

Using Human Rights and Equality to Analyse and Challenge the Public Spending Cuts – Reflections on Past Practice and Organising for the Future

Report of An Expert Workshop Organised by the
Centre for Human Rights in Practice at the University of Warwick

Tuesday 6th November 2012

Organised by James Harrison, Mary-Ann Stephenson and Ann Stewart

1. Summary of Report

This report summarises the key conclusions and recommendations of the Expert Workshop on equality, human rights and the public spending cuts held at Warwick on 6th November 2012. It was written by James Harrison and Natalie Byrom.

Attendees of the workshop included trade union officials, academics, civil society activists, legal practitioners and members of voluntary groups. All of those who attended had extensive knowledge and experience of analysing/ challenging the equality and human rights impact of the public spending cuts. (see section 2).

The workshop was split into three main sessions:

- Undertaking analysis of the spending cuts on vulnerable and disadvantaged groups and strategies for utilising that analysis (see section 3)
- Using litigation strategies in challenging public sector spending cuts (section 4)
- Building links between academia and practice (section 5)

The key insights and findings from each of these sessions are set out in the relevant sections below.

The final part of the workshop explored **key recommendations for future action**. Workshop participants also filled in questionnaires where they were asked about their priorities for future activity. The main recommendations (set out in more detail in section 6) were as follows:

- **The creation of user-friendly and accessible web-based resources** to support actors involved in analysing and challenging the public sector spending cuts (6.1)
- **The production of further guidance and research** to support actors engaged in analysing and challenging the public sector spending cuts (6.2)
- **The formation of a network of actors** engaged in analysis, legal challenge and campaigning around the public sector spending cuts in order to share expertise and experience and identify future needs (6.3)
- **Training and further events** to build on the success of this workshop (6.4)

It was recognised that all of these ideas would require external funding if they are to be viable, particularly given the benefits of adopting a longer term approach to public spending cuts which are likely to last at least a decade.

In the shorter term, a simple compendium of resources has already been set up on the website of the Centre for Human Rights in Practice, on the basis of suggestions made by participants (see <http://www2.warwick.ac.uk/fac/soc/law/chrp/projectss/humanrightsimpactassessments/database>). We will add to this compendium with further materials as they become available.

2. Workshop Attendees

Karen Ashton	Public Law Solicitors
Rachel Blake	East London Fawcett
Sally Brett	TUC
Linda Burnip	Disabled People Against Cuts
Natalie Byrom	University of Warwick
Jonny Butterworth	Just Fair
Alice Donald	London Metropolitan University
Diane Elson	University of Essex and UK Women's Budget Group
Charlotte Gage	Women's Resource Centre
James Harrison	University of Warwick
Zita Holbourne	Black Activists Rising Against Cuts (BARAC)UK
Max Hyde	National Union of Teachers
Debbie Jolly	Disabled People Against Cuts
Ahmad Malik	University of Warwick
Anna Mapson	Bristol Fawcett
Aoife Nolan	University of Nottingham
Pragna Patel	Southall Black Sisters
Sarah Sackman	Francis Taylor Building (Barristers Chambers)
Daisy Sands	Fawcett Society
Kalwinder Sandhu	Coventry Women's Voices
Ravinder Singh	Coventry Law Centre
Mary-Ann Stephenson	Coventry Women's Voices and University of Warwick
Ann Stewart	University of Warwick
Matt Tyrer	Scottish Council for Voluntary Organisations (SCVO)
Andrew Williams	University of Warwick
Jane Young	'Spartacus' Network

3. Undertaking analysis of the spending cuts on vulnerable and disadvantaged groups and strategies for utilising that analysis

Presentations:

- Mary-Ann Stephenson (Coventry Women's Voices) and James Harrison (University of Warwick) - Human rights and equality impact assessments of the spending cuts in Coventry.
- Anna Mapson (Bristol Fawcett) Human rights and equality impact assessment of the spending cuts in Bristol.
- Max Hyde (National Union of Teachers) Human rights and equality impact assessment of the spending cuts in Yorkshire and Humberside.
- Sally Brett (TUC) - Using Equality Act analysis in collective bargaining and actions by local unions.

