

Equality and
Human Rights
Commission

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Local Government Chronicle Conference: Interpreting and Implementing the Equality Bill

Session Title: ‘What can the Equality and Human Rights Commission do to help local authorities implement the bill?’

The reform of public services today is not an option: it is an imperative.

We face two serious pressures. The first is economic. Even if the economy begins to grow steadily by the end of the year – as some predict – there will be significant constraints on public spending for a generation to come. Local authorities, who were among the first in the public sector to feel the effects of recession, will understand better than most the hard choices that this will entail. I don’t want to be the bearer of bad news, but PWC suggest in a recent report that the squeeze on some councils could be as severe as 20-30% over five years¹.

¹ “The Perfect Storm” PWC Market Update, 2009

The second great pressure is demographic. In the past 40 years the number of people aged over 90 has tripled². An ageing population has fundamental implications for the way we plan our towns, the way we work, and the way we organise social care. Not to mention the way we manage rural life. Meanwhile the enlargement of the European Union and the falling cost of travel and have changed the nature of migration. We are seeing much more churn, greater and speedier flows of people. The world is more footloose.

The confluence of these two pressures leads to an irresistible conclusion: local authorities simply cannot carry on with business as usual.

We in the Equality and Human Rights Commission try to see the silver lining. To paraphrase Rahm Emanuel, an obligation to do things differently is an opportunity to do things better. Reform is a chance to embed understanding of equality and respect for human rights in the way public services are designed and delivered.

Some make a moral case: seeking to treat people fairly is the right thing to do. Others make a utilitarian one: in their book "The Spirit Level" Richard Wilkinson and Kate Pickett argue that in more equal societies, everyone is happier. These arguments are contested. But a concern for equality and diversity is not the exclusive preserve of the right-on and

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http://www.statistics.gov.uk/downloads/theme_social/Social_Trends39/Social_Trends_39.pdf/

the sociologists: it is increasingly characteristic of the most goal-oriented, business-minded organisations.

Private firms see a means to recruit and retain the best employees, to reach new customers, and to gain an edge in competitive markets. The public sector perceives a way to make the public's money work harder on their behalf. Both our Commission's Human Rights Inquiry and evidence on implementation of the existing public sector duties show that thinking about equality and human rights can help ensure more efficient, effective services that get it "right first time."

This is why, in the Commission's view, the Equality Bill currently before parliament is extraordinarily timely. On one hand it makes the law easier to understand, easier to access, easier to enforce. On the other, it matches new expectations of public bodies with new clarity and flexibility about what they can do. Put simply, though we are still looking for some improvements, the Bill provides the stimulus and the means for the fully-fledged culture change that is vital to enable public services to succeed in this challenging new environment.

For local government, the Bill means new concepts, duties and powers to adjust to. By this point in proceedings I imagine you have the mantra of socio-economic duty, positive action, age discrimination and the rest off by heart.

No-one is going to pretend that change is always easy, or comfortable. But many local authorities have a track record that others would envy. They have a close connection with the people they serve. They have experience in giving a voice to those who would otherwise go unheard - through, for example, the use of "young advisors." They have expertise

in bringing people from different backgrounds together. They have an intimate understanding of the grass roots voluntary sector. And they know the importance of working in partnership, especially in the current climate.

What is more, in the Improvement and Development Agency, they have an authoritative guide and advocate. IDeA's work on the Equality Framework for Local Government anticipates important elements of the Bill, such as the single equality duty. Therefore there are good grounds for local authorities to look forward with confidence.

So what of the role of the Equality and Human Rights Commission? The Commission aspires to be a modern regulator. We have a wide range of tools at our disposal and aim to use the right ones for the right job. Where organisations are in breach of their responsibilities we will take enforcement action. As some of you may know, for example, this week the Commission is writing to a number of local authorities warning them that that may be failing to meet their responsibilities under the gender equality duty. We think that some of those have neglected even to look at the evidence before making decisions about funding services for victims of violence against women – despite the fact that this is serious problem affecting 3 million women every year and costing the economy £40bn each year. There will be compliance notices for those who fail to put things right.

But while we will not hesitate to take uncompromising action where it is called for, the Commission's first duty is to work in partnership with those organisations – and in local government I think they are the overwhelming majority - who take their responsibilities seriously. We

should be there not simply to admonish when things go wrong, but to explain and encourage so that it is easy for organisations to get it right, consistently and predictably. The Commission and local authorities have already been able to find shared ground to debate issues of common concern, such as the accommodation needs of Gypsies and Travellers. This resulted in the Commission's guidance document "Simple Solutions," published back in March.

So let me make clear some of our expectations as we prepare to explain and enforce the new legislation. There are 3 key principles which will guide us in our regulatory role.

Outcomes

First, when we assess how local authorities are measuring up to the single equality duty, we will look for evidence of practical progress.

In the past – I put my hands up here as former chair of the Commission for Racial Equality – we put far too much faith in what might be called "the bureaucratic theory of change." The idea was this. We would make you produce a document setting out your organisation's policies on equality and fair access. The very act of writing that document – so the theory goes – would make you re-examine your processes and policies and do what needed to be done to sort out the problem, whether it was cutting rates of smoking among Bangladeshi men, improving staying-on rates among white working-class girls, whatever.

But what happened in practice in far too many cases was this.

Organisations became expert at writing policy documents full of good intentions. Far too much energy was directed into convincing the

watchdogs; far too little at actually sorting out the problems. And the watchdogs (among them me) were misguided enough to be satisfied with this. If you want a parallel, think a certain brand of Communism: “The Right Ideological Perspective will lead to a Bountiful Harvest.” It didn’t work in 1930s in the Soviet Union. It hasn’t worked today.

