

The Prisoners' Advice Service
PO Box 46199
London EC1M 4XA
www.prisonersadvice.org.uk

Call for Evidence: Government Review of Public Sector Equality Duty

This is the submission of the Prisoners' Advice Service for the Discrimination Law Association's Response to the Government's review of the Public Sector Equality Duty (PSED).

About the Prisoners' Advice Service

The Prisoners' Advice Service (PAS), launched as an independent charity in 1991, is the only charitable organization in the UK with a specific remit to provide free legal advice and information to adult prisoners in England and Wales. It provides advice and assistance in particular on the application of the Prison Rules and conditions of imprisonment.

Most of our work is done through an advice line (some 15000 calls were received last year) and by letter. We respond to every letter (some 8000 last year) received from prisoners across the country. We take up individual cases where appropriate and through our LSC contract. We also run the Prisoners Legal Rights Group which produces quarterly bulletins entitled 'Prisoners Rights'. Membership of the group includes prisoners, solicitors, barristers, academics and non government organizations.

PAS employs a caseworkers whose dedicated remit includes prisoners' legal issues relating to: gender, sexual orientation (the women prisoners' caseworker), race,

nationality, religion (the race/religion discrimination caseworker) and disability (the community care caseworker).

The work of PAS has been recognized recently with an award in 2011 for Legal Aid Lawyer of the Year in the not-for-profit sector, and the overall winner of the 2012 Lord Longford Prize.

Background

The PSED only came into force in April 2011 and the Equality and Human Rights Commission Technical Guidance was only published in January 2013. In the context of prisons, the criteria by Her Majesty's Inspectorate of Prisons, for assessing the treatment of prisoners and conditions in prison has only relatively recently been expanded to refer to the PSED.

How well do prisons understand the PSED and guidance?

The PSED imposed by s.149 of the Equalities Act on public authorities aims to achieve the following objectives:

- Eliminate discrimination, harassment, and other prohibited conduct;
- Advance equality of opportunity
- Foster good relations

The Prison Service has produced a single and comprehensive policy document (Prison Service Instruction 32/2011 Ensuring Equality) to its staff in relation to the management of equalities issues in prison establishments which came into effect on 14 April 2011. It is intended to be the key tool for understanding the legal obligations of the prison service in the delivery of its services and response to individual needs. This Instruction is mandatory guidance to the prison service. There is scope to take a legal challenge against a prison where it fails to adhere to its own policy, or where a part of the policy does not adhere to the law.

DLA EXHIBIT E

It may be unusual that the Prison Service has formulated a single, central document that provides guidance and direction to every staff member in every prison establishment across England and Wales. This assists greatly in ensuring its accessibility.

In order to discharge their statutory obligations as regards the PSED prisons must collect, record, monitor and publish certain data relating to equalities issues that *are used to drive action in the management of equalities issues*. This also includes the Equality Impact Assessments and Discrimination Incident Reporting (DIRF) procedures that must be utilised in order to identify and manage risk (of breaching PSED and prohibited conduct) and inform the mandatory equality action plan (EAP).

The prison service's policy is to work towards a time when equality is subsumed as part and parcel of the core business of running prisons. PSI 32/2011 is a key component in making that a reality.

PAS Evidence

The nature of our work means that prisoners approach us for legal advice, assistance and where appropriate representation when a prison has failed to implement its policy in relation to the general equality duty.

The position is simple: had the prison followed its own uncomplicated equality policy, the necessity for legal action- often costly- would not have arisen.

This would suggest to us that too often if prison staff do understand the PSED, they do not prioritise its implementation. Given that adherence to the equality duty does not really have a costs implication- in the context of the prison service facing ever increasing pressures in discharging its obligations to those in their custody- the explanation for this disregard lies elsewhere. Ultimately *the equality duty, when carried out properly, reduces significantly the risk of prisons committing prohibited acts against protected persons*. We refer you to R (oao Equality & Human Rights Commission) v SSJ, SSHD [2010] EWHC 147, an action taken against the prison

service's unlawful policy of transferring foreign national prisoners into 'hub and spoke' prisons without first conducting an impact assessment as part of its obligation to its general duty as a public authority. Another example is MP, P v SSJ, Governor of HMP Downview [2012] EWHC 214 (Admin) in which we represented two women prisoners complaining that the closure of semi-open prisons disadvantaged them in the application of childcare resettlement leave. Again, had an impact assessment been carried out it would have become clear at the outset that the prison service must put in place measures to ameliorate the disadvantage as per their obligations under their own policy as well as the general duty without the need for costly litigation.

What are the costs and benefits of the PSED?

The cost to the Prison Service is arguably less, or at least resource neutral. The Prison Service explicitly states that the area of equalities issues is not intended to be targeted for cost savings. (para 1.8 PSI 32/2011).

The benefit of the PSED does not have to be enjoyed only by those affected individuals in the custody and care of the prison service. The prison service itself benefits where the risk of breaching equality laws is significantly reduced, thus saving the public purse the cost of legal action and subsequent remedial action. In keeping with the legislator's intention, the prison service has prepared its own separate policy in relation to dealing with women prisoners pursuant to the Gender Equality Duty (PSO 4800). This predates the PSED, but demonstrates clearly how the general and specific equality duties are intended to operate to enable public authorities to discharge their obligations.

We are currently engaged in lengthy high court action challenging the prison service's overall failure in ensuring that they have in place both adequate prison stock capable of meeting the needs of disabled prisoners, and a policy/ practice ensuring that such needs are taken into account in deciding the allocation of disabled prisoners. The final hearing is to take place next month. Substantial damages to the prisoner are also a feature of this case. This case highlights the

enormous benefit to the prison service of adhering to its own policy and implementing the PSED.

How are prisons managing legal risk and ensuring compliance with the PSED?

The simplified monitoring processes that inform the equality action plans of individual prisons are themselves an important management tool to assess risk and compliance.

Our experience is that where monitoring processes are carried out, legal risk is managed reasonably well. An example would be the local policy at HMP Frankland of exempting Sikh prisoners from removing their bangle for security searches where the bangle is too small to be taken off the wrist.

Our predominant experience, in the context of legal advice work, is that prisons often fail to comply with the PSED, thus placing themselves at risk of committing prohibited acts.

What changes if any would ensure better quality outcomes?

It is critical that the PSED supplements the legal obligations of public authorities such as the prison service. Given that the elimination of prohibited conduct alone could not achieve a more equal society, the PSED is fundamental. It must be given legal enforcement to be as effective as the legislators have always intended.