

Your response to the Equalities Review Team.

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Questions

1. *Where are we?*

(i) *What progress do you think has been made over the past 60 years to reduce inequalities?*

JUSTICE considers that considerable progress has been made in the past 60 years to reduce inequalities. For example, it is now widely accepted that it is not 'right' to refuse services to ethnic minority people whereas even 30 years ago notices saying 'no blacks, no gypsies, no dogs' were commonly exhibited outside rooms to let or public houses. Whilst there are still occasional examples of 'no gypsy' signs outside pubs signs indicating that 'blacks' will not be admitted have disappeared. In 1978 a restaurateur thought that it was justifiable to dismiss a woman because she was a 'mother with children' and hence implicitly unreliable. The Employment Tribunal even agreed with him¹. Such examples would not occur now.

This does not necessarily mean that discrimination has been eradicated rather that overt discrimination has given way to indirect and sometimes unconscious discrimination. It is progress that people recognise that such behaviour is not acceptable.

¹ See *Hurley v Mustoe* [1981] IRLR 208.

(ii) *What helped in making that progress?*

The discrimination acts and the work of the Commissions have undoubtedly played an important part in changing public opinion. Legislation is certainly a force for change, even if it is not the only such force.

The public duties in relation to race equality are beginning to have an effect as are race equality schemes, however, it is important to ensure that they are not met with merely 'tick box compliance' but rather that they are used to ensure that discriminatory practices and procedures are identified and removed. This will also apply to the new gender and disability duties when they are implemented.

(iii) *What do you think are the most persistent and stubborn inequalities?*

Increased poverty,
Cultural barriers to participation, and
Transport and physical barriers for people with disabilities.

2. *What happens currently?*

(i) *What are the barriers to improving equality?*

We will address our answer to this question at three different levels. The first deals with the way that discrimination and inequality operates in society, the second deals with the role of the media in exacerbating this and the third with the need for clear and consistent legislation to counter discrimination.

Judy Mallaber MP said during the recent 2nd reading debate on the Equality Bill:

Division, jealousies, inequalities and prejudice lead to tensions and conflict in society, prevent us from harnessing the talents and potential of all those living in our communities, and mean that we do not use their skills in society or in the economy.²

Inequalities have many causes, but in searching for common traits it is important to look at the role of prejudice and stereotyping and to recognise the role that these play in the way that we organise our lives.

From our earliest days we have to learn to differentiate and discriminate, and then to attribute meanings to difference. We learn to categorise differences and draw conclusions from them. Often these become shortcuts to faster decision-making which can operate subconsciously. In doing so we place a high value on appearances. Our reaction to a person in an expensive suit is likely to be very different to our reaction to a person dressed in rags.

² *Hansard, House of Commons, November 21st 2005, col 1276*

Ina Sjerps has observed:

*This process of observation, of distinction, of qualification and reaction is essential to life. We have learned from the people we live with, the society we live in, the experiences we have, and also, through our genes, from past experiences, how and when to differentiate. It is, however, not a static process. We adapt our categories and qualifications constantly to new realities.*³

Changes in society and in the law can and do influence this process. The law can take a key role in setting equality norms and indeed in leading the aspirations for a more equal society, however, it is a delicate process in which the law can fall into disrepute if it is too far in advance of public opinion.

Sally Witcher has suggested that discrimination can be analysed as a 'processing error'. So that depending on the purpose of a relationship different characteristics will be required:

*where, for example, the allocation of resources depends on demonstrating need, or getting a job depends on demonstrating merit, assessment will be more complex and room for error greater. It may be necessary (or tempting) to rely on proxy indicators, such as appearance, in order to make judgements. The quality and accuracy of the judgements will depend on the quality of the indicators selected i.e. how well they reflect the purpose of the 'societal relationship' and how effectively they can be demonstrated. To select indicators, or criteria for access, which are not relevant would be to commit discriminatory 'process error'.*⁴

This means that in order to avoid discriminatory judgements the criteria for access must be carefully defined in order to include only the essential requirements and to exclude those that are generally phrased, cannot be justified and are not truly necessary. This already occurs when good equal opportunities policies are put into place in respect of employment practices, and it is clear that greater reliance on accurate job descriptions has led to less discrimination. However, it does have a wider application when it comes to the allocation of social resources or access to goods, facilities and services. Opening out these areas to greater rationality and the requirement to give reasons for decisions does serve to reduce unjustifiable discrimination.

