

Briefing Note

Adult Social Care - Judicial Review Birmingham City Council Case no CO/1765/2011 & CO/1772/2011

This briefing note is to update SMT with the outcome of the Judicial Review of Birmingham City Council decided on 19 May 2011. The Review was brought about as a result of challenges to their decision to only fund the community care needs of people assessed as having "critical" care needs. Previously they provided services to those individuals assessed as having overall "substantial" and "critical" care needs as is currently the case in RMBC.

The decision by Birmingham City Council to change the criteria was made when they were facing significant cuts to their budgets. The families of four disabled people fought Birmingham council's spending cuts decision and took legal action against the authority. A Judicial Review was brought on the basis that the process the Council had gone through to assess the impact of these particular cuts, was unlawful and contrary to the Disability Discrimination Act.

This case is one of two recent decisions made by the High Court which have declared the Council's decision making processes as unlawful. It is not the case that the cuts themselves are unlawful, but the process they undertake involving consultation, impact assessments and so on must be a lawful process.

Implications for RMBC

The judgement has implications for all local authorities in England and Wales in that the judges said all public bodies had a duty to follow disability discrimination law and while acknowledging that it placed "significant and onerous" obligations on local authorities, Councils must take account of people's disabilities, even where that involves treating disabled persons more favourably than others.

The Equality Act 2010

Since the Judicial Review began the Equality Act 2010 has introduced the new Public Sector Equality Duty bringing together the previous Disability Equality Duty with other existing duties (on race and gender). It also now covers age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment. The new duty came into force on 5 April 2011.

The duty has three aims, when developing or implementing policy, it requires public bodies to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

Having 'due regard' means to consciously consider the aims when making decisions about policy or practice which would affect people and involves:

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- Removing or minimising disadvantages suffered by people due to their protected characteristics
- Taking steps to meet the needs of people from protected groups where they are different from other groups
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low

The risk to RMBC is that if we fail as a public authority to give due regard to the duty, it could be challenged through a judicial review made by an individual or by the Equality and Human Rights Commission (EHRC).

It is important therefore that RMBC demonstrates compliance with the Public Sector Equality Duty and relevant guidance regarding the Equality Act 2010 whilst ensuring continued support for engagement and involvement activity across all groups in particular those people with protected characteristics.

By using equality monitoring data, engagement opportunities and targeted consultation, managers will then have sufficient information for reliable equality analysis which is essential to show they have an adequate evidence base for any decision making.

Author

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

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