



***DISCRIMINATION LAW REVIEW: A FRAMEWORK FOR
FAIRNESS:***

***PROPOSALS FOR A SINGLE EQUALITY BILL FOR
GREAT BRITAIN***

***A joint response from London Voluntary Service Council,
London Civic Forum, Race on the Agenda and Third Sector
Alliance***



London, August 2007

TABLE OF CONTENTS

Table of contents.....	2
Executive summary.....	3
Introduction.....	4
General comments.....	6
Key recommendations.....	8
Main concerns from the sectors.....	19
Further comments.....	22
Appendix I: partner organisations.....	24
Appendix I I: consultation event participants.....	26

EXECUTIVE SUMMARY

This is a joint submission by:

- London Voluntary Service Council (LVSC)
- London Civic Forum (LCF)
- Race on the Agenda (ROTA)
- Third Sector Alliance (3SA).

The findings and recommendations of this response are based on a consultation event that the partners held at LVSC on 27th July 2007. Over 100 participants from 60 of London's voluntary and community sector (VCS) organisations were present. The list of organisations that attended our consultation event is found in Appendix II.

Key recommendations from the consultation and partnership include:

- The Bill lacks a clear 'purpose clause'
- Mandatory equal pay audits
- Extension of public duties to all equality strands
- The Bill needs robust enforcement measures
- A duty on public authorities to include equality in procurement
- A comprehensive and inclusive definition of transgendered people
- A non-discrimination right for carers
- Use of the social model of disability – a better definition of disability
- More protections around age
- Robust protections around multiple discrimination
- More powerful positive equality duties
- Extension of the Equality Duty to the private sector
- The establishment of equality tribunals
- Better access to justice
- Strong positive action measures
- Workforce equality monitoring
- Legislation should focus not only on the individual but also on the collective – representative actions
- Comparator model and hypothetical comparators

Any comments about this response or clarifications should be addressed to the authors:

Tim Brogden, London Voluntary Service Council – tim@lvsc.org.uk

Alison Blackwood, London Voluntary Service Council – Alison@lvsc.org.uk

Theo Gavrielides, Race on the Agenda – theo@rota.org.uk

Lorraine Dongo, London Civic Forum – lorrained@londoncivicforum.org.uk

INTRODUCTION

This is a joint response from London Voluntary Service Council (LVSC), London Civic Forum (LCF), Race on the Agenda (ROTA) and Third Sector Alliance (3SA). It follows a consultation event held at LVSC on 27th July 2007 at which over 100 participants from 60 of London's voluntary and community sector (VCS) organisations were present.

This is a unique response in that it speaks from a multi-sectoral perspective and includes the voices of many, some of whom are usually either invisible or unheard. This joint response not only comes from the organisations leading it but also from the sectoral representation at the consultation event.

The process that has led to this response was a simple one. Dr Theo Gavrielides of Race on the Agenda led on writing a briefing about the Government's proposals and we circulated this prior to the event to all the participants and via the partners' website and email bulletins.

Over 100 participants from 60 of London's voluntary and community sector (VCS) organisations were present at the consultation event, which was a morning seminar. Firstly there was a presentation from a member of the Discrimination Law Review team at Communities and Local Government. The presentation gave an outline of the main proposals from the Green paper. There was then an opportunity for participants to ask questions. This was followed by an initial response from the Commission for Racial Equality. Following this were two panel sessions with representatives from a wide range of equalities organisations.

The presenters were from; British Institute for Human Rights; Faithworks; Refugee Council; The Children's Rights Alliance for England; Disability Law Service; The Women's Resource Centre; Age Concern London; Consortium of Lesbian, Gay, Bisexual and Transgender Voluntary and Community Sector Organisations; The Irish Traveller Movement in Britain; The Princess Royal Trust for Carers; Press for Change; Croydon BME Forum.

Feedback forms were distributed and comments collated to feed into this response as were comments and key points made during the seminar. The partnership fully supports the responses it has seen from colleagues such as that from Equality and Diversity Forum, Women's Resource Centre, Age Concern London, Commission for Racial Equality, Disability Rights Commission and the Equal Opportunities Commission.

The voluntary and community sector (VCS) in London is as diverse and dynamic as the city itself. There are a huge number of charities and VCS organisations here with estimates ranging from 40,000 to well over 75,000. The VCS in London supports and works for a huge variety of communities and there are a large number of specialist infrastructure

organisations working on the equalities and human rights agenda. Many of these specialists were represented at the consultation event. In gathering comment for this response it is very apparent why London as a region offers particular challenges and opportunities around discrimination, equalities and human rights issues. London has huge inequalities, with more diverse communities than any other region in the country. This is a regional response to the Discrimination Law Review from London's voluntary and community sector.

A full list of the participants and the contributors to this response can be found at the end of the document in Appendix 2.