Schools and education play an important part in teaching about diversity. They are in a key position to challenge cultural norms and minimise ill founded discriminations.

Additionally, in order to ensure the inclusion of those who have been traditionally excluded it may be necessary to consider whether some adjustment needs to be made in order to ensure that full inclusion can be achieved. This principle has been applied to disability discrimination law and

³ *Disparate Impact or how to establish a prima facie case of indirect discrimination*, Ina Sjerps, paper presented to the International Conference on Comparative Non-Discrimination Law, Utrecht, 1998.

⁴ *Mainstreaming equality theories: towards a generic model of discrimination*, Sally Witcher, 2005 at www.creid.ed.ac.uk/events/ESRCSeminar/ESRCSeminar1_PaperSWitcher.doc

consideration needs to be given to whether it could be usefully extended to other types of discrimination without diluting its effect in respect of disability.

Media and Press impact

The media carries an important responsibility for influencing civil society. Reports espousing discriminatory views can have a wide and destructive effect. Whilst freedom of expression is vitally important it is also important that reporting is accurate and is not used to propagate discriminatory scare stories and stereotypes. These cover all the different grounds for discrimination, for example,

- The Sun, Dec 2001 in relation to people suffering from mental health problems –‘Nuts to be caged for life by docs’ or in June 2002 ‘Psychos to be locked up for life’,
- The Express, Jan 2004 in a story headed ‘The Great Invasion 2004’ claimed on its front page that 1.6 million Gypsies are ‘ready to flood in’ to Britain when 10 new countries join the EU in May 2004.

The Code of Practice on discrimination enforced by the Press Complaints Commission only requires the avoidance of prejudicial, pejorative or unnecessary reference to a person’s colour, race or religion so it does not counter racist assumptions or stereotypes. Additionally, the Press Complaints Commission can only consider a complaint if it is made by an individual who is specifically named in a press report, the complaint cannot be considered

The UK has not taken adequate measures against speech that incites racial discrimination. Article 19, the Global Campaign for Free Expression, has undertaken a research project into the presentation of Asylum seekers and refugees in the UK. As part of this project between October and December 2002 they monitored six national newspapers and broadcast news bulletins. Their conclusions indicate that the press encourages racist opinions towards Asylum seekers by including statistics without sources; using discriminatory names, labels, and emotive pictures; and representing Asylum seekers as dirty criminals. For example, an article that is headlined to indicate that it is about asylum seekers then refers to the same people as ‘illegal immigrants’ and ‘economic migrants’.⁵

Media portrayals of asylum and immigration issues have not improved since September 11th and international focus on terrorism, some press coverage has got worse, now verging on the hysterical and racist. It is laudable that government has started to promote debate about positive benefits of immigration for the UK, but it’s activity in the face of media storm about asylum has been passive to say the least.

The Government could be doing more:

- to challenge press attitudes,
- to promote the use of accurate language and statistics,
- to address the language used by politicians themselves.

⁵ Article 19, “What’s the Story? Sangette: A Case Study of Media Coverage of Asylum and Refugee Issues,” www.article19.org.

A further study of London commissioned by the Greater London Authority reviewed press coverage between August and September 2003 in national, local and community newspapers and reached similar conclusions⁶. They found that there was clear evidence that negative, unbalanced or inaccurate reporting in newspapers was likely to promote fear and tension between people of different backgrounds in London. They recommended that 'statutory authorities and others need to find, in co-operation with the press, clearer and more factual ways of presenting information to the public'.

JUSTICE considers that further action needs to be taken to counter the effects of inaccurate or unbalanced press reporting. We would like to see the Press Complaints Commission able to consider complaints made directly by one of the Commissions.

Complexity and inconsistency of the law

There is a huge mismatch between our clear concept of fairness and the complicated and incomprehensible set of laws which are supposed to ensure equal treatment.

