



A legal perspective on the public sector duty

Judy Walsh

Human rights & equality law: implementation machinery

Enforcement: reactive

- Individual complaint = system of redress
- IHREC – command & control e.g.
 - Legal proceedings in own name
 - Inquiries
 - Equality reviews & actions plans

Proactive implementation/ preventative measures

- Codes of practice, good practice guidance, research, voluntary equality reviews & other promotional work

Implementation machinery

- Equality law: prevention driven by promotional work of Equality Authority (now IHREC), public sector equality networks etc. but voluntary & so taken up by select 'good' duty-bearers (with public sector generally faring much better re employment than service provision a/c to EA reports)
- IHREC Act 2014 introduces a modest proactive public sector duty

Proactive duties: general nature

- Designed to prevent discrimination / human rights violations arising in the first place
- Cover a wide range of bodies, not just those found to have violated law
- Shifts the responsibility to implement law to duty-bearers, reducing the burden on individuals
- Require attention to promoting equality in addition to eliminating discrimination / human rights violations = better tool for unearthing & tackling complex discrimination (e.g. institutional racism)

What do public bodies have to do here?

- Must in performance of functions have regard to the need to:
 - ▣ Eliminate discrimination
 - ▣ Promote equality of opportunity
 - ▣ Protect human rightsin relation to both staff & service users

- Very broad coverage e.g. functions include powers and duties of public bodies; entire sweep of Irish human rights and equality law

What do public bodies have to do?

- Give effect to this through ‘self-assessment’ exercise (with guidance from IHREC) fed into strategic plans & annual reports
- Basically requires public bodies to generate policies / refine existing policies on discrimination, equality and human rights & report on steps taken
- No particular outcome required e.g. provision of X number of serviced sites by Y date

Assessment & reporting

- Set out in a manner that is accessible to the public in its strategic plan an **assessment** of the human rights and equality issues it believes to be relevant to the functions and purpose of the body and the **policies, plans and actions** in place or proposed to be put in place to address those issues, and
- Report in a manner that is accessible to the public on developments and achievements in that regard in its annual report

Added value?

- Transparency and accountability
- Should ensure that attention is paid (at least) to **all** nine grounds under discrimination law including 'race' and membership of Traveller community
- Human rights strand neglected to date?
- Bring together discrimination, human rights and equality of opportunity = take account of difference and tackle disadvantage

Enforcement?

- What happens if public body doesn't have regard to need to eliminate discrimination etc.?
- Cannot be enforced in a court / tribunal etc.
- But where IHREC considers there is evidence of a failure to perform functions in manner consistent with duty & that it's appropriate to do so can *invite* public body to:
 - ▣ Carry out a review, or
 - ▣ Prepare and implement an action plan
(can relate to whole or particular aspect of duty)

Evolution vs. revolution

- Existing discrimination law contains strong incentives for proactive measures (evidence of good compliance on part of many public sector bodies re staff, less so in area of services)
- Public bodies already supposed to proactively consider compliance with Convention provisions under European Convention Human Rights Act 2003 etc.

Suggested Questions

- (1) What are the benefits of combining human rights and equality issues in the duty?
- (2) Is IHREC's power to trigger a review/ action plan necessary to give the duty some teeth?