What we care about, what we want to see, and – crucially - what we want to be able to hold public authorities to account for, is change for the better. The public sector duties should be framed in such a way that the Commission can base its tests for compliance on measurable, specific, time-limited outcomes. In other words, achievement, not its simulacrum. Progress, not process. As the Equality Bill nears the end of its parliamentary passage, we want to work with the Government to make sure that this is what it will actually deliver. The benefits are clear: less bureaucracy for you, less bureaucracy for us, better results for the people we serve.

Evidence

The second principle the Commission will apply as regulator is respect for evidence. Local authorities know that the best policies are based on careful observation and intelligent analysis of how different people are affected by different choices. Yet sometimes, we see evidence put aside in favour of dogma.

Some local authorities took the report of the Commission on Integration and Cohesion as the cue to stop what was called “single group funding.” The argument went that funding groups aimed primarily at supporting particular types of people – Bangladeshi women, LGB youth – was unsound, because it could lead to resentment among other groups. In

fact, the recommendation was more nuanced than that, identifying scenarios in which single group funding was justified in the interests of promoting equality³. And the Government subsequently made clear that it does not subscribe to a presumption against targeted, specialised support⁴:

“we consider that it is only local leaders who can properly understand the context, assess the local circumstances, and be in a position to make a truly informed choice.”

Authorities are going to have to make some difficult choices about funding local groups in the years to come. It is up to them to make those choices. But none should think that that they have free rein to cut funding to equality groups without properly examining the impact. If there are signs that those groups have been selected as an “easy target,” without sound analysis, the Commission will take it very seriously. For anyone who wonders what that means, please remember Southall Black Sisters.

Southall Black Sisters were a support group in Ealing, who, among other things, provided particular help for black and Asian women who had experienced domestic violence. They had their funding cut unexpectedly by the local council. The council argued that it would be better to concentrate on support services that helped all women. Southall Black Sisters took the council to court. We in the Commission supported them. It became apparent that the council had failed to

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[http://collections.europarchive.org/tna/20080726153624/http://www.integrationandcohesion.org.uk/~media/assets/www.integrationandcohesion.org.uk/our_shared_future%20pdf.ashx](http://collections.europarchive.org/tna/20080726153624/http://www.integrationandcohesion.org.uk/~/media/assets/www.integrationandcohesion.org.uk/our_shared_future%20pdf.ashx) p164 in particular

⁴ <http://www.communities.gov.uk/documents/communities/pdf/1096594.pdf>

consider the impact that their decision would have on different groups, and in doing so, fallen short in their statutory duties. The council withdrew from the case, having lost a lot of time and money and goodwill. A salutary lesson, perhaps.

Other Actors

The third principle the Commission will apply in enforcing the Bill is an emphasis on partnership. We will take the lead in enforcing and implementing the new framework. But we do not want to be the only policeman on the beat, so to speak. Equality and human rights should be a concern for other regulators – the Audit Commission, OFSTED, the Care Quality Commission. It is our belief that for them to do their job properly they cannot be indifferent to the differential experiences of people from different backgrounds.

In other words, a school that fails its Afro-Caribbean pupils should not get a clean bill of health. A local authority where older people are isolated and unsupported should be held to account. The Commission hopes to sign Memoranda of Understanding with the relevant regulators to give substance to that aspiration.

I should also say – drawing on my own experiences in the Greater London Authority – that Local Scrutiny Panels also have a role here. As part of the “quality assurance” that makes sure public money is doing what it is supposed to, they can alert authorities to shortfalls and gaps that leave particular groups vulnerable. Equality needs to be in their vocabulary.

Nor should the equality bill, when passed, belong solely to official bodies. For example, the Local Democracy Bill currently before parliament would give people the right to expect a response to petitions made to their council. This might offer one alternative, democratic means for people to demand redress and remedy when their expectations and rights under the Equality Act are not met.

The Offer

These then are some of our expectations. Behind them lie our principles as a regulator.

We want to focus on progress, not process.

We want to rely on evidence, not dogma.

And we want to put our energy into partnership, not protest.

And in that spirit let me make clear what we will offer in that partnership.

We will provide clear and authoritative guidelines that help organisations understand the Bill and put it into practice. Our plan is that no-one should have to read more than is relevant to them. They should know the minimum legal requirement: but they should also have access to information about how they could go beyond the minimum, if they wish. The guidance will be illustrated with practical examples, grounded in the real-life experience of firms and public sector bodies. Therefore we are keen to work with, and learn from, the local authorities delivering in our communities. Through the IDeA and LGA we have already canvassed views on what kind of situations the guidance should cover (I'm tremendously grateful, by the way, for the efforts that those organisations are putting in to this): and in due course we hope to get

the views of front-line users on what we're producing: because if guidance is to do its job properly, it needs to work for them.

A word on localism. Very often there is no one answer to overcoming inequality, especially when it comes to some of the most complex and deep-seated causes of disadvantage, such as socio-economic background. There may be elements common to all successful approaches - an emphasis on gathering evidence, measuring impacts and analysing trends - but a variety of approaches is not a weakness. On the contrary, experiment is often a way of testing the most effective solutions. Therefore, we in the Commission expect to keep prescription to a minimum and encourage local innovation.

Finally, if and when the Equality Bill becomes law, the key to implementing it successfully will not lie in some obscure alchemy or theoretical formula. It will lie in seeing people as individuals and treating them with dignity and respect. This, surely, is local government's stock in trade. Perhaps, then, I can end by turning around the question: "what can local authorities do to help the Equality and Human Rights Commission implement the Equality Bill?"