

# Tackling Hate Crime: what is the role of the local authority?

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This paper is developed from ILS talks in the second half of last year concerning Post Referendum Racism.

YouTube was awash with videos that promoted far-right racist tropes, such as antisemitic conspiracy theories. We found titles that included “White Genocide Europe— Britain is waking up”, “Diversity is a code word for white genocide” and “Jews admit organizing White Genocide”. Antisemitic holocaust denial videos included “The Greatest Lie Ever Told”, “The Great Jewish Lie” and “The Sick Lies of a Holocaust ‘Survivor’”. We brought a number of examples to YouTube’s attention, some of which, on the basis of their shocking content, were subsequently blocked to users residing in the UK.<sup>2</sup>

The scale of the problem is immense and is a good example of the way self-statementing can result in action.

## Public Sector and Prevent

Under s 26 Counter-Terrorism and Security Act 2015 a local authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism.

Government guidance indicates that this “Due regard” as used in the 2015 Act means that authorities should place an appropriate amount of weight on the need to prevent people being drawn into terrorism when they consider all the other factors relevant to how they carry out their usual functions.

## Drawn into what?

“Terrorism” under Terrorism Act 2000 means the use of action or the threat of action of particular types. The aim of the use of such action must be to influence the government or an international governmental organisation, or to intimidate the public or a section of the public. The use of action or threat of it must be made for the purposes of advancing a political, religious, racial, or ideological cause.

So the duty in section 26 is to have due regard to the need to prevent people from being drawn into

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<sup>2</sup> Para 11 Commons Home Affairs Committee report: Hate crime: abuse, hate and extremism online HC 609 Published on 1 May 2017.  
<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/609/609.pdf>

## Tackling Hate Crime: what is the role of the local authority?

“Action which is aimed at influencing the government (or intimidate the public) and is made for the purposes of advancing a political, religious, racial, or ideological cause.”

“Action” must :

- (i) involve serious violence against a person;
- (ii) involves serious damage to property,
- (iii) endanger a person’s life other than that of the person committing the action,
- (iv) create a serious risk to the health or safety of the public or a section of the public, or
- (v) be designed seriously to interfere with or seriously disrupt an electronic system.

This “action” can be in the UK or out of the UK (i.e. anywhere in the world).

The person or property can be in the UK or out of the UK (i.e. anywhere in the world).

The concept applies to influencing any government, in or out of the UK. Finally it also includes action taken for benefit of proscribed organisations.

Government guidance on s26 refers to a definition of extremism from its Prevent strategy. This is

*“Vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. ...”*

British Values include the value of tolerance and belief in the rule of law. International Treaties such as Convention on the Elimination of Racial Discrimination represent such fundamental values as do all the norms of international law. Moreover the adoption of the Prevent Strategy must be seen in the light of the aim of government expressed in the PSED, namely to foster good relations between groups of one race/religion(belief) and others.

Public Authorities thus have a special duty to counter extremism. Extremism means all forms of non-violent extremism which can create an atmosphere conducive to terrorism and can popularise views which terrorists can exploit.

It is obvious that racism within the workplace and within broader society undermines these British Values.

### The case from “self interest”

The Equality Act 2010 uses the concept of vicarious liability. Acts carried out “in the course of employment” are the acts of the employer. There are debates in the case law on whether acts occurring off premises or out of working hours are in the course of employment and it depends on the factual situation (see e.g. **Chief Constable of Lincolnshire v Stubbs** [1999] IRLR 81 (EAT), and whether the victim or discriminator was on duty or at a function at which customers were also present along with unrelated third parties. It will be a matter of degree. Thus it is more likely if the event took place immediately after work, than in the case of a chance meeting in a supermarket.<sup>3</sup>

Note also the cases concerning liability for acts outside employment. In **JGE v Trustee of Portsmouth RC Diocese** [2012] EWCA Civ 938 the test for such liability was said to whether the relationship involved was so close to employment that it was fair and just that it is just and fair to hold the employer liable.<sup>4</sup> The test can be expressed as being that liability for the actions of a person will attach to the Defendant where the harm is done by a person who carried on activities as an integral part of the business activities carried on by the Defendant and for its benefit rather than his activities being entirely attributed to the conduct of a recognisably independent business of his own or a third party, and where the tort is a risk created by the Defendant assigning those activities to that person.

