

## **R (on the application of W) v Birmingham City Council [2011] EWHC 1147 (Admin)**

**Keywords:**     *Judicial Review – Public Sector Equality Duty – Defective Equality Impact Assessment*

The Cs were all severely disabled adults living in Birmingham. D decided to confine the caring support it provided to a more limited range of people. The Cs sought to challenge this decision. One of the principle grounds of challenge was that D had failed to have regard to the Public Sector Equality Duty (PSED).

### **FACTS**

Prior to the financial year 2011/2012 D had provided support for those whose needs were assessed as “substantial” or “critical”. After 2011/2012 D decided only to provide support to those whose needs were “critical”. When making this decision D produced and had regard to an Equality Impact Assessment (EIA). Cs argued that: (1) in order to have “due regard” to the PSED, D had to consider whether savings could be found in other areas in order to maintain the level of spending on adult social care; and (2) that the EIA was inadequate as it did not consider the impact on disabled people or the merits of other approaches.

### **HELD**

Mr Justice Walker held that, in deciding to restrict care to those whose needs were “critical” that D had failed to have due regard to the PSED. When making its decision D had not asked itself the right questions. D should have considered the impact of the proposed decision and asked itself whether a decision with that impact would be consistent with the need to pay due regard to the principles of disability equality. Furthermore, the EIA had not addressed the question of whether the consequences were so serious that a less draconian alternative should be considered. Finally, the consultation undertaken by D did not attempt to address the practical detail of what supporting only those with “critical” needs would entail. The Judge asked the parties to agree an appropriate order.

### **COMMENT**

This is another case in which the decisions of a local authority have been subject to a successful judicial review. It demonstrates the extent to which Courts are prepared to examine in detail the decisions of a public authority and also that Courts are not shying away from overturning decisions where it looks as though mere lip service has been paid to the PSED. In this case the evidence produced by D to show that it had complied with the PSED was found wanting, even to the extent that the Court held that the EIA that D had produced was inadequate.

JRs based on the PSED are likely to become more frequent as claimants and their lawyers appreciate the extent to which the courts are prepared to scrutinise decisions that may have an adverse impact on persons with a protected characteristic.