The presentations and extended discussion which followed raised a wide range of issues. Below is a summary of the main points where there were strong insights, widely held views, clear findings and/or lessons to learn for future practice:

3.1 Public authority analysis of impact of spending cuts on vulnerable and disadvantaged groups is generally poor:

Whilst there are a few examples of good practice, generally the analysis is poor quality. Equality impact assessments are largely carried out as a "tick box" exercise, without taking account of individual's lived experience. In the main, these reports are carried out by unsupported junior staff, who have insufficient training, expertise, time and data to undertake assessments properly.

3.2 The difficulties of undertaking research for other actors:

There is an increasing emphasis from the government on local or community groups holding public authorities to account. However, the time, expertise and resources required to produce robust and meaningful analysis of public spending cuts makes it unfeasible for many groups. In particular gathering data and analysis to support assessments is a very complex task. But at the same time, using government data and other expert sources is vital to improving the persuasive power of the finished assessment. Some attendees also highlighted concerns about the efficacy of the Freedom of Information Act in allowing groups to access government data, citing long delays as a barrier to carrying out assessments in a timely fashion.

- It was generally agreed that there is a need for a dedicated resource that allow people to access existing data and analysis in a user-friendly form. This would be invaluable to future efforts to undertake robust and meaningful analysis.

3.3 The value of collaboration between organisations:

Trade unions, civil society organisations and academic institutions all saw the benefits of working together in order to undertake robust and credible research. Civil society organisations and trade unions know what is going on 'on the ground' and are crucial in gaining access to affected populations. Working with academics can add

robustness to research processes and brings credibility to research findings. This can improve lobbying power.

- Also, cooperation and co-ordination *between* third sector groups interested in carrying out equality impact assessments and other forms of analysis would improve quality and reduce time commitment. Civil society groups also saw potential benefits in utilising students to assist in undertaking research. There was general agreement that collaboration between the sectors was currently low and could be greatly enhanced (see section 5 below).

3.4 The importance of capturing cumulative impact:

Analysis of the cuts needs to highlight the combined or cumulative impact of the cuts on vulnerable and disadvantaged groups and individuals. A number of examples of combined impact were presented e.g. disabled women for example are not only being affected by cuts to disability benefits, but to housing benefit, adult social care, health services, transport and voluntary services. It was suggested that comparisons with environmental impact assessment, where it is a requirement to have regard to cumulative impact may be helpful in this regard.

3.5 The importance of a person-centred approach:

Traditional impact assessments focus on quantitative data and as a result only tell half the story. Only through qualitative research such as interviews and focus groups with affected individuals do you capture the whole picture with regard to the cumulative impact of spending cuts. Being rigorous in referencing data sources is important, as this enables you to defend the robustness of your research.

3.6 Concerns that impact assessments carried out by civil society actors may be used by local authorities to justify cuts:

Some attendees reported that the work they had carried out had been used by local authorities to demonstrate that they had given due regard to the equality impact of their policies. But other participants suggested that this risk must be balanced against the probability that if organisations do not engage with public authorities and then bring legal challenges, they are likely to be criticised for their failure to engage, if cases do reach court.

3.7 Concerns about planned government review of public sector equality duty:

The proposed review raises real concerns about the future of the equality duty. Whilst government sources have stated that the review will not focus on deregulation, they have said that they will look for evidence of the impact of the duty in deciding about its future. Litigation or legal challenges will be regarded as evidence of the failure of the duty to effect practice, and may be cited as evidence in favour of amending or abolishing it.

- Since the seminar took place David Cameron has announced that there is no longer any need to carry out Equality Impact Assessments. It is not yet clear whether this is an attempt to present the current legal situation as something new, or advance warning of the Government's intention to repeal the Public Sector Equality Duty under which EIAs take place.

3.8 Maximising the impact of reports: Figure 1 below shows some of the ways in which reports have been used. It was highlighted that through attracting the attention of bloggers and the media, small groups can achieve national news coverage. It was also highlighted that exploring the impact on vulnerable groups as a whole (rather than focussing only on particular constituencies) could enhance the influence and power of reports. For example, public sector trade unions should explore the equality impact on vulnerable service users as well as their own members as this tells a more powerful story and makes their findings more persuasive.

