

New fiduciary duties on directors to address equality issues



New equality regulations have come into effect that could have a significant impact on how directors must behave in order to comply with their fiduciary duties under Companies Act 2006. Certain provisions of Equality Act 2010 require companies to manage the way they deliver services to their customers and members of the public which takes into account each person's protected characteristics.

If any private sector business provides services directly to members of the public or is carrying out work on behalf of a public sector organisation there are now stricter rules in place relating to how those services are delivered. For example if your company provides construction, building or maintenance services or has "outsourcing" arrangements with any public sector organisation these new rules will apply to how your business operates.

It is very important for companies to be aware of these issues for competitive commercial reasons particularly with regard to competitive tendering processes.

Implications for you when dealing with customers

You may have seen recent media reports highlighting that a number of disabled women are set to take legal action against

the bus company, Arriva North East, on the basis that some of its bus drivers have refused to ensure that the wheelchair spaces on their buses are clear so that they can be used by passengers in wheelchairs.

Similar complaints have been made by parents with pushchairs and buggies with young children regarding the refusal of bus drivers to lower the access ramp to enable those passengers to get onto the vehicle. These are examples of a failure by the bus drivers to comply with their duties under Equality Act 2010, firstly to make reasonable adjustments for disabled passengers to ensure that they have enough space to get their wheelchairs onto the vehicle and secondly in relation to creating a hostile and intimidating environment for mothers when they are faced with a driver refusing to lower the access ramp to enable them to get onto the vehicle with their children's buggies.

There are two areas of legal liability here. The first relates to the potential discriminatory conduct of the driver because they could be legitimately accused of engaging in "harassment" of the disabled passenger or the mother by their conduct. This could constitute unlawful discrimination on the grounds of disability or maternity and/or sex,

The second potential area of liability relates directly to the employer and thereby raises issues about director responsibilities. If the company has not taken steps to properly train its drivers and raise their awareness of these issues then the company would be vicariously liable for the actions of its employees. In a situation such as this an aggrieved individual can bring legal proceedings in the county court to claim financial compensation.

These potential legal risks are relevant for directors of businesses because under the provisions of Companies Act 2006 a director must have due regard to the interests of the company's employees and the need to foster the company's business relationships with suppliers, customers and others as well as taking into account the impact of the company's operations on the community and the environment. All of these examples are allied to the director's statutory duty to promote the success of the company (section 172 Companies Act 2006) In these circumstances there is not only potential legal liability under Equality Act 2010 but also legal liability under Companies Act 2006.

The primary duty of a director is to the company to ensure "enlightened shareholder value." This duty therefore imports wider corporate social responsibility factors into the issues that directors must consider when making decisions. This could expose an individual director to challenge on the basis that they have failed to properly take into account the provisions of Equality Act 2010 in ensuring that these issues were properly addressed at a corporate level taking into account employee responsibilities and the organisation's relationship with its customers and members of the general public.

What does this mean for individual directors?

The duties described above apply to all directors. However, some individual directors may be given a particular portfolio of responsibility which could mean that they were in a more exposed position than their colleagues if, for example, they were charged with the duty to deal with HR or health and safety or customer services, or corporate social responsibility. Putting it bluntly these are wide-ranging and comprehensive duties which cannot be ignored.

It is worth noting that the legal cause of action against a particular director would probably be brought by the company itself (or, in limited circumstances, by a representative body of shareholders). Such actions are rare but the issue of potential legal liability is of vital importance for each individual director in terms of their professional credibility because it could have an impact on the perception of their suitability to hold office if they have failed to properly carry out their fiduciary duties to a reasonably competent standard.

What should you do now?

We have developed a training package specifically for directors and owners of businesses to highlight how these laws could impact upon your business and on you, personally. The training provides clear guidance and support to directors when plotting a pathway through this complex area of the law. It is important for directors to be aware of these issues in order to demonstrate that they are carrying out their fiduciary duties to a reasonably competent standard in order to comply with the provisions of Equality Act 2010 and section 178 Companies Act 2006.



If you require any further information or guidance in relation to these matters and would like to discuss booking a training session for your senior executives and board members then please contact **Paul Johnstone** at Muckle LLP.

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