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A More Equal Wales

The Public Sector Duty regarding Socio-economic Inequalities

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Public Sector Duty regarding socio-economic inequalities



Sections 1 – 3 Equality Act 2010

- Using new powers under section 45 Wales Act 2017

- Section 1

“(1) An authority to which this section applies must, when taking decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

(2) In deciding how to fulfil a duty to which it is subject under subsection (1), an authority must take account any guidance issued [in the case of a duty imposed on an authority in relation to devolved Welsh functions], by the Welsh Ministers.

- Section 3
- *“A failure in respect of a performance of a duty under section 1 does not confer a cause of action at private law.”*

Public Sector Duty regarding socio-economic inequalities

Section 149 Equality Act 2010



- Contrast section 149(1)
- *“A public authority must, in the exercise of its functions, have due regard to the need to –*
 - *(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under this 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 protected characteristics are, of course, age, disability, gender reassignment, marriage and civil partnership; pregnancy and maternity, race, religion or belief, sex and sexual orientation.*

Public Sector Duty regarding socio-economic inequalities

When making decisions of a strategic nature



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Preparing for the
commencement of the
Socio-economic Duty

Non-Statutory Guidance

- Guidance issued by Welsh Government: ***“A More Equal Wales – Preparing for the commencement of the Socio-economic Duty”***
- “Non-statutory guidance” but see section 1(2) Equality Act 2010
- *“In general, strategic decisions will be those which effect how the relevant public body fulfils its intended statutory purpose (its functions in regards to (sic) the set of powers and duties that it uses to perform its remit) over a significant period of time and will not include ‘day to day’ decisions.”*
- *“The duty will apply to both new strategic decisions and when reviewing previous strategic decisions. Note the duty is not retrospective, which means that relevant public bodies do not have to give due regard to decisions which have been made before commencement.”*

Public Sector Duty regarding socio-economic inequalities

When making decisions of a strategic nature



- Guidance issued by Welsh Government: “***A More Equal Wales – Preparing for the commencement of the Socio-economic Duty***” lists some non-exhaustive examples of strategic decisions for relevant public bodies
- Strategies developed at Regional Partnership Boards and Public Service Boards which impact on a public body’s functions
- Medium to long-term plans (e.g. corporate plans, development plans, service delivery and improvement plans)
- Setting objectives (e.g. well-being objectives, equality objectives, Welsh language strategy)
- Changes to and development of public services
- Strategic financial planning
- Major procurement and commissioning decision
- Strategic policy development

Public Sector Duty regarding socio-economic inequalities



When making decisions of a strategic nature

- ***R(Nash)-v-Barnett LBC [2013] EWHC 1067 (Admin) per Underhill LJ at first instance dealing with the best value duty under section 3 LGA 1999***
- *[Para 69] “I start with sub-section (1) which establishes the substantive best value duty. I would analyse it as follows....The core subject matter is “the way in which” the authority’s functions are exercised. That is very general language. It could in a different context cover almost any choice about anything the authority does. But in this context it seems to me clear that it connotes high-level choices about how, as a matter of principle and approach, an authority goes about performing its functions...”*
- *[Para 75] “I fully accept that it cannot have been the statutory intention that every time that an authority makes a particular operational decision...it is required by section 3 to consult about that decision simply because it could be said to be part of “the way in which” it performs its functions. As I have said above, in this context that phrase connotes high-level issues concerning the approach to the performance of an authority’s functions and it is about those and not about particular implementation that consultation is required.”*

Comparisons with the Well-being of Future Generations (Wales) Act 2015



- The Appendix to the Guidance states that it provides a brief overview of the duties under, inter alia, the Well-being of Future Generations (Wales) Act 2015
- The 2015 Act aims to improve the social, economic, environmental and cultural well-being of Wales
- Lists the Seven Well-being Goals, which include (i) A Prosperous Wales; (ii) A More Equal Wales; and (iii) A Wales of Cohesive Communities
- These goals in section 4 and the duties under sections 3 & 5 have led to attempts to argue that a failure to have regard to socio-economic inequalities involves a breach of the 2015 Act