### The employer's defence

The employer will not be able to run a defence against an allegation of discrimination unless all reasonable steps to prevent the act or the type of act were taken (section 109 EA 2010). Cases discussing this include **Fox v Ocean City Recruitment Ltd** UKEAT/0035/11 and 0183/11 on when to take reasonable steps for s 109(4). The stringency of this rule was considered in **Canniffe v East Riding of Yorkshire Council** [2000] IRLR 555. A tribunal (and a court where necessary) will consider the steps the employer took and then consider if there were other reasonable steps that it could have taken. It will then consider what effect those steps were likely to have had.<sup>5</sup>

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<sup>3</sup> E.g.s: unwanted sexual advances - *HM Prison Service and others v Davis* UKEAT/1294/98 and one off incident at a function: *Sidhu v Aerospace Composite Technology Ltd* [2000] IRLR 602. However note the dates of these two cases. Much has changed.

<sup>4</sup> This test was also used in the *Christian Brothers* case [2012] UKSC 56 and endorsed in *Cox v MoJ* [2016] UKSC 10.

<sup>5</sup> *Casparsz v Ministry of Defence* UKEAT/0599/05; see the discussion of the defence in EHRC's statutory code para 10.50 (and discussion of defence).

## Tackling Hate Crime: what is the role of the local authority?

For a long time the unions and local government have worked together on anti-racism campaigns in most if not all authorities. These are the types of factor that are taken into account when considering the employer's defence. So the courts and tribunals will consider whether the LA was putting out a positive message about diversity, and whether racist graffiti and conduct is eliminated at work. This will now include the e-sphere. There are issues of definition surrounding the e-sphere which I will examine. Definitions of gross misconduct will (or should) include

- engaging in unlawful discrimination or harassment; and
- Bringing the organisation into serious disrepute.

The judges will look to see whether the organisation has and implements an equal opportunities policy and an anti-harassment and bullying policy. These need to be reviewed from time to time. Most local authorities have at least a theoretical review. However in the light of recent events, a review which focuses on the way in which hate activists organise themselves may be necessary.

One impact of the vote on the Referendum appears to have been that people feel that there is a permission to express racially negative views. After all, the politicians, or some of them, appear to have come very close to doing so or have explicitly crossed the line. So now, and more frequently making staff aware of the policies and their implications and engaging in training is an important means of ensuring that discrimination does not gain a foothold.

Local authorities should also consider, in line with the PSED, whether to require these standards of all companies who tender for work with them, and to take action when the standard does not appear to have been reached.

Any employer will be expected to deal effectively with complaints, including taking appropriate disciplinary action. Thus the standard that the local authorities are asking from contractors is no more than that they should observe good practice (as set out in the EHRC's statutory code<sup>6</sup>).

### Protecting employees

Although the provision of the Equality Act 2010 dealing with third party harassment of an employee is said to have no apparent force in UK law, the position of local authorities (at the least) is more complicated and will

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<sup>6</sup> It is worth bearing in mind that the EHRC's codes on employment, and the one on Goods Facilities, Services, Public Functions and Association were subject to parliamentary scrutiny and are subject to the approval of parliament. It is not therefore a very big step to require contractors to observe the standards set out in both documents. The requirement that they do so can be a useful educating moment for some organisations.

remain so for some time (even after Brexit if a statutory stasis is maintained).

Under EU law the Directive relating to Race Discrimination (2000/48) requires the employer to give protection against third party harassment. Whilst there has been controversy on this point, the case law appears to be solidly behind this point.<sup>7</sup> In the light of recent case law of the CJEU this may require disapplication of the repeal of section 40 Equality Act 2010.<sup>8</sup>

### **Liability for agents**

Section 109(1) EA 2010 deals with questions of liability of agents which is essentially the common law concept of agency.<sup>9</sup>

### **Expanding effect**

A policy which is worth having would involve prohibiting “harassment of, or discrimination against, employees, contractors, clients or members of the public, related to gender, marital or civil partner status, gender reassignment, race, colour, nationality, ethnic or national origin, disability, religion or belief or age contrary to our Equal Opportunities Policy or our Anti-harassment and Bullying Policy; regarded as misconduct (or gross misconduct).”