General Comments

Equality is not equality without equality

Britain has the most advanced anti-discrimination legislation in the world, but still we witness serious cases of racism, stigma, prejudice and fear. Racial and cultural tensions can simmer under the surface, and the lack of respect generates homophobic behaviour, hate crime and terrorism. Undoubtedly, since the first anti-discrimination legislation forty years ago significant battles have been won. However, despite these achievements, patterns of deep-rooted inequality persist.

So far, the vision of equalities has been guided by our anti-discrimination laws, which created a tendency to assume that if we act in a way that does not discriminate on the grounds covered by their articles, then equality has been achieved. It is time that we see equality from a new prism and that is as maximising opportunities for individuals to achieve their potential. Equality under human rights law goes beyond mere anti-discrimination; it encompasses dignity, fairness and respect in a democratic and inclusive society where every individual matters. Under this vision, therefore, it is not sufficient to ensure no-one is discriminated against.

The partnership that worked together to deliver this consultation response has the human rights perspective at its core. The human rights vision of equality is an ambitious one and it includes:

- An holistic approach which looks at the treatment of a human being
- Protection against universally bad treatment
- Access to fundamental rights that enable participation in a democratic society
- Equality is a core human rights principle
- Equality is also a fundamental human right (Article 14 ECHR)¹.

This human rights vision of equality has been embraced by most European countries, the Council of Europe and the European Court of Human Rights (EcrtHR), and included in Protocol 12 of the European Convention on Human Rights (ECHR). Although the Human Rights Act 1998 incorporates the ECHR, the UK has not ratified this Protocol yet, and therefore does not accept a free standing right to equality. UK cases, however, are being taken to the EcrtHR, which, through its jurisprudence, has given a detailed, practical significance to the human rights vision of equality. Take for example the case of 19 year old Zahid Mubarek, who was killed by his racist cellmate in Feltham Young Offenders' Institution in 2000. His family convinced the Law Lords to order the Home Secretary to hold a public inquiry into Zahid's murder by using Article 2 of the ECHR, which protects the right to life. Following this case, the Prison Service introduced changes to its policy and procedures relating to cell-sharing and anti-racism.

¹ Race on the Agenda (2006) "The Commission for Equality and Human Rights", *Policy Briefing 17*, London: ROTA. Also see British Institute for Human Rights www.bihhr.org.uk

The Single Equality Bill provides a unique opportunity to develop and implement a new equalities and human rights attitude that will go beyond tackling individual instances of discrimination and form the foundation of a new framework to challenge persistent patterns of race discrimination, inequality and promote and protect diversity, good relations and human rights.

This is our starting point and whilst we welcome both the Discrimination Law Review (DLR) and the attempt to harmonise and simplify the current legislation, to modernise it and make it more effective it is with disappointment that we received the proposal document.

We welcome the chance to comment on the proposals but we do not applaud the content of the unimaginative review that we consider has missed an important opportunity to ensure that Great Britain protects everyone within its borders.

We have serious reservations about the scope of the review and were also disappointed that after 2 years the Government chose the summer over which to consult. We recommend that future consultations comply, not just with the letter, but also with the spirit of the Compact, particularly when they involve matters of such prominent significance. We have evidence to suggest that government officials not only often fail to comply with the Compact, but most of the time are not aware of it.

There was a consensus of opinion from the consultation event that the voluntary and community sector should come together to voice its reservations about the DLR and focus on the commonalities between the sectors rather than focus on what makes each of them unique.

This reinforces our conclusion from a previous consultation the partners carried out on the regional presence of the Commission for Equality and Human Rights. A challenge was thought to be the setting up of effective mechanisms that would enable the Commission to work across strands on issues, such as multiple discrimination, hate crime and community cohesion. Participants did not feel that the Commission was properly prepared to deal with the multidimensional nature of equalities and human rights. The need for a single equality Act and the significance of the Discrimination Law Review were discussed. For example, someone said: "It will be important that groups engage with the Discrimination Law Review and input into the consultation when it is produced in February. The Equalities Review also needs much greater involvement from grassroots organisations". Someone else said: "We need to have laws to support all human beings in this country to live lives of dignity and respect and enable us to live up to our potential".

To conclude, the partners and the consultation participants are disappointed with the limited vision of equality that the Bill adopts and urge the Government to consider a more holistic and inclusive approach to equality. We have described this as the human rights vision of equality and it is based on the four fundamental human rights principles of Freedom, Respect, Equality and Dignity.

Key Recommendations

Those contributing to this response would like a Single Equality Act to contain:

A clear 'purpose clause'

A strong and clear statement of purpose would we feel set the Single Equality Act in context and give it a framework and coherence that it would lack without one. Currently discrimination legislation is disparate and disconnected with many different pieces of anti-discrimination legislation. A Single Equality Act with a strong purpose clause would draw the whole Act together.

"The law should be easily understandable and easily and quickly enforceable."

"We have to make the law easier for the general public to understand."
Conference participants

Mandatory equal pay audits

In the Equal Opportunities Commission (EOC)'s original submission in 2006 it stated that while " 61% of large public sector organisations have completed an equal pay audit or have their first equal pay audit in progress, just 39% have done so in the private sector. At the current rate the Government will miss its own target of 45% of large organisations completing pay reviews by 2008."

