

Equality law fit for the 21st Century?

The Government is bringing forward a new Equality Bill. This follows its Discrimination Law Review (the Review) published in June 2007, which addressed long-held concerns about inconsistencies in the current anti-discrimination legislative framework. The Review considered how to create 'a clearer and more streamlined equality legislation framework, which produces better outcomes for those who experience disadvantage'.

The Review proposed that existing laws on sex, transgender, race, disability, sexual orientation, religion or belief and age discrimination should be brought together in a single Equality Act within this Parliament.

Current discrimination laws are unequal in their scope. The table below shows the differences in anti-discrimination protection for different grounds in relation to the three main areas of current law:

SCOPE	Race	Sex	Disability	Religion or Belief	Sexual Orientation	Age
Employment						
Goods and services						
Public authority duties						

The Equality and Diversity Forum (EDF) considers that a new Equality Act should ensure full protection for all.

What is needed?

- An end to the current failure to outlaw discrimination on grounds of **age** in the provision of access to goods, facilities and services;
- A robust single **public sector equality duty** that covers *all* grounds, ensuring public bodies ‘think equality’ throughout their functions;
- Express provision for the use of **public procurement** to secure equality outcomes in the private sector;
- Provisions to address **multiple discrimination**; and
- A clear **statement of the purpose and principles** of equality law, in order to give overall coherence and direction.

Age

Currently there is no law that protects people from age discrimination in access to goods, facilities and services. Such a law has a vital role to play in establishing a fair and equal society. Substantial evidence exists of the inequalities experienced by people because of their age –

whether as patients in receipt of health care or social services, as volunteers or in respect of insurance and other financial services. For instance, a recent Help the Aged report found that 73% of people say that older people face discrimination on grounds of age in their everyday lives.¹

There is also evidence of discrimination experienced by younger people. For example, a recent UK government report found the most common form of unfair treatment reported by children and young people related to that based on age (43%).²

Public sector equality duties

Equality can be delivered by taking complaints or individual enforcement action, if discrimination occurs; however, it can also be achieved by requiring public authorities to promote equality in the way that they operate. These requirements are often called 'public sector equality duties'. They are intended to ensure that public authorities mainstream equality considerations into all their actions. They do this by requiring public authorities to have due regard to the need to eliminate discrimination and promote equality in all that they do. Currently there are equality duties in force for race, gender and disability. Such duties can make a profound difference to equality outcomes in vital areas that impact on life chances, not least in education, health, housing, criminal justice and employment.

EDF considers that that the duties should be extended, and should cover sex, transgender, pregnancy and maternity, race, disability, religion or belief, sexual

orientation and age, and be capable of addressing the specific needs of each ground. An integrated equality duty would be more efficient and effective. It must not diminish the impact of any of the existing duties.

Public procurement

It is important to ensure that employees in the private sector do not receive less protection than those in the public sector. One way to achieve this is for public authorities to include equality requirements in any contract they enter into to outsource work. This is referred to as 'public procurement' or 'contract compliance' and the use of such requirements can be a very effective means for achieving change within the private sector. This is well recognised. The CBI has said 'Employers believe public procurement is a highly effective lever for increasing diversity...'.³ But the Review found a lack of clarity about the extent to which public bodies are permitted to use procurement to achieve equality objectives. Some public bodies also lack motivation. EDF is convinced that the opportunity should be taken in the new Equality Bill to include a specific clause to make clear that public authorities must build equality into all aspects of their procurement processes – ensuring that public bodies feel both entitled *and* obliged to use procurement in order to achieve equality outcomes.

The Review acknowledged considerable guidance was already available on this issue. So simply providing more guidance will not lead to action. With outsourcing increasing, EDF considers that it is vital that there be a statutory clarification of the role of procurement as a lever for equality.

Multiple discrimination

There is an increasing awareness of the complexity of the operation of discrimination within our society. People do not simply fit into single-issue categories as black, disabled or gay etc. Individuals are diverse, complex and multi-layered, and sometimes they are treated unfairly for more than one reason. However, our equality laws assume that the treatment of people should be analysed by reference to one single characteristic at a time. EDF considers it important that any new equality law is able to take account of the treatment of the whole person, not just one aspect of their identity.⁴

Statement of purpose

EDF considers that a clear statement of the way in which equality law 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. By setting out the objectives and goals of the Act, it would provide guidance to those seeking to interpret it, both Courts and Tribunals, as well employers and service providers.

A new Equality Bill in 2008?

If we are to achieve equality laws fit for the 21st Century, 2008 is the year in which to ensure that MPs and Ministers are aware of the kinds of changes in the law that are needed.

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References

- 1 *Older people's accounts of discrimination, exclusion and rejection*, a report from the Research on Age Discrimination Project (RoAD) to Help the Aged, 2007.
- 2 Consolidated 3rd and 4th Periodic Report to UN Committee on the Rights of the Child, 2007, p34-35.
- 3 Confederation of British Industry, Evidence to the Equalities Review, 2005, p35, para 118.
- 4 The EDF leaflet on Multidimensional Discrimination explains this further and is available at <http://www.edf.org.uk/news/MultidimensionalDiscriminationLeaflet.pdf>



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