

The Public Sector Equality Duties and Financial Decisions

An Advice Note for Public Authorities¹

The recent downturn in the economic climate is likely to have a significant impact on public authorities. Financial constraints have already resulted in many authorities making important decisions about their operation and the services they provide. These decisions include efficiency drives; budget cuts; reorganisations and relocations; redundancies²; and service reductions.

The Equality and Human Rights Commission is concerned that some decisions may have a disproportionate effect on different groups of people, and may be contrary to the statutory equality obligations to which public authorities are subject.

Recent press reports substantiate these concerns, by suggesting, for example, that women are more likely to be affected by redundancies than men, as companies revise their maternity and flexible working policies in an attempt to save money.³

While acknowledging the difficult economic environment in which public authorities are now operating, the Commission is emphasising the mandatory nature of the equality duties, and the importance of public authorities meeting their duties when making significant decisions.

¹ This document is not a definitive statement of the law. Authorities should consult with the relevant Acts, Regulations and statutory Codes of Practice.

² The Commission has recently published guidance on redundancies and equality issues, *A short guide to managing the downturn and preparing for recovery*. See <http://www.here4business.net/a-guide-to-redundancy/>

³ See <http://www.timesonline.co.uk/tol/news/politics/article5581549.ece>

The equality duties

A positive duty on public bodies to promote race equality was introduced in 2001⁴. A duty to promote equality for disabled people came into effect in December 2006⁵, and this was followed by a duty to promote gender equality which came into effect in April 2007⁶.

While each duty places distinct legal obligations on public authorities, collectively the duties have the common aim of ensuring that the public authorities work to eliminate discrimination and promote equality in their activities.

This means that when developing proposals and making policy decisions, including those about finance and service provision, public authorities must comply with their statutory equality duties. Public authorities must ensure that decisions are made in such a way as to minimise unfairness, and do not have a disproportionately negative effect on people from different ethnic groups; disabled people; and men and women.

Case study: Harrow⁷ - the importance of taking public sector equality duties into account

To make savings in light of budget deficits, the London Borough of Harrow proposed to restrict the provision of adult care services to people with critical needs only.

A consultation and an equality impact assessment were carried out regarding the proposed change. During this process, concerns were identified that the proposed decision would have a differential impact on particular groups of disabled people.

A report on the issues, including analyses of the results of the consultation process and the equality impact assessment, was then considered at a Cabinet meeting, where the Council decided to effect the proposed change. However, the Disability Equality Duty, and the specific obligations it places on the Council, was not explicitly brought to the Councillors' attention when they made the decision.

⁴ Race Relations (Amendment) Act 2000

⁵ Disability Discrimination Act 2005

⁶ Equality Act 2006

⁷ R (Chavda and others) v London Borough of Harrow [2007] EWHC 3064 (Admin)

The Council's decision was challenged by service users. The Court held that elected members could not come to a balanced conclusion without being aware of what its responsibilities were under the Disability Equality Duty. As a result, the decision to restrict adult care services was held to be unlawful.

The equality duties are legal obligations which should remain a priority, even in times of economic difficulty. The duties are an invaluable tool to help ensure that decisions do not create or perpetuate inequality.

To ensure that they have complied with the equality duties, and to ensure that any decision made do not unfairly discriminate, public authorities should carry out robust equality impact assessments, and consult and involve relevant stakeholders, as part of the decision-making process.

Equality Impact Assessment

A key requirement of the public sector duties is for public authorities to carry out equality impact assessment for all relevant policies and decisions.

When public authorities are making financial decisions, it is vital that such decisions are equality impact assessed; the impact assessment being carried out when policy is initiated, as a central part of the policy development process.

As well as being a legal obligation under the public sector duties, equality impact assessment is an invaluable tool to assist authorities in ensuring that the interests of all groups are properly taken into account when difficult choices about resources are required.

Case study: Southall Black Sisters⁸ - the need to impact assess decisions

Southall Black Sisters (SBS) provides specialist services to Asian and Afro-Caribbean women, particularly in relation to domestic violence issues.