With statistics about closing the equal pay gap indicating that this would not be achieved until 2085 this partnership believes that it is lamentable that the DLR proposals do not include mandatory equal pay audits. The EOC suggests bringing equal pay legislation into the Single Equality Act because the current 30-year-old legislation is not producing change quickly enough.

Case study

The Fawcett Society in its report "*Gender Equality in the 21st Century: modernising the legislation*" (2006) stated that if the gender pay gap is to be significantly narrowed, then equal pay audits must be mandatory for all public and private sector employers. The report suggests that audits could be phased in by size of employer so that smaller employers would not be required to carry them out for a few years. If this requirement is not introduced, there should at least be a minimum requirement, that where there has been a finding of unlawful pay discrimination, tribunals should be obliged to consider making a recommendation that the employer carries out an equal pay audit. Such an audit could be limited to the category of worker(s) affected by the tribunal's finding in the individual claim(s).

Extension of public duties to all equality strands and more powerful positive equality duties

We believe that public duties should be extended to cover everyone and to allow for emerging strands to be identified and protected. The current list of equality strands does not cover everyone who experiences discrimination and needs to be broadened and inclusive.

The objective of the Government's proposals is to promote equality and protect from discrimination and disadvantage, if this is so then the public duties need to be mandatory across all sectors to cover everyone.

"No need for categories for those discriminated against – one category 'everyone'."
"External public sector duties [need] to cover all strands – but oppose the move to remove need to have 'due regard' and the move towards 'key principles'."
"Extend the duty to cover age, religion and belief, sexual orientation."
Conference participants

We are particularly concerned that while doing so the Equality Duty will be weakened. We strongly support the submission of the Commission for Racial Equality and call the Government to uphold its promises following the Stephen Lawrence Report. The then Home Secretary Jack Straw MP said, when introducing the race equality duty:

'The Macpherson report made it clear that there is institutional racism not only in the police service but in a large number of other public authorities and some private bodies. The [Race Relations Amendment] Bill would not be necessary if there were not institutional racism in a wide variety of public bodies.'

The partners believe that race discrimination and disadvantage continues to blight Britain. Almost a decade on from Macpherson and the pioneering race equality duty, it is true that many public authorities fail to deliver a service that respects the dignity of consumers even those who are vulnerable. Equality and human rights legislation are not always reflected in institutional procedures, service delivery and internal/ external policies. Frontline staff and managers lack awareness of human rights and equality legislation and have negative perceptions of human rights and equalities.

Poor service provision by public authorities that is in breach of basic human rights principles should not be seen as an isolated phenomenon but as a result of a failure to mainstream a human rights culture in public authorities and beyond. Furthermore, it should not be separated from the phenomenon of institutional racism. Although, the Stephen Lawrence inquiry and the Scarman report focused on racist behaviour by the police, their conclusions and findings brought evidence to a discrimination culture that appears to exist throughout public services. In particular, Sir William Macpherson who carried out the inquiry into Stephen Lawrence's death concluded that there exists "institutional racism across public services".

Institutional racism was defined as: "The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping, which disadvantages BAME people. [Racism] persists because of the failure of the organisation openly and adequately to recognise and address its existence and causes by policy, example and leadership. Without recognition and action to eliminate such racism it can prevail as part of the ethos or culture of the organisation. It is a corrosive disease" (Macpherson 1999).

The new equality duty must adopt a fuller idea of equality by requiring public bodies to (i) eliminate unlawful discrimination and harassment, (ii) address disadvantage, (iii) promote equal dignity, life chances, and participation, and (iv) secure good, respectful community relations (especially race relations).

Robust enforcement measures

Without policing and enforcement the Single Equality Act will, as many critics have already said, have no teeth. There is no point whatsoever having a Single Equality Act that allows for voluntary acquiescence. A large private or public sector organisation can repeatedly offend and there will be no penalty, nor follow up.

"The Green Paper has no teeth – how will the Single Equality Act be enforced?"

"Equalities duties should remain specific and have more power of enforcement and more resources to enforce."

"The Commissions have important enforcement powers. For example, under Section 71(D) as amended RR(A) 2000 the CRE [Commission for Racial Equality] may serve a compliance notice on organisations not complying with a specific duty. As I read the current enforcement powers they relate to compliance with and the enforcement of the SPECIFIC DUTIES. If there are no specific duties then this component of the enforcement framework is undermined. Legislation along such lines would go back on existing legislative provisions and runs the risk of being regressive."

Conference participants

Case study

In its 2007 audit "*Public Bodies Response to the disability equality duty: An audit of compliance with the requirement to publish a Disability Equality Scheme*", the Office for Disability Issues found that only 72 per cent of public authorities covered by the audit were found to have published a Disability Equality Scheme. A random sample of 580 published Disability Equality Schemes were reviewed to check for statements of involvement of disabled people. Only 75 per cent of these schemes contained evidence the public authority had involved disabled people in its production.