3.9 The need for expertise in financial analysis: Some attendees highlighted the importance of expert evidence in challenging decisions made by local authorities: being able to present financially viable alternatives to the programme of cuts is seen as important in convincing key actors to adopt alternative strategies.

3.10 The importance of challenging the austerity rhetoric: It is important for actors to work together to challenge the necessity of cuts and focus debates on issues such as different approaches to deficit reduction, for example, raising council tax. It is also important the effort not be expended saving one vulnerable group from cuts to the detriment of other vulnerable groups.

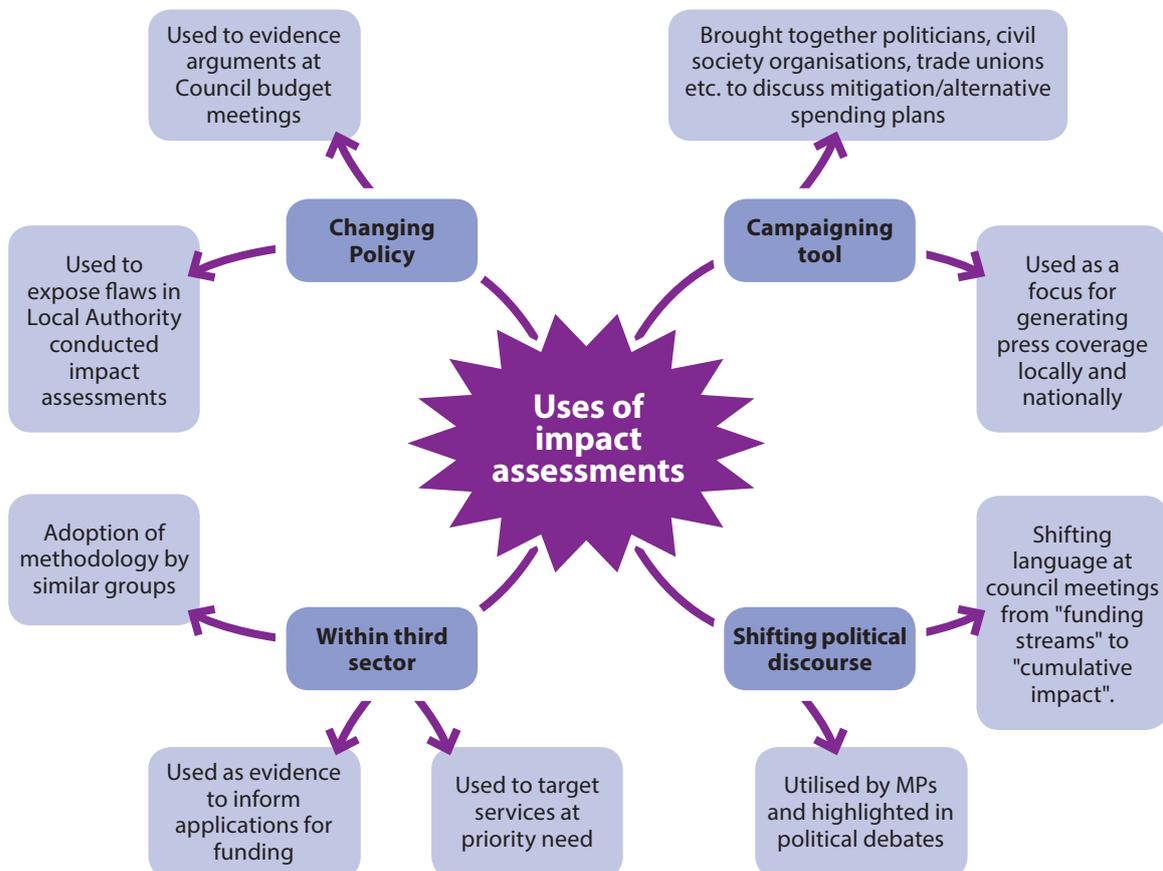
4. Using litigation strategies in challenging public sector spending cuts

Presentations:

- Karen Ashton (Public Law Solicitors) – legal challenges to equality impact assessment processes including successful challenge to Birmingham City Council’s adult social care cuts.
- Pragna Patel – (Southall Black Sisters) – Reflections on successful legal challenge (under Race Equality Duty) of decision to cut their funding.
- Sarah Sackman (Francis Taylor Buildings) – Litigating on equality impact assessments and advising public authorities on how to comply with their public sector equality duties.
- Daisy Sands (Fawcett Society) – Lessons from Fawcett’s challenge to the Treasury for failing to carry out an equality impact assessment of the 2010 emergency budget

The presentations and extended discussion which followed raised a wide range of issues. Below is a summary of the main points where there were strong insights, widely held views, clear findings and/or lessons to learn for future practice:

Figure 1: Reported uses of impact assessments



4.1 The Value of Litigation to Challenge Public Spending Cuts: Litigation can be a useful tool for creating resistance and raising public awareness, whether or not it is eventually successful: Spending cuts tend to follow the path of least resistance. Legal challenges can help to make it harder for public bodies to make cuts by creating resistance and publicising issues related to budget decisions. The impact of litigation in postponing decisions can create a valuable space for campaigning. Furthermore, litigation serves to remind the public of the disproportionate impact of cuts on vulnerable groups. As such, it can help to challenge political rhetoric e.g. “We’re all in this together”.

4.2 The Limitations of Litigation and the Need to See it as Part of an Overall Strategy: Litigation needs to be seen as part of an overall strategy for challenging public spending cuts. Litigation is often a long drawn-out process and other methods of challenging decisions need to be undertaken in tandem to provide the best prospect of success e.g. political and media campaigns, collective action etc.

4.3 The Need For Information and Resources on Litigation: Many small organisations can be discouraged from litigating by fear of spiralling costs and lack of understanding of the litigation process as well as their chances of success. This can be overcome by working in partnership with other groups and sharing resources.

- There needs to be a free resource for civil society actors and charities that explains clearly the steps involved in bringing a case to court: Paucity of information can result in actors missing deadlines, failing to comply with procedures and therefore missing the window of opportunity for bringing cases. There is also a need for information about successful judicial review cases and guidance about what successful litigation might achieve.

4.4 The Need to Balance the Costs and Benefits of Litigation: People shared a number of positive and negative impacts of litigation and highlighted the importance of weighing up the pros and cons in advance. On the positive side, successful litigation can lead to changes in policy. Litigation can also increase the public profile of an organisation, as well as lead to increases in its membership.

- On the negative side, litigation is a costly option, in terms of time, even where there are no legal fees. Litigation can also severely damage relationships with public authorities. This can make it hard to communicate effectively and influence policy in the future. Particularly where organisations rely on those public authorities for funding, there may be additional financial concerns raised by litigating. At a local level, it was noted that a large number of campaigning organisations are also now involved in service provision which probably has an impact on the number of organisations willing to pursue litigation.

4.5 The Important Role Of Judges: The success or otherwise of litigation can very much depend on

the judge who sits on the case. Having a judge who is sympathetic and aware of the issues raised by a given case can be crucial in determining the outcome. Attendees also expressed concern about the judiciary’s recognition and knowledge of what is required to comply with the Public Sector Equality Duty and the processes it should involve.

4.6 Public authorities have become better at defending challenges: The success of civil society actors in bringing public bodies to account for failure to discharge their equality duty has resulted in local authorities becoming increasingly savvy in conducting equality impact assessments, though not necessarily improved the quality of the finished reports.

4.7 Trends in litigation are likely to move away from challenges to strategic spending decisions: In the future legal challenges are likely to be brought in respect of individuals, rather than groups. Will these cases be less politically compelling and therefore, from the point of view of civil rights groups, less worthwhile to pursue?

5. Building links between Academia and Practice

Presentations:

- Diane Elson (University of Essex and Women’s Budget Group) – the Women’s Budget Group, how it has created a network of members, its impact assessments and relationship with governments.
- Alice Donald (London Metropolitan University) – General lessons on building links between academia and practice – The resources available, the challenges and the opportunities
- Ann Stewart (University of Warwick) – Learning from experiences of the 1980s and networks created between academics, practitioners and local authorities.

