

EQUALITY AND DIVERSITY IN SERVICE DELIVERY

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BRIEFING NOTES

By Gertrude Badejo

As advertised: [Getrude Badejo's](#) workshop will provide an opportunity for you to develop an understanding of **equality** and **diversity** with references to legislation and practical examples. Use inclusion and **diversity** methods to check the business risk factors and identify business gains in procurement. Topics include the business case for **equality** and **diversity**, the legal framework, **diversity** in **service** development, and protecting your business from risk of a tribunal and the bad publicity.

In succeeding paragraphs are some of the key points addressed during the seminar.

Terminologies

Direct discrimination	Less favourable treatment of a person compared with another person because of a protected characteristic.
indirect discrimination	Indirect discrimination happens when there is a rule, a policy or even a practice that applies to everyone but which particularly disadvantages people who share a particular protected characteristic. However, it doesn't count as indirect discrimination if the person applying the policy can justify it.
Perception	In the Act, the belief that someone has a protected characteristic, whether or not they do have it.
Unlawful	Not permitted by civil law (as distinct from illegal which means 'forbidden by law' and could be criminal).
Unlawful discrimination	When an employer has engaged in prohibited conduct against someone with a "protected characteristic" and does not have a valid defence. E.g. Unlawful discrimination because of disability

Business Case in favour of Equalities and Diversity

Many people and organisations are aware of the equality debate in society – such as tackling worklessness and homelessness. But there are still unfair discriminatory practices. Arguments in favour for Equality and Diversity are:

- Moral responsibility to promote equality and respect for the person
- Overcoming cultural differences
- Reaching out to diverse service users
- Ensuring a diverse workforce that create effective productivity
- The Law says so...

Legal Framework – Single Equality Act 2010

Up until April 2010, there were nine key legislation on discrimination – such as laws governing equal pay, equality of the sexes, religion, and sexual orientation.

The Equality Act 2010 replaces all the nine existing legislation and simplifies the current law. The new law is geared to be more effective in tackling disadvantages and reinforcing individual right. Most of the provisions in the Equality Act 2010 came into effect on 1 October 2010.

Anticipated timetable

- Integrated Public Sector Equality Duty 2011
- Dual discrimination protection April 2011
- Ban on age discrimination in the provision of goods, facilities, services and public functions 2012
- Private and voluntary sector gender pay transparency regulations 2013
- Publication of diversity data 2013

Protected Characteristics as key feature of the Equality Act 2010

Before being encoded in the law, the Equality and Human Rights Commission developed the concept of “seven strands” of diversity. The Equality Act 2010 enshrines the following “protected characteristics” and gives protection on:

- Age
- Disability
- Gender reassignment (Transgender)
- Marriage and Civil Partnership
- Pregnancy and maternity
- Race (Ethnicity)
- Religion or belief (Faith)
- Sex
- Sexual orientation

Under the 2010 Act, direct discrimination occurs when someone is treated less favourably than another person because:

- they have a protected characteristic,
- they are thought to have a protected characteristic, or
- they associate with someone who has a protected characteristic.

There is a wider interpretation on protected characteristics and enhanced for people suffering from disability, transgender and nursing mothers.

Principal changes brought in by the new law (individual rights, employers and/or service providers' responsibilities)

- Single Justification test
- Direct discrimination easy to prove
- Discrimination arising from disability and definition on disability expanded (section 15)
- Restrictions on health related check before job offer
- Reasonable changes ('adjustments') required to meet the need of disabled persons
- Nursing mothers allowed to breast feed babies in public (but no provision required at work)
- Staff can question equal pay (more transparency on 'gagging' clause)
- Discrimination by association – e.g. carer's right
- Discrimination by perception – e.g. assumption on sexual orientation, but exception to perceived marriage/civil partnership
- Changing the definition of gender reassignment, by removing the requirement for medical supervision.
- No less favourable treatment when receiving services - basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions; premises; work; education; associations, and transport.
- Clubs with 25 members – should become more inclusive
- **Positive action** for those with protected characteristic, especially, voluntary bodies can target disadvantaged or under-represented groups
- Harassment is *effect of violating a person's dignity or unwanted conduct leading to degradation*. Two main duties
 - related to a protected characteristics
 - sexual harassment and/or gender assignmentEmployers and/or service providers could be liable for harassment by third parties. Defence – reasonable steps have been taken to prevent conduct.

Equality in Procurement

If you're interested in public sector contract, you must do equalities...

The public sector spends millions of pounds on contract provisions. There is broadening requirement for public sector to use the procurement process as a vehicle for promoting equality and diversity. Sometimes the equalities and diversity elements and its impact on the service users are not monitored effectively.

The new Single Equality Duty on public authorities will become effective from April 2011. By virtue of the new law, public sector organisations will be required to make a difference in addressing equality in the procurement process. Also the Minister of Public Sector has powers under s155 to ask public bodies to use procurement to address equality consistently.