They concluded that "these findings highlight the need to share best practice on ways to facilitate involvement among public authorities in order to meet this key aspect of the Disability Equality Duty."

A duty on public authorities to include equality in procurement

It is absolutely essential to extend the anti-discrimination legislation to cover the procurement of services by public sector organisations from private and voluntary sector organisations. In the health sector, for example, this would be particularly relevant in relation to age discrimination.

Case study

The Greater London Authority's core strategy on procurement contains a section on equalities and is viewed as an example of good practice on this issue:

"The Authority will encourage applications for inclusion in its tendering processes from all of London's diverse communities. It will endeavour to appoint contractors who are committed to promoting equality of opportunity in their own employment practices and service delivery methods and who can demonstrate the ability to assist the GLA achieve its statutory responsibilities in this important area. Monitoring will take place on the diversity of businesses securing GLA contracts and fair employment provisions will be required in all GLA contracts.

Risk management of contracting with suppliers with no track record will be explored.

This will ensure, for example, that previous experience outside this country is not necessarily ignored or that suppliers without long term experience but demonstrating capability are not ignored. In this regard the need to demonstrate financial and economic standing by requesting for three years final accounts will be reviewed to introduce some flexibility and avoid discriminating against smaller and new suppliers including those from Black and Ethnic Minorities who might otherwise be disadvantaged."

A comprehensive and inclusive definition of transgendered people

The current definition being used by Communities and Local Government is very narrow and only affords protection to Trans people who are undergoing or thinking of undergoing gender reassignment. The provisions therefore do not cover the majority of Trans people who are not undergoing nor seeking to undergo medical intervention. The definition needs to be broadened and be more inclusive.

*"Transfolk are 20 years behind LGB in legislation [and] public awareness."
"Equalities legislation is particularly ineffective in schools. Transgender children should be protected under the single Equalities Act. They may be intersex as well as considering gender reassignment surgery."*

Conference participants

A non-discrimination right for carers

We believe that carers are a group of people who experience considerable discrimination both directly and by association and that they should be included in any anti-discrimination legislation and protected from discrimination and disadvantage.

Case study

Carers UK produced a report in May 2007 which analysed the responses of around 3000 carers, *"Real change, not short change"*. Its findings included the facts that:

- Three out of four (72%) carers are worse off as a result of caring, rising to four out of five (83%) among those aged 45-54.
- Nearly two out of three (58%) are worse off because of the extra costs of disability.
- More than half (54%) have given up work to care.
- Half (49%) end up subsidising the costs of the disability of the person they care for because of inadequate disability benefits.
- One in five (21%) have to reduce the hours they worked.
- One in four (28%) find the charges for services too high.
- Those caring long term are more likely to have extra costs related to the disability or illness - two thirds (65%) of those caring for more than 15 years.
- On average carers retire 8 years early, missing out on years of income and pensions contributions.

Use of the social model of disability

The Disability Rights Commission defines the social model of disability by saying "disabled people do not face disadvantage because of their impairments but experience discrimination in the way we organise society. This includes failing to make education, work, leisure and public services accessible, failing to remove barriers of assumption, stereotype and prejudice and failing to outlaw unfair treatment in our daily lives."

The important point is that it is the notion of disability that is salient and any anti-discrimination legislation must focus on this social model rather than the medical model that suggests that it is the impairment that makes people disadvantaged. We would support the Disability Rights Commission's call for a "better, simpler definition of disability".

"Definition of disability – why does the DLR [Discrimination Law Review] not discuss DRC [Disability Rights Commission] review of the definition of disability and not follow up recommendations?"
"DLR missed opportunity – e.g. definition of disability."
Conference participants

More protections around age

Age Concern London in their submission is calling for "public authorities to be placed under a legal duty to promote age equality in all aspects of their work".

We would recommend extension of the legal duty to apply to procurement of services by public sector bodies as well. We would also like to see an age equality duty applied to the private sector and protection against age discrimination extended to goods, facilities and services.

Case study

In their 2007 report "Age of Equality", Age Concern provided examples of positive outcomes that would result from extending equality duties to cover age.

How an age equality duty would work

- In spite of recent learning and skills initiatives, there has been little change in the number of mature workers with Level 2 qualifications. Often the funding and qualifications available are unsuited to their needs. 'Age-proofing' the design, funding, and performance framework would lead to a complete reassessment of curriculum, teaching, marketing and financial support, giving older learners the same opportunities as younger adults.
- Choice based lettings schemes are increasingly excluding vulnerable older people seeking to move into, or within, social housing. Local authorities are expected to ensure that applicants are given the assistance they need to bid for properties but many are not doing enough in practice. An age equality duty would ensure that adequate monitoring is taking place and that older people are not being unfairly disadvantaged.
- The tax and benefits system gives unequal treatment to people of different ages, partly because of different needs and aspirations. This is often accepted; for example, no one objects to the state pension system. But an age equality duty would force policy makers to assemble evidence to justify their policies on taxes and benefits. This could lead over time, and as resources permit, to indefensible policies being amended – such as those on the upper age limits for disability mobility payments and additional money for carers.
- Older people's public transport needs may differ a great deal from those of commuters: they often travel at different times or require different routes. An age equality duty would require public transport services and town planners to take older people's needs into account when planning routes and timetables.