### **Non obvious cases**

I will not deal with the practice concerning obvious cases, such as racially motivated fighting, as I believe that the pre-emptive work that can be done is more important but is perhaps less obvious. For the same reason I will not deal with the criminal side of race hate. However it is worth reflecting that many of the cyber related incidents may themselves constitute criminal offences (such as breach of section 1 Computer Misuse Act 1990). The usual procedure should be followed in respect of any disciplinary matter, and the same standard (relative to severity) should be adopted. Is it more likely than not that the conduct complained of took place? Of course mitigating circumstances should be taken into account.

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<sup>7</sup> see *Conteh v Parking Partners Ltd* UKEAT/0288/10 in action will “rarely” create liability. However for local authorities: *Sheffield City Council v Norouzi* [2011] IRLR 897, *Gravell LB Bexley* UKEAT/0587/06 (a policy of ignoring racist abuse from customers and forbidding staff from telling customers that such comments were unacceptable was subjecting the employee to harassment. Until Brexit local authorities must also give effect to the EU Charter of Fundamental Rights in areas governed by EU law, such as provision of goods and services (to protect against race and gender discrimination) and in the field of employment for all of the protected characteristics under the Equality Act 2010).

<sup>8</sup> See CJEU cases of *Rasmussen and Kucukdevici*

<sup>9</sup> *Kemeh v Ministry of Defence* [2014] EWCA Civ 91, *Hall v Xerox UK Ltd* UKEAT/0061/14, *Lana v Positive Action Training and Housing (London) Ltd* UKEAT/245/00 & *Bungay and another v Saini and others* UKEAT/0331/10, *Victor-Davis v London Borough of Hackney* UKEAT/1269/01 & in *Mahood v Irish Centre Housing Ltd* UKEAT/0228/10. EHRC Code: Paras 10.48 and 10.53 give examples.

Post referendum volatility (or a claim to “free speech”) are unlikely to be mitigating circumstances. Most policies would list racial abuse as gross misconduct, but in any event it is behaviour so serious as is likely to be accepted as constituting gross misconduct.

### **More difficult**

What if the speech is not abuse? The tone of the debate has been such as to encourage more extreme statements to be made. Inquiring about EU nationality status: could this be viewed as abuse? This depends on how it is done of course.

What about cases in which workers say something along the lines of “you foreigners come over here taking our jobs”? Is this simply reflecting a political debate? Plainly not. It is drawing a distinction between “us” and “you” on the basis of race, and not addressing the political issue of whether there is too much immigration for the local job market. Of course this political point appears now to be controversial in the light of the prospective challenges to obtaining sufficient NHS staff for the future.

### **The exercise of Free speech**

There is a distinction to be drawn between a reporter reporting what someone else has said (e.g. a politician) which does engage Article 10 ECHR rights (see *Jersild v Denmark*, 23 September 1994, § 31, Series A no. 298) and distributing hate speech. In *Hennicke v Germany Application No. 34889/97* the Claimant’s claim under Art 10 was held inadmissible because Article 10 is a qualified right, and hate speech incompatible with rights of others. There is also the fact that a person cannot rely on ECHR rights to undermine ECHR rights (see Article 17 ECHR). Thus hate speech undermines democratic pluralistic values.

A “reasoned” exposition of racial superiority would not, for the same reason constitute a philosophical belief for the purposes of the Equality Act 2010 as it is not worthy of respect in a democratic society? (**Grainger v Nicholson** [2010] IRLR 4). Moreover Directive 2000/43 the preamble to the Convention on the Elimination of Racial Discrimination (CERD) reject theories of racial superiority. Post Brexit, CERD will still be an international commitment of the UK.

The tribunals have viewed racist conduct at work as a potentially fair reason for dismissal.

### **Misusing the email system**

First, who owns the system on which the email is being disseminated? Does the organisation have an email policy? The local authority can use its position to ensure that all organisations have in place email policies which exclude discriminatory or hate. There should be an express email policy to this effect. It should be made clear that no one has permission to use the local authority's permission to disseminate hate speech, or in particular racially offensive material.

Second are offences being committed from the computer of the employee etc?<sup>10</sup> Section 1 of the Malicious Communications Act 1988 and Section 127 of the Communications Act 2003, refer to communications deemed to be "grossly offensive".<sup>11</sup> Under the Malicious Communications Act 1988 it is an offence to send communications or other articles with intent to cause distress or anxiety; this covers all forms of communication such as email, faxes and telephone calls.<sup>12</sup> Section 127 of the Communications Act 2003 creates an offence of sending, or causing to be sent "by means of a public electronic communications network a message or other matter that is grossly offensive or of an obscene or menacing character". In addition the Computer Misuse Act 1990; Protection from Harassment Act 1997, The Criminal Justice and Public Order Act 1994, all have a role to play in determining whether criminal activity has occurred.

