

COURT REFUSES TO MICROMANAGE EQUALITY IMPACT ASSESSMENT

On 1st June 2012 Cranston J handed down judgment in the Administrative Court in the case of **R (Siwak) v LB Newham**. In dismissing Ms Siwak's the claim for judicial review, the learned Judge:

- a) provided a helpful overview of the Public Sector Equality Duty (PSED) and of consultation obligations; and
- b) explained that the courts must ensure that they do not micro-manage the decisions of public authorities. To do so in the circumstances of this case would constitute an unwarranted interference into local democratic processes.

The background to the challenge was that in January 2011 Newham Council gave notice terminating its fixed term contract with the Newham Advice Consortium for the provision of a range of advice services in its borough, for which it had paid £284,000 per year. That contract was terminated following severe cuts to Newham's budget.

Ms Siwak challenged the alleged decision of the mayor in cabinet of 17 November 2011 that future problem solving advice services would be provided by Council officers, and would not include, as previously, any advice commissioned from the voluntary sector. She also challenged an implied decision that there would be a hiatus in face-to-face advice services in Newham until April 2013. Her case was that there was a strategic decision as to the identity of the provider in the model to be developed. The criterion on which a decision was reached was that the service would be provided in-house and not as in the past commissioned from external providers such as the voluntary sector.

The challenge failed.

- a) There was no challenge to the decision to terminate the fixed term contract;
- b) There was no decision on 17 November 2012 to the effect contended for by Ms Siwak. No decision had been made as to what service was to be provided.
- c) No PSED challenge was available. *“Notwithstanding the importance of the public sector equality duty the courts must ensure that they do not micro-manage the decisions of public authorities. For the court to interfere at this stage would be to breach this sensible injunction and would constitute an unwarranted interference into local democratic processes”* [paragraph 30]
- d) This case was distinguishable from ((R (Kaur) v London Borough of Ealing [2008] EWHC 2062 (Admin), R (Hajrula) v London Councils [2011] EWHC 448 (Admin) and R (on the application of Rahman) v Birmingham City Council [2011] EWHC 944 (Admin), being earlier in the decision making process.
- e) There was no obligation to conduct a public consultation before 17 November 2011. It would have been impossible to have engaged in a meaningful dialogue with the public when sufficient detail of the proposals had not been fleshed out.
- f) In any event, a clarificatory decision by the deputy mayor in cabinet on 15 March 2012 had cured any alleged defect in the decision.

Bryan McGuire QC and Matt Hutchings acted for LB Newham