Robust protections around multiple-discrimination

There is little or no recognition in the Government's proposals of the existence of multiple-discrimination. A black woman who is a wheelchair user for example, may face discrimination on three different fronts – there needs to be robust provision in the legislation to recognise and address this issue. The Discrimination Law Review states that there is no evidence that people are losing or failing to bring cases because of multiple discrimination. However, there is significant evidence that discrimination is worse for those who are discriminated on two or more fronts. For example "Fairness and Freedom: The Final Report of the Equalities Review" (2006) found that employment rates for Bangladeshi and Pakistani women were much worse than for Bangladeshi and Pakistani men and White British women.

For this reason we support the recommendations of the Equality and Diversity Forum that:

- Multiple comparisons should be expressly permitted, allowing the Courts to combine consideration of two or more grounds.
- Where there are any differential provisions, for example, any specific justifications, exceptions or genuine occupational requirements that apply to one ground for discrimination these should, in effect, be treated as cumulative and apply to all the grounds involved in a multiple discrimination case.
- In awarding damages for cases of multiple discrimination the Court or Tribunal could be given a discretion to increase the amount awarded in relation to injury to feelings to reflect the number of grounds.

"[There are] multi-layers of inequality. Can we have some government funded research into the effects of multiple discrimination and concrete proposals as to how to challenge it?"

Conference participant

Extension of the Equality Duty to the private sector

As with our earlier point about policing and enforcement we are very disappointed that the Government's proposals are not extended to the private sector. We would like to see the Equality duty extended to include private sector organisations. The private sector is vast and employs enormous numbers of people who may experience discrimination in many different ways and have no redress or recourse to protection. A 'light touch' or voluntary adherence is simply not good enough.

Case study

A study reported in 2006 by Sin Yi Cheung and Anthony Heath "*Ethnic Penalties in the Labour Market: The Public-Private Sector divide*" found that:

- There was a clear pattern for people from ethnic minority communities to be under-represented in professional and managerial occupations in the private sector, but this was not significant in the public sector
- There were much higher levels of ethnic penalties and self-reported prejudice in the private sector than in the public sector.

Their findings led them to recommend that the Race Relations Amendment Act was extended to the private sector, since long-standing enforcement of religious monitoring in Northern Ireland had been effective in reducing the labour market disadvantage of Catholics.

The establishment of equality tribunals

Currently employment tribunals concerning issues of discrimination are heard in the same way as all other employment tribunals. In addition, cases concerning discrimination in the delivery of goods, facilities or services have to go to the county courts. Discrimination cases are often some of the most complicated cases and require legal professionals with specialised knowledge in this area not only to present the case but also to cast judgement upon it. For this reason we recommend that the Single Equality Act should provide provision for the establishment of specialist equality tribunals where all discrimination cases can be heard.

Case Study

In the Republic of Ireland the Equality Tribunal (based in the Office of the Director of Equality Investigations) is the accessible and impartial forum to remedy unlawful discrimination. It is an independent statutory office, which investigates or mediates complaints of unlawful discrimination. It operates in accordance with the principles of natural justice and its core values are impartiality and professionalism, accessibility and timeliness.

The Equality Tribunal's principal role is the investigation and mediation of complaints of discrimination in relation to employment and in relation to access to goods and services, disposal of property and certain aspects of education. This protection against discrimination applies to all nine grounds on which discrimination is prohibited under the new equality legislation. Where a complaint of discrimination is upheld, redress must be awarded.

Better access to justice

There are several concerns that discrimination cases are not being taken forward for a number of reasons:

- The individual being discriminated against is unaware of the law or their rights

"The law should be easy to understand and easily and quickly enforceable. I have deaf clients who have spent years in mental institutions with no access to interpreters. They do not know they are being discriminated against and have rights."

Conference participant

- Cases of discrimination in the delivery of goods, facilities and services have to be heard at county courts, which have high court fees, risks of incurring costs and complicated systems that reduce accessibility
- Legal aid is being further limited so there is less chance of lawyers working on time-consuming and complicated discrimination cases
- Legal support and advocacy for those at risk of discrimination is increasingly being reduced with large funding cuts in the voluntary and community sector and, in particular, law centres.

In order to reduce discrimination, there will need to be a simple system in which better access to justice in discrimination cases is supported through advocacy, legal aid support and a simplified equality tribunal system. The Discrimination Law Review's proposals of a specialist county court system for discrimination cases does not go far enough to address this.

"It would be great to include the importance of access to independent advocacy within the Green Paper."

