

# **Public Sector Equality Duty (PSED) assessment for support for disabled candidates seeking elected office**

Date: 12/11/2018

## **Introduction**

This document records the analysis undertaken by the GEO to enable Ministers to fulfil the requirements placed on them by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. The PSED requires the Minister to pay due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

In undertaking the analysis that underpins this document, where applicable, the Department has also taken into account the United Nations Convention on the Rights of Persons with Disabilities (CRPD), and in particular Article 29.

## **Brief outline of policy**

The Government Equalities Office, together with the Office for Disability Issues and the Cabinet Office, is undertaking a programme of work with disability stakeholders over the next 12 months to help political parties best support disabled candidates.

As part of this work, we are:

- Meeting with disability stakeholders to hear their views
- Meeting with political parties to hear about their current support for disabled candidates and what support they would like to receive from government
- Reviewing the evidence base on political representation and disability and commissioning research on barriers disabled people may face in seeking elected office and strategies for success, to fill the gaps in the evidence base.

While this work is ongoing, we are establishing a £250,000 interim fund to support disabled candidates, primarily for the forthcoming English local elections in 2019.

The interim fund will help cover the additional disability-related expenses disabled people could face in seeking elected office, to advance equality of opportunity in supporting disabled candidates standing for election. It will be in place for disabled candidates standing for election in: local elections, mayoral elections, metropolitan and district council elections, Police and Crime Commissioner elections, any by-elections on a case by case basis.

In Parliament, there are only five declared disabled MPs, however, to be representative of the entire UK population (in which people with some form of disability represent about 22% of the population, or 19% of the working age population), we would expect to see about 140 or 123 MPs, respectively, with some form of disability. Additionally, the number of declared disabled Local Authority Councillors is about 10%, although most of these disabilities relate to age-related impairments, reflecting the older age profile of Local Authority Councillors. The interim fund is a deliberate intervention by the government with the aim of increasing the rate of participation by disabled people as candidates in local elections, thereby enhancing the chances of improving the level of representation of disabled people as elected office-holders.

An Access to Elected Office pilot Fund, which ran from 2012 until after the general election in 2015 attracted a total of 141 applications over the three years it was in operation, resulting in £271,000 being paid out in grants to 67 people. Since June 2015 no further grants have been made, the Fund was closed to new applications and the contract with the Fund administrator lapsed at the end of 2015/16.

The interim fund will be delivered by the Local Government Association (LGA). The LGA will tender for a commercial scheme administrator who will support applicants, process and assess applications to make recommendations for awards, and administer awards. The LGA's four Political Groups will be engaged in decision making on applications. This element of the scheme is designed to encourage good practice by Political Groups in supporting their disabled candidates. Individual disabled people will be able to apply directly to the interim fund and the commercial scheme administrator will provide support to apply when required.

We engaged with disability stakeholders, including disabled people's organisations, and Inclusion Scotland who deliver an equivalent fund in Scotland to support disabled candidates seeking elected office. They advised that the interim fund should not have a cap on individual awards as this would deter some potential candidates with expensive access needs from standing for election and could be discriminatory for deaf people or those with hearing impairments.

In order to ensure the right balance between the need to support as many disabled people as possible and what it is reasonable to offer individual applicants within the limit of available resources, we will work with the LGA and the commercial scheme administrator (when appointed) to develop a fair application process and assessment criteria for disabled applicants. The purpose is to ensure fair and proportionate allocation to applicants with broad and varied disabilities. The aim is to help potential disabled candidates fare better with and in seeking elected office by comparison with each other and their non-disabled counterparts.

Ministers have decided there will not be a cap on individual awards. This means there is a risk that the fund is allocated to a smaller number of applicants with more expensive access needs, compared to the distribution of awards to more applicants with a cap on individual awards.

The degree and extent of any risk will depend upon the application process and assessment criteria designed by the commercial scheme administrator, and applicant demand. Evidence from the previous Access to Elected Office pilot fund suggests that based on the average awards, the risk of the fund being allocated to only a small pool of applicants with expensive access needs is low. This will be further mitigated through governance structures and quality assurance processes to provide additional scrutiny for high value awards. We will take steps to monitor the impact, particularly of how the application process and assessment criteria are designed, and will consider if further flexibilities are required should an adverse impact be found.

The Access to Elected Office 2012-15 pilot approved 94 applications for 67 candidates with the total value of grants provided at £418,734. Only two cases for grants over £30,000 were approved. Overall, for the Access to Elected Office 2012-15 pilot had a £4,455 average award value, with the highest award being £39,735 and the lowest award being £130. The average award for Parliamentary elections was £9,607, which is higher than the average award for English local authority elections, which was £2,255. As the interim fund is primarily for the English local authority elections in May 2019, with no Parliamentary elections scheduled for the time period of the interim fund, it is likely that the average award value for the interim EnAble fund will be similar to £2,255.

Figure 1: Estimated number of individual awards based on award value

Award value	Estimated number of individual awards for the £250,000 grant fund
Overall average award £4,455	56 awards to candidates
Average award for local authority elections £2,255	110 awards to candidates

We are working with Cabinet Office to lay an affirmative procedure Statutory Instrument before Parliament in order that a candidate's disability-related expenses can be excluded from the amount, which they are able to spend under electoral law. We have successfully influenced Cabinet Office to secure a Ministerial steer to proceed with a general exemption for disability-related expenses from election spending limits. This will cover grants from the interim fund.