This means that public sector organisations may consider non commercial matters in the procurement process. Businesses in the European Union are allowed to bid for most UK contracts to provide services. The public sector organisation should not set conditions that require changes to the organisation's structure or cost the organisation money to obtain external accreditation. Otherwise this would be seen as discriminatory or a barrier to freedom to provide services under European Community Law.

Sub-contractors working on public sector bids are required to demonstrate equality and diversity in their approach.

Practical Tips: to ensure compliance, speak to the principal authority and ask for supplier's diversity framework. The Procurement Officer should be able to tell you where small contracts are advertised. Ask to be put on their training courses or preferred list of contractors. For more information on procurement opportunities check the websites of Office For Government & Commerce (OGC), Society For Procurement Officers (SOPO), **TED**, **OJEU**, CompeteFor (Olympic opportunities), and local authorities.

Mainstreaming Commitment and that winning streak

Valuing diversity is the cornerstone of equalities. Service providers should find ways to design and deliver service that customers need rather than engineer the approach. Service improvement approach can impinge on these factors:

- Identify customers needs (wants and demands)
- Provide a user friendly service (by thinking outside the box, asking for views, and making reasonable adjustment)
- Measure outcomes by setting targets and monitoring performance.

Service providers can achieve equality and diversity by:

- Developing effective leadership strategies and policies
- Celebrating diversity – e.g. sponsoring community project
- Going for an award – e.g. 2 tick symbol 'positive about disabled people'.

Get it wrong and pay the price

Despite the pressure, scarce resource allocation and community tension, organisations who fail to adhere to equalities rules may infringe intentional or unintentional pain on stakeholders. In any conflict situation, there is a misunderstanding and the inability to deal with an individual's concern.

Service providers should beware of:

- Staff' feelings and behaviours (ensure frequent monitoring and give appropriate training to support your staff)
- Failing to make adequate provisions for service users who may be treated “worse” than other people
- Making unsavoury comments that could be misconstrued
- Bad Publicity - the media will jump on malpractice case. Though complaint is good barometer of gauging satisfaction, beware that unresolved complaint can cost money and damaged reputation. Example of current headliner “*BBC presenter Miriam Reilly warned over wrinkles*” Thurs 4 Nov 2010 on Personnel Today

An aggrieved person could take an action against the “perpetrator” in a court of law.

- **Employment Tribunal** - deals with discrimination at work and redundancy cases. Tribunals now have extra powers under the new law to make recommendations in discrimination cases that will benefit other people who work for the employer. There is now “**reverse burden of proof**”.
- **County Court** - deals with claims for discrimination when buying goods or getting services. It has the power to grant injunctions, specific performance, and damages.

For More Information

- Equality and Human Rights Commission: www.equalityhumanrights.com
- Government Equalities Office: www.equalities.gov.uk
- ACAS www.acas.com
- British Chambers of Commerce: www.britishchambers.org.uk
- National Council for Voluntary Organisations: www.ncvo-vol.org.uk
- Charity Commission for England and Wales: www.charity-commission.gov.uk
- Chartered Institute of Personnel and Development: www.cipd.co.uk
- Radar the disability network radar@radar.org.uk
- Age UK: www.ageuk.org.uk
- Carers UK: www.carersuk.org
- Directgov: www.direct.gov.uk
- You can also visit your local Citizens Advice Bureau.

AN OVERVIEW OF THE EQUALITY ACT 2010

In comparison with previous legislation**

Key

Characteristic covered in existing legislation – no changes	No change
Characteristic covered in existing legislation – but some changes	Changes
Characteristic not covered in existing legislation – now covered	New
Characteristic not covered in existing legislation – still not covered	No protection

	Disability	Gender reassignment	Pregnancy and maternity	Race	Religion or belief	Sex	Sexual orientation
Direct discrimination	Changes	No change	No change	No change	No change	No change	No change
Discrimination by association	New	New	No protection	No change	No change	New	No change
Discrimination by perception	New	New	No protection	No change	No change	New	No change
Indirect discrimination	New	New	No change	No change	No change	No change	No change
Harassment	Changes	Changes	No protection*	Changes	No protection*	Changes	No protection*
Victimisation	Changes	Changes	Changes	Changes	Changes	Changes	Changes
Positive action	Changes	Changes	Changes	Changes	Changes	Changes	Changes
Associations and private members' clubs	No change	New	New	No change	New	New	No change
Charities	Changes	Changes	Changes	Changes	Changes	Changes	Changes
Discrimination arising from disability	New						
Reasonable adjustments	Changes						

* Where there is no specific harassment protection, direct discrimination protection prohibits treatment such as bullying and harassment which results in a person being treated less favourably.

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