Under the Computer Misuse Act 1990, section 1, P is guilty of an offence if P causes a computer to perform any function with intent to secure access to any program or data held in any computer or to enable any such access to be secured. The access P intends to secure or to enable to be secured is unauthorised; and he knows at the time when he causes the computer to perform the function that that is the case.

The intent a person has to have to commit an offence under section 1 CMA need not be directed at—

(a) any particular program or data;

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<sup>10</sup> See [http://www.cps.gov.uk/legal/a\\_to\\_c/communications\\_sent\\_via\\_social\\_media/](http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/) for the CPS guidelines on prosecuting cases involving communications sent by social media

<sup>11</sup> A conviction for sending by a public electronic communications network a message of a menacing character contrary to the Communications Act 2003 s.127(1)(a) was quashed where a "threat" sent via Twitter had been intended as a joke and would have been understood as a joke by those reading it. A message which did not create fear or apprehension in those to whom it was communicated, or who might reasonably be expected to see it, fell outside s.127(1)(a), for the simple reason that the message lacked menace (see *Chambers v DPP* [2012] EWHC 2157 (Admin)).

<sup>12</sup> "indecent or grossly offensive" in the Malicious Communications Act 1988 s.1(1)(b) does not bear a special meaning such that communications of a political or educational nature fell outside its ambit. The prosecution of the appellant, who had sent photographs of dead fetuses to pharmacists in an attempt to dissuade them from selling the "morning-after pill", did not give rise to a breach of her Convention rights to freedom of expression and freedom of thought, conscience and religion. (see *Connolly v DPP* [2007] EWHC 237 (Admin)).

(b) a program or data of any particular kind; or

(c) a program or data held in any particular computer.

So it would be possible to prohibit use of the council's computers for any discriminatory purpose, or for the use of programmes like any of the social media programmes. However this may be unmanageable. It would also be possible to prohibit the initiation or transmission of racially etc discriminatory material via the programmes on such computers.

A perhaps typical example of use however is that in **Gosden v Lifeline Project Ltd** ET/2802731/09, where the tribunal found that there had been a fair dismissal for racially a offensive email sent *outside* working hours from the employee's home computer to another employee's home computer.

This does not involve misuse of the employer's computer system necessarily. Nonetheless action can be taken. Why?

The offensive email put the employer's reputation at risk and the employee had no control over where it went (it also contained "pass it on!" at the end of it.) The tribunal held that this was a fair dismissal even though the conduct took place away from work.

Some guidance can perhaps be gained from regulated professions. Local authority employees, like members of the professions, can perhaps be held to a higher standard. Thus it may not matter whether the communication is sourced in any particular way. Whether it brings the organisation into disrepute may simply depend on the intrinsic nature of the communication.<sup>13</sup>

In cases in which it is alleged that there is an interference with the human rights (article 10 article 8 ECHR), then the authority can scrutinise the extent to which a communication

(a) is a responsible exercise of the right of free speech; and if it is whether there is an interference with that right; if there is

(b) was that interference justified as in accordance with the law, and necessary in a democratic society for the protection of the rights of those who wish to use the services of the public authority;

(c) whether the communication was said to be private – whether there is any evidence to support an expectation of privacy; if so

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<sup>13</sup> See the reasoning in *Craven v Bar Standards Board* Mr Justice Silber Mr Kenneth Crofton-Martin Ms Amanda Savage Date: 30/01/2014



(d) whether the alleged lack of respect for that privacy was necessary in a democratic society for the protection of the rights of others.

### Tweets

Some social media allow a person to set privacy settings. How does this factor into the consideration of whether the employer can take action over it? You would look at who was following the tweet, and whether other employees or customers were following. In other words what damage does the tweet do the employer's reputation in reality? Can the remarks be seen to be those of an employee of the organisation and are they available to the general public? If they were not restricted to social acquaintances, it does not matter whether people have to make a conscious decision to follow the tweeter. However there are many factors to consider (**Game Retail Ltd v Laws** UKEAT0188/14). If the organisation's policy is clear enough then the distinction between revelation to a circle of acquaintances and wider circulation should not matter. The real question is whether the Tweet brings the employer into disrepute. It is not necessary to show that someone was actually offended in this context. You are entitled to reach the conclusion that the tweets might cause offence. It is also not necessary to show that they were derogatory of the employer.

