

PUBLIC SECTOR EQUALITY DUTIES: WHERE ARE WE NOW?

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ELBA October 2012

“it is incumbent upon every institution to examine their policies and the outcome of their policies and practices to guard against disadvantaging any section of our communities”

Sir William MacPherson

A new approach to equality



- From restitution to mainstreaming
- From tort model to public law duty
- Pre-emptive duty of consideration
- From avoiding to discrimination to promoting equality

Why should you care?



- Challenges to decisions affecting employment law
- Significance of a breach of PSED for justification in an indirect discrimination claim (see Mummery LJ in *Elias v Secretary of State for Defence*)

S149 Equality Act 2010



- “(1) A public authority must, in the exercise of its functions, have due regard to the need to –
- (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
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- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
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- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
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- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

Protected characteristics



- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Eliminating discrimination



- Direct, indirect
- Harassment
- Victimisation
- Breach of equality clauses or rules
- Breach of non-discrimination rules
- (s149(1)(a) and (8))

- Advancing equality of opportunity
- - removing/minimising disadvantages;
- - taking steps to meet different needs;
- - encouraging participation in public life
- - steps to take account of disabilities
- (s149(1)(b), (3) and (4))

Fostering good relations

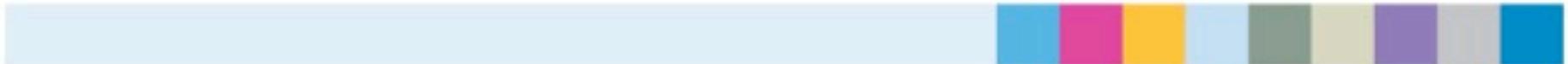


- Tackling prejudice
- Promoting understanding

General Principles (1)



- Decision makers must be aware of duty to have ‘due regard’
- Awareness must be of specific content of the duty, not just of ‘equality issues’



General Principles (2)



- ‘Due regard’ is that which is appropriate and proportionate
- The severity of effect and numbers affected are significant
- Rigor and an open mind

General principles (3)



- Timing is key
- Focus on equality is an essential preliminary, not a rearguard action
- An integral part of policy development
- Duty is ongoing/continuing
- A duty of consideration – EIA is a *tool* not an *end in itself*

Content of analysis



- EIA is a tool, not an end in itself
- Object is evidence-based policy not policy-based evidence
- Equality impact assessment may require focused consultation (see Rahman) unless adequate alternative sources of information

“Cuts” cases



- Domb
- Hajrula
- Rahman
- W
- Fawcett & EHRC s31 assessment
- Gloucester & Somerset libraries challenges
- Tuition fees
- Isle of Wight (JM) case
- R(JL) v Lancashire CC

Is the tide turning?



- MacDonald, SC
- Police v SSWP (RPI/CPI index linking) (DC) 2 12 11
- R(RP) v Brent 7 12 11 (changes to adult social care)
- Bailey v Brent (CA 19 December 2011)
- Hurley & Moore
- Greenwich Community Law Centre (CA)

Specific Equality Duties



- The Equality Act 2010 (Specific Duties) Regulations 2011
- Reg 2: Scheduled public authorities must publish information to demonstrate compliance with PSED by either 31 January 2012 (Sch 1 authorities) or 6 April 2012 (Sch 2 authorities), and annually thereafter.
- Regulation 3 each public authority must prepare and publish “specific and measurable” objectives by 6 April 2012 and every 4 years thereafter

Specific Equality Duties



- Is this a political opportunity?
- What should public authorities be publishing?
- What are equality problem areas?
- What could they do which is specific and measurable?

- Vol 1: The essential guide to the PSED (Jan 2011)
- Vol 2: Equality analysis and the equality duty: a guide for public authorities (Jan 2011)
- Vol 3: Engagement and the equality duty: a guide for public authorities (revised December 2011)
- Vol 4: Objectives and the equality duty: a guide for public authorities (revised December 2011)
- Vol 5: Equality information and the equality duty: a guide for public authorities (revised December 2011)



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