

## High Court Challenge to Loss of Funding

Section 149 of the Equality Act 2010 imposes the public sector equality duty: the fundamental obligation on a public authority to have regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between diverse groups in the exercise of its functions.

A recent case was brought by the director of a charity providing services to people with learning disabilities who was also a beneficiary of the charity. In her capacity as a beneficiary she challenged the London Borough of Lambeth's decision to withdraw the charity's funding on the basis that this had amounted to a decision to no longer provide such services and therefore was a breach of the equality duty.

The withdrawal of funding was first agreed by the Council in January 2011 without reference to what was formerly known as an Equality Impact Assessment and is now referred to as an "analysis of the effects on equality" under the 2010 Act, although an Impact Assessment had in fact been prepared. However in April 2011 the local authority set aside this decision, prepared a further Equality Impact Assessment and determined to commission some of the services previously provided by the charity from another provider. The charity's director (also a service user) brought judicial review proceedings, submitting that the January decision to stop commissioning the type of services it provided had engaged the equality duty contained in section 149 of the Equality Act and that the local authority had breached that duty and had failed to consult.

The High Court drew a distinction between the withdrawal of funding to a particular organisation and the decision to stop funding services altogether. It held that the latter decision engaged the equality duty. However as the January decision had already been set aside, there was no point in granting a remedy.

In relation to the decision to commission services from another provider, the court held that it was up to the local authority to determine the scope of the consultation and that it had properly considered the consultation responses before making the second decision. The court did not uphold the local authority's case that the proceedings had been an abuse of process. The Claimant had raised a legitimate issue concerning the services to be provided for people with learning disabilities and she was entitled to bring them as a user of the charity's services and was not debarred by the fact that she was also a director of the charity.

Although this challenge to a local authority's re-commissioning process did not succeed, the case is a helpful reminder that funding decisions may be challengeable if a proper assessment of the impact of the withdrawal of services has not been carried out or has not formed the basis of a commissioner's decision.

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