"The laws should be enforceable easily and quickly – possibly through tribunals rather than dragging things through the county courts"

Conference participants

Strong positive action measures

"Positive action is a range of measures which employers can lawfully take to encourage and train people from under-represented (racial, ethnic and other groups, such as women or disabled people) in order to help them overcome disadvantages in competing with other applicants. However, selection for interviews and jobs must be based on judgements of individual's ability to carry out the work required."

BAME groups often experience a disadvantaged position in the labour market in relation to their white counterparts. In terms of employment, they have lower employment rates, suffer higher levels of unemployment, experience longer periods of unemployment, occupational and industrial segregation and lower earnings. The 2001 census showed that the unemployment rate for inner London is 8.9% and for Greater London

6.7%. 6.2% and 5.0% respectively are the figures for White British and 15.1% and 11.3% are for BAME people.

Positive action can provide opportunities for BAME individuals to develop their full potential.

There are three broad reasons for undertaking positive action. These are a commitment to equality, business benefits and legal obligations. Some organisations undertake positive action because they are committed to equality and seek to remove discrimination. This is particularly so in London as BAME groups constitute an increasing proportion of the working population. Positive action also often seeks to address past inequalities. Positive action can also bring benefits for business in that it can lead to an improved market and image. It can aid in attracting a wider pool of applicants, accessing a greater range of skills. It is also an opportunity to enter ethnic community markets, increasing profitability and achieving contract compliance in order to gain contracts with public authorities. Though the legal obligations are considered weak in the UK, some organisations may adopt positive action activities to overcome inequalities in order to prevent legal cases against them.

Currently employers are not clear in what circumstances positive action may be taken, and find it difficult to access and understand support and guidance.

We support the recommendation in the "Fairness and Freedom: The Final Report of the Equalities Review" (2006) that in order to make this possible, the Discrimination Law Review should propose the repeal of existing legislation that limits positive action and include balancing measures in a new single Equality Act, consistent with the wider possibilities under EU law (which would include, for example, the ability to take action in recruitment and progression).

Strong measures should be built into the Single Equality Act to encourage particularly employers to take measures to address potential discrimination, rather than voluntary balancing measures

Workforce equality monitoring

We believe that it is absolutely essential for equality monitoring to be a requirement particularly of employers and we would like to see mandatory equalities assessments and reviews built into legislation.

Case study

Recent data from the London Health Observatory found that in London for hospital episode statistics ethnic coding is incomplete in 34% of cases. Completeness of ethnic recording is needed to comply with the Race Relations (Amendment) Act and is also vital in assessing health needs in the capital.

Indications of Public Health in the English regions 4. Ethnicity and Health, London Health Observatory www.lho.org.uk

Legislation should focus not only on the individual but also on the collective – representative actions

Currently there is little or no chance of collective or representative actions being taken. The onus is on the individual to pursue a case and we would recommend that groups of people or representative organisations should be able to take a case to tribunal.

Comparator model and hypothetical comparators

There was support at the consultation event for use of the comparator model as it was seen to be more definite and achievable than other approaches. However there were concerns linked to the fact that on a practical level, the comparator model is fundamentally flawed in failing to truly recognise and value diversity - people are uniquely different, not just shadows or reflections of others and therefore the integrity of individuals and groups should be respected for what they are in their own right. Also gaining and assessing evidence regarding comparators is time-consuming and challenging for claimants, employers and tribunals and can lead to protracted decisions. This is more so in cases on indirect discrimination and use in cases of victimisation claims is not appropriate.

We further recommend that hypothetical comparators be permitted. These would be more helpful in cases of equal pay claims, in our view it would be inconsistent to rule out their use. They are used in other discrimination law and may be useful in circumstances where normal comparators are not available. For example where women are marginalised in certain sectors of the labour market and where there is a dominant female workforce. The argument would be that unless the use of hypothetical comparators is uniform in discrimination law it will neither be consistent nor simplified.

MAIN CONCERNS FROM THE SECTORS

It is certain that Communities and Local Government will receive submissions from specialist organisations that are better placed than this partnership to respond to the consultation from the perspective of equality groups across the voluntary and community sector spectrum.

However, since the consultation run by this partnership had as one of its main objectives to allow voices to be raised across the equality strands we thought it appropriate here to include the key points and main concerns from the representatives that participated in the consultation event at LVSC in July.

BAME sector

Commission for Racial Equality

Nothing on law enforcement and racism

Patchy evidence

Regression in equality duties

Access to justice issues not addressed

Little enforcement against institutional discrimination

Protection against multiple-discrimination is needed

Age (Older people) sector

Age Concern London

Legislation has a central role in promoting age equality and eliminating age discrimination

All public authorities should be placed under legal duty to promote age equality in all aspects of their work

Age equality duty should be extended as with all public duties to the procurement of services

There should be robust policing and enforcement, and anti-discrimination legislation should be mandatory not voluntary

A public duty on age should be extended to goods, services and facilities as well as the workplace

Disability sector

Disability Law Service

All disability discrimination cases should be heard in a Discrimination Tribunal

There should be more than one avenue to seek redress, Government proposes the CEHR as the only avenue

