

Employment

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Public Sector Race Duty - Importance of Equality Impact Assessments

The High Court ruled that a local authority's failure to carry out an equality impact assessment before changing their funding criteria was unlawful, resulting in the Council reversing their policy.

Background

Under the Race Relations Act 1976, public authorities have a general duty to eliminate racial discrimination and to promote equal opportunities between racial groups. An order made by the Secretary of State also requires an assessment of the likely impact of a proposed policy and of methods to avoid an adverse impact before adopting the proposed policy. Guidance by the Equalities and Human Rights Commission ("the Commission") emphasises that any decision must be based upon the "results of your race equality impact assessment".

Kaur v London Borough of Ealing

The Facts

This case involved a community group called the Southall Black Sisters which had been part-funded by Ealing. This group provided services to Asian and Afro-Caribbean women, especially in relation to issues arising from domestic violence.

Ealing decided to discontinue funding by individual sponsorship of organisations. Instead, borough-wide services would be commissioned from organisations selected in competition according to published criteria. The specification stated expressly that the service provider would have to provide the service to "all individuals irrespective of gender, sexual orientation, race, faith, age, disability, resident within the Borough of Ealing experiencing domestic violence". This change, they believed, was justified in order to promote social cohesion.

The Southall Black Sisters raised concerns of a disproportionate effect on ethnic minorities. This resulted in Ealing conducting a racial equality impact assessment. Following this, Ealing maintained that it would only fund an organisation providing borough-wide services. However, it proposed to provide £50,000 if, following monitoring, funds were needed for specialist services to those of minority backgrounds. This decision was challenged by two recipients of the services provided by the Southall Black Sisters. In view of the important implications of the decision the Commission intervened in the case providing submissions on the legal issues and the content of the relevant statutory and non statutory codes.

The Decision

The High Court's key point was that "**a racial equality impact assessment should be an integral part of the formation of a proposed policy not justification for its adoption**". In other words, the impact assessment should not be used to approve a decision after it has been made.

Several other points were made on the subject of equality impact assessments:

- any departure from the Commission's non-statutory guidance would have to be justified
- the process of assessments should be recorded to contribute to transparency
- the assessment is not a box ticking exercise, it should be conducted as "a matter of substance and with rigor"
- a local authority can only deviate from its own impact assessment policy where this is a proportionate response to the circumstances

Impact

Employers should ensure that an appropriate equality impact assessment takes place before a policy is adopted or varied, taking into account the Guidance set out in the non statutory guides and the statutory Code of Practice. (Although different Guidance exists north and south of the border, the requirement to conduct equality impact assessments exists in both jurisdictions.) As this case demonstrates, if an employer fails to do this, the decision may be challenged in court and quashed.

For more information on this subject please contact Mandy Laurie on 0131 200 7496.

This Alert! is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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