The law should reflect social values and so serve to strengthen them. But incomprehensible legislation is counter-productive. It undermines confidence in the rule of law as a mechanism and will be ignored. So it is important that equality laws are simple to understand and easy to use.

The current discrimination laws are notoriously complex and inaccessible. This is partly the product of their piecemeal development. The discrimination acts of the 1970s have been the subject of progressive additions and amendments from a range of new Acts, Statutory Instruments and EC Directives.

The list of relevant legislation would strain a tax lawyer. A recent count identified 38 different Acts, 67 Statutory Instruments, 13 Codes of Practice, 3 Codes of Guidance and 17 EC Directives and Recommendations that apply to equality law. This makes it hard for employers to keep track of their responsibilities and for lay people to understand the law. The position has only deteriorated in the four years since the University of Cambridge study concluded:

The statutes are written in a language and style that renders them largely inaccessible to those whose actions they are intended to influence. Human resource managers, trade union officials, officers of public authorities, and those who represent victims of discrimination find difficulty in picking their way through it all.

We need a new Equality Act to bring the main provisions of equality law together in a clear, straightforward and comprehensible way. The new law would eliminate inconsistencies and ensure that each type of discrimination receives the same level of protection. Of course, the key to this is getting the content of any new Act right. It must entail common, clear standards that

6 Media in the UK: Image, Community Impact, Assessing the impact of media and political images of refugees and asylum seekers on community relations in London, ICAR, 2004.

employers and the public can understand, including consistent definitions of key terms and common and effective remedies.

The process of updating and simplifying very complex law has been done before. 'Consolidating Acts' are frequently passed. In the field of tax law the Inland Revenue set up a Tax Law Rewrite Project in December 1995. Its aim was to make tax law clearer and easier to use. Although equality law is not the same as tax law, there are some useful lessons to be learnt. Elements of the tax law project – the use of shorter sentences, clearer and more consistent definitions, and more up-to-date language – can and should be applied to equality law.

A clear statement of the way in which equality legislation should be interpreted would assist its application. A modern law should both reflect current thinking and set new standards – by changing hearts and minds without the need for litigation. From today's perspective it is clear that both the Race Relations Act 1976 and the Sex Discrimination Act 1975 have been successful in doing this. A similar challenge faces an Equality Act. The title alone is not enough – an Equality Act must be valued for its universal application.

It is here that inconsistencies are most significant. Common definitions for the key legal terms must be the starting point for any new equality law. There should be distinction can be shown. common definitions for direct and indirect discrimination, harassment, and victimisation – unless a clear case for any variation.

(ii) What interventions have worked in tackling those barriers?

Equal Opportunities Policies in employment and the requirement to give reasons for decisions in the operation of public authorities.

School and education policies which promote positive views of equality and diversity.

Reasonable adjustments for people with disabilities.

(iii) Where are the gaps in intervention?

Multiple discrimination

Transport for people with disabilities.

3. *Where do we want to be?*

(i) What would success look like?

In one year?

In three years?

In 10 years?

In 40 years?

(ii) What should our top three priorities be for this review?

The need for a single Equality Act
Consideration of reasonable adjustment provisions for grounds of discrimination other than disability.
A more effective Code of Practice for responsible media and press reporting.

(iii) What are the priorities for the new Commission for Equality and Human Rights?

To ensure equality of protection from discrimination and a new single Equality Act.
To ensure that equality is effectively mainstreamed at least throughout the public sector and that it reaches into the private sector through the application of contract compliance requirements.
To create a culture of respect for human rights.

(iv) What are the priorities for Government? Other sectors?

To enact a new single Equality Act,
To extend protection from discrimination in the field of goods, facilities and services to age discrimination, and
To extend the public duties to promote equality to sexual orientation, religion or belief and age.

Please note, your response should reach the Equalities Review team by Friday 26 November. Send your responses to: equalitiesreview@cabinet-office.x.gsi.gov.uk or to The Equalities Review Team, 3.32, 22-26 Whitehall, London SW1A 2WH.

Please tick the box which best describes your organisation

Voluntary sector/charity

Public sector

Private sector

Other (please specify)

Which area does your organisation cover?

Age

Disability

Gender

Race or ethnicity

Religion or belief

Sexual Orientation

Transgender

Other (please specify)