in respect of the Electoral Integrity Pilots Scheme issued by the Cabinet Office and presently being piloted by five local authorities for the purposes of the May 2018 local elections.

The Commission is concerned that the requirement to produce identification at the five local elections will have a disproportionate impact on voters with protected characteristics, particularly older people, transgender people, people with disabilities and/or those from ethnic minority communities. In essence, there is a concern that some voters will be disenfranchised as a result of restrictive identification requirements potentially leading to violations of Article 1 Protocol 1 of the European Convention on Human Rights, as incorporated into domestic law by the Human Rights Act 1998.

We understand that the Scheme arose from the Government's response to Sir Eric Pickles' review into electoral fraud and as a way to trial measures aimed at mitigating risks to the integrity of the British democratic processes. To date there only appears to be one convicted case of electoral fraud following the

2017 local and general elections¹. Notwithstanding, the Cabinet Office issued a prospectus inviting interested local authorities with a “diverse range of relevant socio-economic and demographic conditions and different types of area (e.g. metropolitan, rural, urban)” to participate in the Scheme. The local authorities for Bromley, Gosport, Swindon, Watford and Woking successfully applied to run pilots in their respective constituencies during the local elections next month.

The Scheme, and its implementation through the Pilots, clearly engages the Public Sector Equality Duty (PSED) under section 149 of the 2010 Act. The PSED requires public authorities, such as Government Departments and Ministers of the Crown, to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. As you are no doubt aware, this is an ongoing duty which applies throughout the policy-making process, from the development of options and draft proposals through to legislation and implementation.

The application of the PSED by the Cabinet Office will be broader in relation to this policy than that required by the five local authorities. This will ensure that both the Scheme and the underlying policy have been adequately considered with sufficiently detailed analysis to determine its potential impact on equality in a national context and prior to any pilots being run. The Act makes clear that having due regard for advancing equality involves encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low. It is imperative that due regard was given, and continues to be given, to the impact of the Scheme on persons sharing protected characteristics particularly where a voter will be refused a ballot paper and unable to vote without the ID required by the local authority. As such, the PSED was, and is, applicable to both the Scheme and each of the Pilots.

Please could you provide us with a copy of any Equality Impact Assessment (EIA) that you carried out, for example, prior to issuing the Scheme prospectus, for implementation of The Combined Authorities (Mayoral Elections) (Amendment) Order 2018, and during the Pilot application process,

¹ <https://www.electoralcommission.org.uk/find-information-by-subject/electoral-fraud/data-and-analysis>

development and testing stages. If you have not undertaken an EIA for the purposes of the Scheme, please provide reasons for this decision, and an explanation of how due regard was had to the PSED.

Turning to the Pilots, we would like to understand the role of the Cabinet Office in developing, agreeing, running and evaluating the Pilots. For example, the prospectus indicates a six month development and trial period from September 2017 to March 2018. Please confirm what on-going assessment was undertaken by you in respect of, and during, this trial period to ensure that equality considerations were reflected in the ongoing design of the Scheme policies and the delivery of the Pilots.

Further, we are interested to know what measures the Cabinet Office has in place to ensure that local voters across the Pilot constituencies are afforded an equality of opportunity to vote despite the distinct identification methods implemented by each of the local authorities. While I understand that each of the local authorities has expressed a commitment to ensuring that no eligible voter is disenfranchised, we are concerned on the evidence we have seen that the assessment of potential impacts by the five local authorities falls short. In general, we have observed a failure to fully identify all potential impacts on each of the protected groups and/or to provide sufficient mitigation for any adverse impact identified. For example, a communications plan designed to ensure that voters are aware of the pilot identification requirements must be assessed and balanced against the adverse impact. A mere commitment to developing the plan, provide training or that all persons are “treated the same” is insufficient. We are copying this letter to the five local authorities concerned to make them aware of our concerns but we consider that primary responsibility for creating a workable scheme that does not negatively impact on people with protected characteristics rests with the government.

The prospectus provides high-level details of the evaluation process and refers to a commitment of the Cabinet Office to produce an evaluation of the pilots. In the context of the PSED, please provide the evaluation assessment criteria and an explanation on how you intend to evaluate the equality impact arising from the separate pilots on a national scale and against the overall Scheme policy.

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The Commission will review the outcome of the pilots in May, and would be grateful for a response by 20 April 2018. Please copy your response to my colleague [REDACTED]@equalityhumanrights.com.

Yours sincerely

[REDACTED]

Clare Collier

Senior Principal - Legal

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