The presentations and extended discussion which followed raised a wide range of issues. Below is a summary of the main points where there were strong insights, widely held views, clear findings and/or lessons to learn for future practice:

5.1 Academic expertise and perceived neutrality can be an asset in strengthening arguments made by civil society actors: There is a great value in involving academic experts in tailored research projects which assess the impact of public spending cuts ‘on the ground’. Academics have time, expertise, and perceived independence which can all be greatly beneficial to attempts made by civil society activists to measure impacts of cuts on particular groups and individuals. There is some experience of successful collaborative projects (e.g. Coventry Women’s Voices and University of Warwick, UK Women’s Budget Group, Scottish Women’s Budget Group), but much greater scope for interaction.

5.2 Finding appropriate academic partners is difficult: For academics, the way in which Universities are structured can discourage engagement with practice: Academics cited the pressure to publish and methods through which their performance is measured as a barrier to engagement (e.g. the REF).

- For organisations seeking academic assistance, there can be difficulties in finding academics who are producing research in areas useful to civil society actors. Small charities in particular are overstretched and do not have time to seek out and approach individuals. There is a need for a centralised information hub providing details of academics interested in working with civil society groups and the work that they are involved with.

5.3 Students can provide a useful resource for civil society actors, but only if they are utilised in an appropriate manner: Undergraduates are only available for a limited time period - a maximum of three years (often much less) and very rarely all year round. So there is a need to think carefully about how best to create structures by which students can support organisations undertaking analysis of impact. Otherwise there is a danger that organisations can invest time and resources in training people which is disproportionate to the benefits gained, leading to mutual frustration with the arrangement (i.e. students feel that they are not gaining experience, and organisations feel that they are having to invest too much in individuals whose involvement is transitory).

5.4 There is also a benefit to creating stronger links between academics, legal practitioners and local authorities: Academic research and expertise can assist legal practitioners in a number of ways e.g. to critique public sector equality impact assessment processes. Academic evaluation of cases and their outcomes would also be valuable. Lessons from analogous experiences in the 1980s suggest that local authorities themselves can also be important sites of resistance and challenge and that there is a benefit to extending networks to include local authorities.

There is a need for external funding to support significant on-going collaborations: It was recognised that the collaborative networks and creation of resources suggested at the workshop would require external funding if they were to be viable in the longer term (see proposals for specific projects below)

6. Findings and Recommendations For Future Action

In the final sessions of the workshop, participants discussed the future action that they would like to see as a result of the workshop. Participants also filled in questionnaires where they were asked about their priorities for future activity.

Overall there was a sense from the workshop that there was a huge amount of activity already going on which was attempting to analyse and challenge public spending cuts. But existing action (analysis, legal action, campaigning) was very fragmented, and there was little co-ordination, or learning from the experience of others. There were also many more actors who would become involved in actions of they had the resources to do so, and processes were made simpler for them.

There were many recommendations, but broadly speaking, the majority of the recommendations fell into four types;

- The creation of user friendly and accessible resources to support actors involved in analysing and challenging the public sector spending cuts
- The production of further guidance and research to support actors engaged in analysing and challenging the public sector spending cuts
- The formation of a network of actors engaged in analysis, legal challenge and campaigning around the public sector spending cuts in order to share expertise, experience and identify future needs
- Training and further events to support capacity
- These recommendations are considered in turn below. It was recognised that all of these ideas would require external funding if there are to be viable, particularly given the benefits of adopting a longer term approach to public spending cuts which are likely to last at least a decade.

6.1 The creation of user friendly and accessible resources to support actors involved in analysing and challenging the public sector spending cuts

It was recognised that there was a huge amount of information and analysis that is available in relation the impact of the public spending cuts. However, it is often very difficult to find, can be very long and/or complex and inaccessible. There was a strong feeling that was need **for a dedicated user-friendly set of resources** that allows people to access a range of data and analysis in relation to assessing, litigating and campaigning on the public spending cuts (see also 3.2, 4.3, 5.2 and 5.4 above).

In the longer term, there was strong support for **the development of an interactive web-based resource database** in each of the above areas. In particular, this could support individuals in conducting human rights and equality analysis of the impact of the spending cuts. It was proposed that this could be arranged around specific issues and/or geographical areas. Individuals could search the website to find guidance on the questions they should ask, the methods they should use and data to interrogate proposed policies with. For example, an individual could search for “introducing telecare” and find information and guidance on conducting an impact assessment into the introduction of this type of service.

