

RMBC – REPORT TO MEMBERS

1.	Meeting:	Cabinet
2.	Date:	21 September 2011
3.	Title:	Equality Analysis
4.	Directorate:	Chief Executive's Directorate

5. Summary

This report is to update Cabinet on the outcome of a Judicial Review case involving Birmingham City Council's adult social care assessment procedures, and to highlight the changes made to the RMBC Equality Impact Assessment process in light of the case.

The judicial review was lodged by a care user as a result of a decision by Birmingham City Council to fund only the community care needs of people assessed as having "critical" care needs; previously they had provided services to those individuals assessed as having overall "substantial" and "critical" care needs. The case being one of two recent decisions made by the High Court which declared the Council's decision making processes unlawful.

The Court ruled however that the cuts themselves were not unlawful, but the process Birmingham Council undertook including consultation, impact assessments, and consideration of mitigation must be a lawful process. The Court stated that all public bodies had a duty to follow disability discrimination law even though this could place "significant and onerous" obligations on local authorities. Councils were under an obligation to take account of an individual's disabilities, even where that involves treating that disabled person more favourably than others.

With the strengthening of the Equality Act 2010 and the implications of the judicial review, revisions have been made to the council's Equality Impact Assessment process which will now be referred to as 'Equality Analysis' in accordance with the guidance provided by the Equality & Human Rights Commission (EHRC).

6. Recommendations

That Cabinet agree the councils revised approach to conducting equality impact assessments to ensure compliance with EHRC guidance and the findings of recent case law.

7. Proposals and Details

Guidance provided by the EHRC on Equality Analysis and the Equality Duty emphasises “more attention on the quality of the analysis and how it is used in decision making , and less on the production of a document, which some may have taken to be an end in itself” is required.

Guidance has been issued by EHRC which suggests an approach for Equality Analysis to help public bodies meet their legal obligations. The stages are:

- Identifying who is responsible for the equality analysis
- Establishing relevance to equality
- Scoping your equality analysis
- Analysing your equality information
- Monitoring and review
- Decision-making and publication

The revised Equality Analysis form and process meets the above principles.

8. Finance

There are no direct financial implications arising. There will be a requirement to spend officer time providing briefing sessions on the new form and process and for officers who will be carrying out Equality Analysis to attend these briefing sessions.

9. Risks and Uncertainties

The Council is required to meet its obligations under the Equality Act 2010 and in particular with regards to Equality Analysis.

To reduce the risk to the Council of unnecessary challenge it is important that Managers and staff are briefed on the new form, the change in focus and the process for Equality Analysis.

10. Policy and Performance Agenda Implications

To improve access, reduce barriers and make improvements to services or information provided by the Council to local residents, visitors and employees. Address the disadvantage that individuals experience because of their protected characteristics. To reduce the risk of Council services discriminating against individuals and being opened up to legal challenge.

11. Background Papers and Consultation

Equality analysis and the equality duty: A guide for public authorities.

The judgement of The Honourable Mr Justice Walker between the Queen on application of W, M, G & H and Birmingham City Council

Community Engagement Team members and Equality & Diversity Managers were involved in the development of the revised form and guidance.

The proposed changes have been considered by the Cabinet Member for Community Development, Equality and Young People's Issues and at the Overview and Scrutiny Management Board; comments have been incorporated in the revised forms and guidance.

- Appendix 1 Equality Analysis Form
- Appendix 2 Equality Analysis Guidance
- Appendix 3 Equality Analysis Guidance one page summary
- Appendix 4 Judgement Briefing

Contact Name:

Matt Gladstone, Director of Commissioning, Policy & Partnerships, Chief Executives Directorate; email: matthew.gladstone@rotherham.gov.uk; tel: 01709 822791.

Author

Caroline Naylor, Community Engagement Officer Chief Executives Directorate
Telephone 01709 822324 email caroline.naylor@rotherham.gov.uk.

Gillian Damms, Equality & Diversity Manager, ex- 2010 Rotherham, email:
gillian.damms@rotherham.gov.uk, telephone: 01709 822238