However there is a balance struck between the employer's desire to remove/reduce reputational risk from social media and the right of free expression. The latter must be exercised responsibly. This will not cover matters which are hate speech. The extent to which the right to freedom of expression may be relied upon may depend on the type of work that is being done.

In **Game Retail** (para 46) the EAT stated that generally employees have the right to express themselves *if it does not infringe on their employment and or is outside the work context*. However this will depend on the nature of the work in question. Once question is whether the contents of the tweet are properly private.

### Facebook

In **Smith v Trafford Housing** [2013] IRLR 86 the claimant had been demoted for posting his religious views on gay marriage, in which he stated that it was an equality too far. He sued for wrongful dismissal. The court held that his Facebook page was not sufficiently work related, although it identified him as a manager. He was entitled to express his (moderately expressed) views on the issue of gay marriage. Doing so did not constitute misconduct.

### How should local authorities approach social media communications incidents?

It is legitimate for the local authorities to approach non-criminal pre-cursor communications in the same way as the CPS approaches hate crime. It states that its approach to hate crime is underpinned by a number of UN treaties and conventions to which the UK is a party, and UN declarations on hate crime, which the UK supports. The importance of this approach will be readily apparent. Even if the UK leaves or qualifies the ECHR, these international treaty obligations will remain and will inform the approach of public bodies to their duties under Acts of parliament which are to be interpreted in accordance with these international treaties. The CPS points, in particular to the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Rights of Persons with Disabilities (2006), the Universal Declaration of Human Rights (1948) and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981). It could also have pointed to the Convention on the Elimination of Discrimination Against Women.

In determining issues such as whether to mount information campaigns to correct inaccurate information which may lead to racial or other tension in an area (and hence increase the likelihood of hate crime) the local authority should bear these obligations in mind. They should also inform the approach of the local authority when considering whether it can properly spend public money on this type of campaign. The clear answer is that proportionate amounts should be spent on achieving these objectives.

### Goods services and public functions: section 29 Equality Act 2010 (part 7 EqA 2010)

A local authority may be the provider of a service or it may be exercising a public function. Section 29 EA 2010 provides that a service provider (person concerned with the provision of a service to the public or a section of the public) must not discriminate against a person requiring the service either by not providing the service or in the terms on which it is provided to that person, or by terminating provision of the service. The duty also applies to harassment and of course victimisation protection applies to this area. These duties also apply to a public body providing a public function (section 29(6)).

Schedule 28 of the Equality Act says that the expression "public function" is defined in sections 31(4) and 150(5) which refer to the Human Rights Act 1998: includes any person certain of whose functions are functions of a public nature; all local authorities and all those bodies established by

statute; persons who carry out state functions are also covered while they are carrying out the state function. Contracting out does not stop the state having an involvement.

So the local authority can be held liable for discrimination by all persons (natural and corporate<sup>14</sup>) against whom its employees or agents discriminate in respect of these matters.

### **Public Sector Equality Duty**

By s 149 Equality Act 2010, a public authority is subject to the public sector equality duty, which requires it in the exercise of its functions, to have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the EA 2010 Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Act points out that having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

### **Fostering good relations**

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<sup>14</sup> EAD Solicitors LLP and others v Abrams UKEAT/0054/15, the EAT held that a limited company that was a member of an LLP could bring a claim alleging it was the victim of direct discrimination based on the age of its principal shareholder and director. Wording of Act was sufficiently broad not to require "person" to be limited to natural person. Also Race Directive (2000/43/EC) explicitly enjoins Member States "where appropriate and in accordance with their national traditions and practice", to provide "protection for legal persons where they suffer discrimination on the grounds of the racial or ethnic origin of their members".

Under section 149(5) there is an explanation of what is meant by having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It involves having due regard, in particular, to the need to—

- (a) tackle prejudice, and
- (b) promote understanding.

### Local authorities fomenting critical thinking?

One role which a local authority (as such<sup>15</sup>) can perform is to encourage individuals and organisations within the local authority area to make sure that the local authority is informing its decision making process by proper regard to the equality duties.

Thus these groups can bring to the attention of the councillors involved in any decision making on local functions, e.g. relating to community projects, safety etc etc, their responsibilities (which belong to the decision maker). Some organisations including local businesses can be encouraged to

- Remind councillors of their duty in the context of racism in the community;
- Point out the issues they feel give rise to a question of race discrimination (e.g. harassment) and how they say this prevents persons of a particular racial group having equal opportunities or how it impacts on good race relations.

