

Increasing voluntary sector influence

Module 8 – Equalities issues

Factsheet – Public Functions

Public authorities deliver a wide range of services, both statutory and discretionary. Many of the services delivered would be described as public function in terms of public law. The Empowering the Voluntary Sector project uses the definition;

Public functions are what the public body does for the public in a broader sense; for instance, providing housing, administering taxes and welfare benefits and funding the voluntary sector

The Act does not define the term public function; it relies on the definition used by the Human Rights Act 1998. Unfortunately, the Human Rights Act does not clearly define this term either, despite much discussion and case law.

Much of the discussion has taken place around how the term public authority is defined. This is slightly clearer. There are two forms of public authority, pure and functional. Pure public authorities are those such as government departments, local government, police, NHS trusts, etc. A functional public authority (or hybrid) is one that is only a public authority by virtue of the fact that it is performing a public function. For example a security company running a prison will be seen as a public authority for that purpose but not for the function of delivering security to a supermarket.

Further insight on this complex area of law can be found at:

<http://www.justice.org.uk/pages/public-authorities-under-the-human-rights-act-1998.html>

From the point of view of the Act the definition of public functions is limited to delivery by public bodies to those activities which;

- are not services;
- do not fall within the following parts of the Act
 - premises (part 4)
 - work (part 5)
 - education (part 6)

Many activities carried out by bodies delivering public functions are in actual fact services as defined by the Act. A good example of this difference is outlined below;

A public body decides to fund a range of activities to be delivered by voluntary and community organisations. It advertises this on its website and through other means such as the production of a leaflet. The decision to fund this activity and the decision making process used to decide who will receive the funding are public functions. The provision,



production and distribution of the information via the web and printed materials are services.

As noted, other bodies (other than pure public authorities) may be seen to be delivering public functions (often described in legal terms as “delivering functions of a public nature”). This can include voluntary and community organisations. This is a new and potentially unclear area of law and will develop over the years through case law. The following activities are most likely to be seen as being a public function:

- Delivering service under public funding (grant or contract).
- Exercising statutory powers.
- Taking place of central/local government.
- Providing a public service.
- Close links/relationship with public body.

Organisations working in the areas mentioned above are also strongly advised to have due regard to the general duty under section 149 of the Act, (See Fact Sheet 14).

For further information on public functions in relation to the Act please see chapter 11 of the ‘Equality Act 2010 Statutory code of practice; Services, public functions and associations’.

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