In the shorter term, **a simple compendium of resources** has already been set up on the website of the Centre for Human Rights in Practice (see <http://www2.warwick.ac.uk/fac/soc/law/chrp/projectss/humanrightsimpactassessments/database>).

6.2 The production of further guidance and research to support actors engaged in analysing and challenging the public sector spending cuts

It was recognised that there were also some areas where there was a need for further guidance and research to be conducted to support actors engaged in analysing and challenging cuts. A number of different types of research and guidance were identified including:

- **Simple, targeted guidance** in relation to key issues such as how to take a judicial review (see 4.3 above); how to construct a campaign around research and litigation (see 4.2 above); the nature of the obligations created by the public sector equality duty in light of recent government reviews and court decisions (see 3.7 above); and how to undertake human rights analysis of the spending cuts and how to bring a judicial review using human rights law – human rights legislation is less well known than equality law.
- **Research into the impact of judicial review processes and human rights and equality analysis of the spending cuts.** Analysis of Equality Act judicial review cases would seek to identify any patterns in the cases brought, explore the factors that influenced the success or failure of the case, and any barriers to litigation. Research into the effectiveness of human rights and equality assessment of the spending cuts would consider how such analysis has been used by campaigning organisations and what the outcomes of the campaigns were
- **Longitudinal research into the human rights and equality impact of austerity driven policies:** There exists currently a paucity of equality and human rights impact research over an extended time frame. Since austerity policies look set to go on for a decade or more, it was suggested that such analysis was necessary to capture the longer term impact, particularly on vulnerable and disadvantaged groups.
- **Research support and assistance** to groups who need particular support with particular assessments. This might involve varying degrees of assistance from a resource for answering a particular research question (e.g. how do I find data about the number of BAME service users in my area?); on-going student support to particular research projects; expert guidance in how to carry out a particular assessment of a particular issue/location; and/or review and feedback for completed assessments. The provision of such assistance would probably depend on the creation of the network set out in 6.3 below.
- **Facilitating networking between actors who have need of assistance** including a) civil society groups who need legal practice expertise (see 4.3 above); b) civil society groups who need academic expertise to support research (see 3.3) c) possibilities for collaboration with students working as interns on specific projects (see 6.2).
- **Identifying needs for training, workshops etc.** which bring together cross-profession stakeholders and otherwise to facilitate discussions that would otherwise not take place (see below).

6.4 Training and further events to build on the success of this workshop

There were also calls for specific workshops, training and networking events to build on the success of this workshop. If a network was created, then that could be the forum in which discussions about particular priorities and needs at any given time could be discussed. The following types of events were suggested as particularly useful:

- **Clinic sessions** in which campaigners concerned about certain specific issues, for example to do with benefits and social care can ask questions, discuss case studies etc. Clinic sessions could discuss different types of analysis, legal challenges, campaigns etc. in relation to these particular issues. There was also a specific request for advice and guidance on how to take test cases using human rights law.
- **Workshops dealing with specific groups of people** and how they are affected by the cuts. For example, a workshop on how disabled people are affected by the cuts would be very useful in terms of sharing knowledge and understanding between disabled campaigners and legal professionals.
- **Further annual events** to document progress in analysis, campaigns, litigations etc. and to follow up on this initial workshop.

There was concern that there would need to be an element of payment for small unfunded campaigner organisations. For these organisations, even one day away from their work for events or other activities is very difficult. Payments would allow more grassroots activists, who are facing the worst of the cuts to attend future sessions.

6.3 The formation of a network of actors engaged in analysis, legal challenge and campaigning around the public sector spending cuts in order to share expertise, experience and identify future needs

There was a perceived need for an on-going network of academics, civil society groups, legal practitioners and trade unions. This network would have to be carefully designed so as to add value to other networks that have been created on related issues, but there was general agreement that such a network could provide significant added value by:

- **Acting as a hub for sharing information including:** a) information about cuts and changes in particular locations that have a particular impact on vulnerable and disadvantaged groups; b.) human rights and equality analysis (on-going and concluded reports) and improved methodologies for conducting that analysis; c) information in relation to judicial review cases (on-going and concluded)