The way in which the case law operates demonstrates how community involvement can ensure that the duties are observed. The local authority in encouraging such involvement can also promote the equality objectives and take a positive step under the Prevent duty.

### PSED case law

The duty is non-delegable. A Councillor cannot simply be told by the officers what the requirement of “due regard” is.<sup>16</sup> The duty is “not a duty to achieve a result”, but a duty “to have due regard to the need” to achieve the goal of good race relations. It applies to specific single decisions, not just policy development **Michael Pieretti v London Borough of Enfield** [2010] EWCA Civ 1104.<sup>17</sup> In **Stuart Bracking and others v Secretary of State for Work and Pensions** [2013] EWCA Civ 1345 & in **Hotak v Southwark LBC**

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<sup>15</sup> i.e rather than those who are in control politically at any time

<sup>16</sup> Baker v Secretary of State for Communities and Local Government (Equality and Human Rights Commission intervening) [2008] EWCA Civ 141

<sup>17</sup> Michael Pieretti v London Borough of Enfield [2010] EWCA Civ 1104

[2015] UKSC 30 it was emphasised that these duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation. Therefore they cannot be avoided or treated as a simply procedural step which the local authority is obliged to go through, but which is a box ticking exercise.

Although in England the duty to conduct form Equality Impact Assessments has gone, the courts have warned that the decision maker should make a record of the steps taken in seeking to meet the duty to have due regard to the need to foster good relations. This should show how the authority is having due regard to the need to foster good relations in relation to any policy or decision they are engaged upon.<sup>18</sup> The decision making councillor must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a “rearguard action”, following a concluded decision.<sup>19</sup>

Local authority officers and others should marshal the facts, and put them to the councillor showing the likely consequences on particular racial groups, and suggesting lessened impact if an alternative path is followed. It is not good enough for a council to try a policy and see what happens, detecting impact and the mitigating after implementation. It is in other words a duty which must be taken into account in the formulation of policy (and the exercise of other functions).

Officials reporting to or advising councillors on matters material to the discharge of the duty have a particular role to play in this duty. They must not merely tell the councillor what he/she wants to hear but they have to be “rigorous in both enquiring and reporting to them”.<sup>20</sup> It is not for court to determine if appropriate weight has been given to the duty. It will be concerned to see that there has been a rigorous consideration of the duty.<sup>21</sup>

Of particular important is that the duty involves a duty of inquiry. Public Authorities must be properly informed before taking a decision. If the relevant material is not available, there is a duty to acquire it and this will frequently mean than some further consultation with appropriate groups is required.

### **Practical things that a local authority can do**

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<sup>18</sup> R (BAPIO Action Ltd) v Secretary of State for the Home Department

<sup>19</sup> Moses LJ in *Kaur & Shah v LB Ealing*

<sup>20</sup> R (Domb) v Hammersmith & Fulham LBC.)

<sup>21</sup> R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills).

## Tackling Hate Crime: what is the role of the local authority?

- Get a clear picture of the demographics in the area; this is necessary to comply with the PSED, and will assist in the implementation of the Prevent Duty.
- Try to build good lines of communication with identifiable communities within the area (e.g. white working class);
- Use the Prevent duty to further the aim of fostering good relations between different groups, and use the PSED to further the aim of preventing people being drawn into terrorism via extremism.
- Consider mounting counter information campaigns and ensuring that good information is available in place of false (and often hate disposing information). Consider responding to tweeter misinformation. This is compatible with the duties relating to the use of public funding (see *The Right Side of the Law*)
- Ensure that councillors are properly trained in relation to their duties on the PSED and how to consider impact in the light of information provided.

### Conclusion

Local authorities have tools at their disposal which can ensure

(a) racism at work is talked about not simply in terms of activities at work but in terms of its acceptability more generally for the employees and workers used by the local authority;

- policies clearly state that initiators of hate speech and transmitters of hate speech will not be using the computer system with authorisation and therefore are misusing the system;

(b) the public sector equality duty, along with the Prevent duty, can be used to target racism (and other discriminatory hate speech) by attacking the circumstances which permit it to flourish;

(c) the perceived human rights constraints do not prevent effective action against such discriminatory behaviour.

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