## Evidence and analysis

### 1. Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act.

There is no evidence that the programme of work will disadvantage some groups more than others and no forms of discrimination are considered to arise. This evidenced from the diversity data for the Access to Elected Office 2012-15 pilot fund, shown below.

Male – 53%; Female – 47%; Ethnicity: White – 82%; Black African / Caribbean – 6%; Asian, all backgrounds – 7%; Age range – 35-44 - 19%; 45 – 54 – 41%; 55 – 64 - 35%.

The policy drive for the interim EnAble fund is a rights first based approach, which avoids a cap on individual awards that may indirectly discriminate against deaf people or those with hearing impairments. However, as highlighted above the fair and proportionate application process and assessment criteria aims to ensure the finite funding available supports as many potential applicants as possible. This is because supporting more candidates and meeting the hypothesised significant unmet need – particularly of under-represented groups including those with hidden impairments such as learning disabilities, is something that key stakeholders have strongly encouraged. In addition, political parties and other associations still have a responsibility to make reasonable adjustments under provisions in the Equality Act.

The amendment to electoral law has the potential to have a positive impact on the elimination of discrimination. It will support disabled candidates by enabling a candidate's disability-related expenses to be excluded from the amount, which they are able to spend under electoral law. It will also help political parties to make reasonable adjustments for candidates because it will ensure that any expenditure will not count towards election spending limits.

### 2. Advance equality of opportunity between people who share a particular protected characteristic and people who do not share it.

It is likely to be beneficial to individuals seeking electoral office that have a disability. It will support disabled candidates with additional disability-related expenses, which non-disabled candidates do not face, thus enhancing the equality of opportunity. It may also help people participate in public life who had not previously considered doing so. This supports article 29 of the United Nations Convention on the Rights of Persons with Disabilities to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected. By helping to meet the additional disability-related expenses disabled people could face in seeking elected office, the intended outcome of

the interim fund is to increase the rate of participation by disabled people as candidates in local elections, thereby enhancing the chances of improving the level of representation of disabled people as elected office-holders.

By not having a cap on individual awards, applicants with more expensive disability related expenses who may previously not have been able to afford seek election will be able to do so through the support of the interim fund. This advances equality of opportunity for potential candidates with a broad range of disabilities, including deaf people.

Data from the LGA survey of local Councillors<sup>3</sup> and the LGBT survey<sup>4</sup> suggests that the fund could benefit older candidates (45% of state pension age people have a disability<sup>5</sup>) and those with gender reassignment (32.5% stated they considered themselves to have a disability) protected characteristics, respectively, compared to the national population which is around 22%. This is because both groups have a greater likelihood of having disabilities compared to the national population.

Diversity data from the Access to Elected Office 2012-15 pilot fund, shown below, does not suggest that any other protected characteristic would be disproportionately affected. The diversity of fund applicants is shown below.

Male – 53%; Female – 47%; Ethnicity: White – 82%; Black African / Caribbean – 6%; Asian, all backgrounds – 7%; Age range – 35-44 - 19%; 45 – 54 – 41%; 55 – 64 - 35%.

The amendment to electoral law has the potential advance equality of opportunity for disabled people by ensuring disability-related expenses for disabled candidates, which are additional to expenses of non-disabled candidates are excluded from election spending limits. This will help to level the playing field between disabled and non-disabled candidates.

### **3. Foster good relations** between people who share a particular protected characteristic and people who do not share it.

By providing disability-related expenses to support disabled candidates in seeking elected office, where they are likely to encounter non-disabled people, this can foster good relations between people who share a protected characteristic and those who do not. It will also enable a wider understanding of equality issues and the particular disadvantages faced by those with disabilities for political parties, stakeholders and the public.

There may also be an impact upon the ability of disabled people to enter into elected office which could impact on inclusion in the wider community and the ability to participate in political life on an equal basis with others.

Increasing the number of disabled people in elected office may help increase the visibility of disabled people in political life, which in turn could positively impact the public's perception of disabled people's ability to participate in all aspects of public life including politics.

There is a risk that by not having a cap on individual awards, applicants with the most expensive disability related expenses will be awarded a high proportion of the interim fund, meaning it is not available for other applicants with a broad range of disabilities. This could negatively impact on fostering good relations between people who share the protected characteristics of disability. However, as outlined above, we will put in place mitigations, such as fair assessment criteria and application processes, which aim to ensure the fund is distributed fairly to as many applicants as possible. In addition, political parties and other associations still have a responsibility to make reasonable adjustments under provisions in the Equality Act.

## **Decision making**

The recommendation is to proceed with the programme of work and interim fund as planned. The evidence outlined above, from the Access to Elected Office 2012-15 pilot fund, stakeholder feedback, and other data, highlights the positive impacts of the programme of work and interim fund on eliminating discrimination, enhancing equality of opportunity and fostering good relations for disabled people. It does not suggest that any other protected characteristic would be disproportionately affected, and where disability overlaps with other protected characteristics (for example age) it will have wider equality benefits.

## **Monitoring and evaluation**

We will continue to monitor the programme of work and interim fund, including the impact of mitigations and will consider if further flexibilities are required should an adverse impact be found. In particular, we will ensure we regularly review monitoring information from the interim fund to ensure that applicants from diverse backgrounds and with a broad range of disabilities are able to access the interim fund.