

Equalities Panel – 15th June 2009

Equality Bill

1. Introduction

1.1 The Equality Bill 2009 has two main aims:

- ♦ to harmonise discrimination law; and
- ♦ to strengthen the law to promote progress on equality.

1.2 The Bill has a number of provisions that will impact on the City Council, including:

- ♦ Placing a duty on local authorities to consider how their strategic decisions might help to reduce inequalities associated with socio-economic disadvantage;
- ♦ Creating a single public sector Equality Duty to cover **age, disability, gender, gender- reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation;**
- ♦ Prohibiting unjustifiable age discrimination in the provision of **goods, facilities and services and the exercise of public functions;**
- ♦ Allowing employment tribunals to make recommendations in discrimination cases which benefit the whole workforce and not just the individual who brought the claim;
- ♦ Giving powers to ministers to require public authorities to report on equality issues.

1.3 The government hopes that the Bill will receive Royal Assent by Spring 2010, with most of the measures coming into effect the following October. The new public sector equality duties are likely to be brought in during 2011. The extension of the age discrimination provisions to goods and services is planned for 2012.

2. Socio-Economic Duty

2.1 The Bill places a duty on local authorities (and other public bodies) to consider how their strategic decisions might help to reduce inequalities associated with socio-economic disadvantage. Such inequalities might occur, for example, in housing, crime rates, health or education.

2.2 The duty applies to 'strategic decisions'. It is not intended to affect front line decisions that apply to individuals.

- 2.3 The duty is not intended to create new processes or functions and the duty will not be separately monitored, enforced or reported upon.
- 2.4 Individual citizens will not have recourse to private law because of a failure by the authority to comply with the duty, but they are not prevented from bringing judicial review proceedings against an authority in these circumstances.

3. Equality Duty

3.1 General public sector duty

The Bill creates a single public sector Equality Duty to cover age, disability, gender, gender-reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief and sex and sexual orientation. This brings together and extends the existing three separate duties on race, disability and gender.

3.2 In providing their services and functions councils will have to have due regard to:

- ♦ eliminating discrimination, harassment, victimisation and other conduct prohibited by the Bill;
- ♦ advancing equality of opportunity between people who share a protected characteristic¹ and people who do not;
- ♦ fostering good relations between people who share a protected characteristic and people who do not.

3.3 Prior to the implementation of the new duty in 2011, the Equality and Human Rights Commission intends to produce a Statutory Code of Practice in addition to supporting non-statutory guidance for employers, service providers and other stake holders to ensure that the new duty is understood and implemented effectively.

3.4 Specific public sector duties

The new overarching duty is likely to be supplemented by specific duties. As with the three existing duties (race, disability and gender) this is likely to involve the publication of equality schemes and monitoring statistics though it is anticipated that these will be able to be covered by a Single Equality Scheme rather than many individual schemes.

3.5 It is likely that public sector bodies with more than 150 employees will have to publish annual details of their gender pay gap, their ethnic minority employment rate and their disability employment rate from 2011 onwards. The government will consult on the details of this in the summer.

3.6 The Bill makes it explicit that these specific duties may be applied to the

¹ The protected characteristics are: age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex and sexual orientation. This extends the number of discrimination 'strands' to nine.

authority's procurement functions. In practical terms this means that local authorities will have freedom to include references to non-commercial matters in their procurement processes to the extent that they believe this to be necessary to comply with the general or specific equality duties. The government is saying clearly that councils can use procurement to address inequality.

4. Age discrimination in goods, facilities and services

- 4.1 A significant element of the Bill is the prohibition of 'unjustifiable' age discrimination in the supply of goods and services and the exercise of public functions. This new provision does not apply to people under the age of 18. The government will consult later this year as to how this provision will be achieved and by when. At present it is likely that this change will be introduced in phases with the government expecting that legislation will be in force in all service sectors except health and social care, by 2012. The government acknowledges that there are significant cost implications to this provision particularly in relation to health and social care.

5. Employment Tribunals

- 5.1 Part 9 of the Bill will allow employment tribunals to make recommendations in discrimination cases which benefit the whole workforce and not just the individual who brought the claim, even if the employee bringing the claim has left. This power will not apply to equal pay claims which will have to continue to be brought under the Equal Pay Act.
- 5.2 The Bill states that the long-term aim of reducing gender pay inequality is a legitimate aim for pay practices that discriminate between women and men. This suggests that short-term pay protection schemes introduced with the aim of removing long-term inequalities in pay should be objectively justifiable, provided their use is proportionate to their aim.

6. Extending Positive Action

- 6.1 Currently, although measures to encourage applications from protected groups are allowed, positive discrimination at the point of recruitment – for example, employing or promoting someone because they are from a protected group but are less suitable than other candidates, is not. The Bill proposes a minor change to this rule that will allow employers to select a candidate from a protected group in cases where two candidates were equally qualified.
- 6.2 It is interesting to note also that the Bill extends permission for political parties to use women-only short lists for election candidates to 2030.

7. Clarifying Definitions

- 7.1 Direct discrimination: “A person (A) discriminates against another (B) if, because of a protected characteristic, (A) treats (B) less favourably than they would treat or treats others.”

The definition of direct discrimination will now apply where someone is treated less favourably “because of a protected characteristic.” The definition does not imply that the victim of the discrimination has to have the protected characteristic. People will also be covered by the law if they are discriminated against because of their association with a member of a protected group, or because they are perceived (wrongly) to have a protected characteristic.

e.g. If a Muslim shopkeeper refuses to serve a Muslim woman because she is married to a Christian, this would be direct religious or belief – related discrimination on the basis of association with her husband.

- 7.2 Indirect discrimination: “A person (A) discriminates against another (B) if (A) applies to (B) a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of (B’s).”

Indirect discrimination occurs when a policy which applies in the same way for everybody, has an effect which particularly disadvantages people with a protected characteristic because they have that characteristic. The Bill gives the one definition that applies to all strands except pregnancy and maternity. At present there are slight differences in some of the definitions and the concept of indirect discrimination is not applied at all in disability cases.

- 7.3 Harassment: “A person (A) harasses another (B) if –

- (a) (A) engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating (B’s) dignity or creating an intimidating or hostile, degrading, humiliating or offensive environment for (B)
- (b) (A) engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect set out above, or
- (c) because (B) has rejected or submitted to conduct, (A) treats (B) less favourably than (A) would treat (B) if they had not rejected or submitted to that conduct.”

The proposed new definition of harassment makes it clear that it extends to harassment based on association or perception. This brings the definition into line with the new, wider definition of direct discrimination.

e.g. An employer propositions one of her staff, he rejects her advances and is turned down for a promotion which he believes he would have got if he had accepted his boss’s advances . The employee would have a claim of harassment.

- 7.4 Positive action: A new measure which allows positive action across all strands in all sectors (public and private) will replace existing

provisions. Positive action will be allowed if it is a proportionate means of addressing needs or disadvantages shared by members of a protected group. It will also be allowed to encourage wider take up in activities where the participation of members of a protected group is disproportionately low.

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