In June 2007, Ealing Council announced proposals to move away from funding particular organisations (such as SBS), towards

⁸ R (Kaur) v London Borough of Ealing [2008] EWHC 2062 (Admin)

commissioning services (including domestic violence services) following a competitive bidding exercise.

Despite concerns raised during consultation that plans had not been equality impact assessed, and that commissioning could disadvantage grassroots community initiatives, Ealing decided to press ahead with its proposals.

During discussions about criteria for commissioning domestic violence services, SBS had highlighted the adverse impact the criteria could have on pre-existing domestic violence services provided to women from ethnic minority communities, and so an equality impact assessment should be carried out.

Ealing carried out belated impact assessments on proposals before deciding to proceed with the existing domestic violence services commissioning criteria, resulting in two SBS service users launching a judicial review of the decision.

Ultimately, Ealing conceded these submissions and withdrew from the case. However, in an oral judgement, Lord Justice Moses reiterated the importance of undertaking an equality impact assessment, and also the importance of carrying out an impact assessment before policy formulation.

Impact assessment requires public authorities to consider all relevant, available information in order to anticipate any likely negative impact on people from different racial groups; on disabled people; or on men and women; and seek to avoid that negative impact by taking alternative courses of action wherever possible.

For example, the equality duties require public authorities to consider the potential impact of redundancies or reductions in service on race relations. If ethnic minority staff are disproportionately affected by a 'last in first out' redundancy policy, could this lead to tensions or a sense of grievance in the community, as well as potentially being indirectly discriminatory?

Similarly, under the Disability Equality Duty, public authorities are required to promote disabled people's participation in public life. 'Public life' is defined very broadly in the statutory Codes of Practice⁹ and can include

⁹ For both the England and Wales, and Scotland, Codes of Practice, see www.equalityhumanrights.com/en/forbusinessesandorganisation/publicauthorities/disabilityequality/Pages/Codesofpractice1.aspx

participation in tenants' associations, school councils, or in public appointments. Decisions which restrict disabled people's ability to participate in such forums, for example by restricting access to community transport, may hamper an authority's ability to meet its statutory obligations. Such decisions may also inhibit the organisation's ability to promote positive images of disabled people.

So in making a decision regarding funding or service provision, public authorities must assess the potential impact of that decision, both positive and negative, as regards race, disability and gender. Where further action is required, public authorities must take this into account. Should a public authority be unable to avoid any potential negative impact which arises as a result of the decision, this must be a key consideration of future action, such as considering the effect of the decision when the financial situation has improved.

The reality is that, in times of financial constraint, public authorities will have to make difficult and often unpopular decisions regarding funding and service provision. The public sector equality duties do not prevent authorities making these decisions, provided that decisions are taken in accordance with the duties.

The importance of consultation and involvement

Under Gender Equality Duty, public authorities must consult staff, service users and other relevant bodies. Under the Disability Equality Duty, authorities must promote disabled people's participation and involve disabled people. Involvement requires much more active engagement of disabled stakeholders than consultation.

Public authorities should consult and involve relevant stakeholders before making important decisions. By effectively consulting and involving stakeholders, as an integral part of their decision-making processes, public authorities will be able to make better decisions by getting a clearer picture of the main equality issues in their work; gathering evidence to use in carrying out impact assessments; and increasing transparency and openness in decision-making.

Conclusion

Considering the economic climate public authorities are facing it is more important than ever that authorities meet their statutory equality duties when making decisions, particularly those regarding finance or service provision.

All such decisions should be subject to robust impact assessment, which should entail a sound consideration of relevant data to identify if the decision may have a negative impact on particular groups, and seek to avoid this. The decision-making process also requires effective consultation and involvement with stakeholders to identify and address relevant issues. When decisions are made, decision makers must have the relevant data, including the results of equality impact assessment, and of consultation and involvement, before them to ensure they reach an informed decision.

Not only are public authorities under a legal obligation to meet the duties, but the duties also constitute a tool for better decision-making, ensuring that decisions are taken in an accountable manner and do not adversely affect different ethnic groups; disabled people; or men and women.