Problems facing people with mental health issues should be recognised by a Single Equality Act

BAME sector

Croydon BME Forum

DLR proposals are regressive – current legislation should be built upon not undermined

There should be a duty on positive action to address discrimination that should be applied to the public and private sectors

BAME sector

Irish Travellers Movement in Britain

Public equality duties should be robust and strengthened and 'due regard' should be retained rather than replaced by 'proportionate action'
Monitoring, guidance and enforcement should be rigorous

Gender sector

Women's Resource Centre

Gender equality schemes should be mandatory
Equality objectives and priorities should not be identified by each public authority but laid down centrally
Discrimination Law should retain 'due regard' and not be weakened by the proposal for 'proportionate action'
Discrimination Law needs to be levelled up and not down
The proposals do not identify nor address institutional or systematic discrimination
The DLR should explicitly acknowledge the existence of structural and institutional discrimination against women and adopt measures which tackle it by strengthening public sector duties.
Extension of duties to cover procurement of services as well as mandatory duties on the private sector

Sexual orientation sector

Consortium of LGBT VCS Organisations

Clarity is needed on the definitions and parameters of genuine occupational/service requirements
Clarity also needed around the 'subject' of legislation (is it only for individuals or does it cover organisations as a legal personality?)
The issue of multiple discrimination is not covered and needs to be recognised and addressed
The legislation needs to have 'teeth' and enforcement should be paramount

Religion or belief sector

Faithworks

The Genuine Occupational Requirement test must be applicable to faith-based organisations to comply with their ethos
Public sector duties should be extended to cover all equality strands

Carers sector

Princess Royal Trust for Carers

Carers should be protected by any anti-discrimination legislation
Carers should also be protected from discrimination by association with disabled people
It should be recognised that many carers do not freely choose to be a carer
Public bodies need to identify, assess and support carers so that their rights as human beings are not infringed
Disabled or ill people should not be forced to rely for their survival and well-being on an individual who does not choose, or get paid for, that role

Age (children and young people) sector

Children's Rights Alliance for England

Age discrimination against children and young people beyond the workplace should be recognised and built into Discrimination Law

A public duty to promote good relations between age groups should be introduced

Age-specific services need to be developed for children and young people

Children and young people should be protected from discrimination by specific duties

There should be a clear purpose clause, extension of anti-discrimination law to the private sector and robust policing and enforcement

Refugees and asylum seekers sector

The Refugee Council

Refugees and asylum seekers are a distinct category within the equalities agenda and should be acknowledged and protected by discrimination law. Many issues from this sector's perspective could have been addressed by the Discrimination Law Review but weren't e.g. negative and prejudicial media coverage, rights to work, access to justice, access to healthcare and housing, discrimination against people with no documentation, access to training and employment

These issues need to be recognised, accepted and built into anti-discrimination protections

Transgendered people sector

Press for Change

The limited definition of trans people needs to be addressed and broadened

Protection from discrimination by association needs to be built into the legislation as does 'perceived' transgender

Legislation around trans people needs to be consistent and certain

Trans people may experience discrimination through medical, career and financial histories, this needs to be acknowledged and incorporated into the Single Equality Act

The Gender Equality duty should be strengthened

Enforcement should be rigorous

Protection against gender identity related discrimination for children in schools needs to be incorporated

Organisations working from the Human Rights perspective

British Institute of Human Rights

Human Rights need to be the foundation of any Single Equality Act

Multiple-discrimination must be acknowledged and addressed

Equality needs to be broadened to include everyone not simply the current strands

Article 14 of the Human Rights Act fills the gap around age discrimination beyond the workplace

Older people, disabled people and others living in care homes must be protected

The Government needs to recognise that Human Rights must be integrated into all equality work underpinning and strengthening it.

Further Comments

Harmonising and simplifying the law

The law needs to be easy for the general public to understand but this doesn't mean that the law should be weakened or levelled down, rather it should be broadened and strengthened and the equality gains already established such as the Race Relations Act should be built upon.

There should be clear occupational requirement guidance and protections should be extended to all equality strands and allow for emerging and as yet unidentified strands to be included.

Hypothetical comparators should be allowed.

There is a fear that harmonising and simplifying means weakening and although this point has been made several times already it needs to be reiterated.

Making the law more effective

Anti-discrimination legislation must be mandatory and extended to incorporate the private sector.

The law should be monitored and enforced making it easier to challenge discrimination. Collective or representative cases should be permitted and the focus of any litigation should not necessarily be on the individual.

The procurement of services by public authorities from whatever source must also be covered by the Single Equality Act and be subject to the same duties.

There needs to be better access to justice and that access needs to be easier to obtain. Access to independent advocacy should also be built into the legislation.

Modernising the law - This is also our concluding statement

The main point about modernisation of the law has already been made, that in the 21st century everyone should be equally protected from discrimination and disadvantage and that in the spirit of the Human Rights Act everyone should be able to reach their potential and contribute to society no matter their background, race, gender, class, sexual orientation, religion or belief, disability, age, nationality or origin or any other defining characteristic.