Comparisons with the Well-being of Future Generations (Wales) Act 2015

The reaction of the Courts



R (Blackmore)-v-Neath and Port Talbot CBC [2019] EWHC (Admin)

- Held on an application for permission (per Lambert J.)
- *"I do not find it arguable that the 2015 Act does more than prescribe a high-level target duty which is deliberately vague, general and aspirational and which applies to a class rather than individuals. As such judicial review is not the appropriate means of enforcing such duties; see R(G)-v-Barnet LBC [2004] 2 AC 208"*
- *Decision upheld on an oral renewed application*

Comparisons with the Well-being of Future Generations (Wales) Act 2015

Contrast section 3 Equality Act 2010



- Section 3 Enforcement
- A failure in respect of a performance of a duty under section 1 does not confer a cause of action at private law
- However, little doubt that, like the public sector equality duty under section 149, an alleged breach of the duty will be justiciable by way of judicial review
- ***“A More Equal Wales – Preparing for the commencement of the Socio-economic Duty”***: *“As with the public sector equality duty, an individual or group may bring judicial review proceedings against a public body which is covered by the duty....”*
- Section 1 Equality Act 2010 may achieve, what the Well-being of Future Generations (Wales) Act 2015 has not

Comparisons with the Public Sector Equality Duty

Section 149 Equality Act 2010

The Equality Act 2010



- Section 149
- *“(1) A public authority must, in the exercise of its functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under this Act; (b) advance equality of opportunity between persons who share a relevant characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it”*
- *Subsection (3) sets out in detail what this involves*
- *Subsection (7) sets out the nine protected characteristics*

Comparisons with the Public Sector Equality Duty

Section 1 Equality Act 2010



- *Contrast section 1, which does **not** make socio-economic inequality a tenth protected characteristic,*
- *Only imposes a duty “to due have regard to the desirability of exercising [an authority’s functions] in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage”*
- *If public bodies in Wales, to which this duty applies, determine to comply with the duty by compiling and publishing Equality Impact Assessments which merely indicate that they have had due regard to the desirability of exercising their functions in a way designed to reduce such inequalities (as opposed to actually having regard to achieving and taking action to achieve that outcome), people in Wales may still be left with a high-level target duty which is deliberately vague, general and aspirational and which applies to a class rather than individuals, and of no practical use in any claim for breach of the duty.*

Conclusion

Public Sector Duty regarding socio-economic inequalities

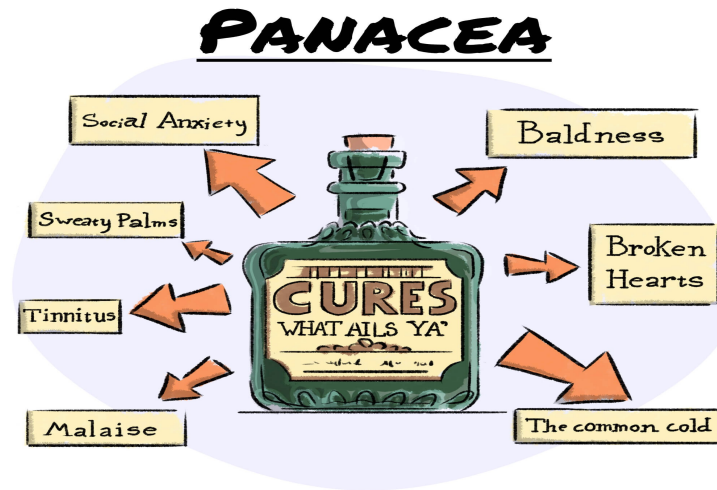


- Not a panacea for all ills
- Duty either needs to be made comparable to section 149 duty
- Or socio-economic inequality needs to become a protected characteristic
- Neither likely to happen in near future
- Or the Courts could recognise duties in Well-being of Future Generations (Wales) Act 2015 as justiciable by way of judicial review
- Still possible!

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The Public Sector Duty regarding Socio-economic Inequalities

That might be a panacea for some ills!



Diolch am wrando/Thanks for listening

Rhodri Williams QC