Recent statistics have shown that at the current rate we should only have a representative House of Commons by 2080, that the gender pay gap will not be closed until 2085 and that the ethnic employment gap will only be closed by 2105. The 50 plus employment penalty will not be ended in our lifetime and the disability employment gap will probably never be closed.

These statistics are simply unacceptable and Great Britain needs to take immediate action to speed up change and to outlaw discrimination. The Single Equality Act needs to address all the points raised in this joint response, as well as acknowledging and acting upon all the advice in the submissions from specialist organisations.

This Government has made significant progress towards equality but now is the time to build on those advances.

APPENDIX I: PARTNER ORGANISATIONS

London Voluntary Service Council

London Voluntary Service Council brings London voluntary and community sector organisations together to learn and share best practice and to create a co-ordinated voice to influence policy makers. LVSC's vision is for the voluntary and community sector to play a fully empowered and effective role in the diverse life of London.

LVSC hosts and services 4 networks including Third Sector Alliance, Voluntary Sector Forum, Second Tier Advisors Network and Cascade. It is from the networks that LVSC's policy work is driven.

LVSC also provides HR related services such as PEACe (the Personnel Employment Advice and Conciliation service) and the BMER Outreach HR Advice and Support Project. There is also a specialist legal advisor providing legal advice on leases, licences, contracts, commercial agreements constitutions and other voluntary and community sector commercial matters

LVSC provides up-to-date information on organisational management and funding, advice and support for voluntary and community groups, an information service and short courses for those working in the sector.

www.lvsc.org.uk

Third Sector Alliance

The Third Sector Alliance (3SA) is the regional network of 225 networks of voluntary and community organisations for London. 3SA aims to promote and support the effective engagement, contribution and influence of the voluntary and community sector as partners in regional policy.

Funded by Government Office for London this London region 'network of networks' works to channel the views of voluntary and community groups from the grassroots to policy and decision makers in London.

www.lvsc.org.uk/3SA

Race on the Agenda

ROTA is a social policy think tank devoted to issues that affect black, Asian and minority ethnic (BAME) communities in London. Rota is committed to working towards achieving social justice and the elimination of discrimination and promoting diversity and human rights, equality of opportunity and best practice. ROTA achieves these aims by informing London's strategic decision makers about issues affecting the BAME voluntary sector and the communities it serves and by making government policy more accessible to London's BAME organisations. ROTA is also the home to MiNet (Minority Network), a government funded network for networks. MiNet serves London's BAME organisations by providing a voice in the development of regional policy

www.rota.org.uk

London Civic Forum

London Civic Forum engages the capital's civil society in the regional governance of London through democratic debate and effective consultation. Through cross-sectoral working groups set up to look at specific policy issues, the Civic Forum

informs the Greater London Authority, the London Assembly, and other pan-London organisations about the issues that affect the lives and opportunities of those who live and work in London.

This work is led through projects which include London 2012 (Olympic and Paralympic Games, Promoting Community Cohesion, Combating Discrimination and promoting Equality, Community Safety and Policing, Active Learning for Active Citizenship and How London Works. LCF's membership consists of over 1300 organisations drawing on a cross section of organisations from the voluntary and community, private and public sectors, which include specialist equalities organisations covering various equality strands.

www.londoncivicforum.org.uk

APPENDIX II: CONSULTATION EVENT PARTICIPANTS

Participating organisations

1990 Trust
Action for Advocacy
adviceUK
Age Concern Islington
Age Concern London
Alliance for Inclusive Education
Black Londoners Forum
British Black Anti Poverty Network
British Humanist Association
British Institute of Human Rights
Brook London
Cardinal Hume Centre
Central London CVS Network
Challenge Life
Children's Rights Alliance for England
Commission for Racial Equality
Confederation of Indian Organisations
Consortium of LGBT VCOs
Disability Law Service
Enfield Community Empowerment Network
Equalities National Council
Evelyn Oldfield Unit
Faithworks
Federation of Irish Societies
Hammersmith & Fulham Action on Disability
Haringey LGBT Network
Havering Asian Social & Welfare Association
Havering Citizens' Advice Bureau
Healthcare Commission
Hindu Cultural Association
Independent Academic Research Studies
Irish Traveller Movement
Journeyman Training
Kingston Racial Equality Council
London Civic Forum
London Voluntary Service Council
National Society for the Prevention of Cruelty to Children
Necko Consultancy
Office for Disability Issues
Positively Women
Press for Change
Princess Royal Trust for Carers
PublicMedia

Race On The Agenda
Refugee Council
Richmond AID
Richmond CVS
Rights and Humanity
Royal National Institute for the Deaf
Schools Out/LGBT History Month
Shape
Shelter
St Mungos Westminster Building Based Service
The Royal Association for Deaf People
TransLondon
West Indian Standing Conference
Westminster Advocacy Service for Senior Residents
Westminster Partnership for Race Equality
Women's Design Service
Women's Resource Centre