



briefing no 19

Discrimination Law Review – Proposals for a Single Equality Bill

July 2007

policy briefing

INTRODUCTION

On 12 June 2007, the Government published its Green Paper “A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain”, entering into public consultation until 4 September 2007. The Green Paper will lead to the Single Equality Act. It is based on the findings of the Discrimination Law Review that was launched in February 2005, as well as on the recommendations of the Equalities Review that was published in February 2007, and was chaired by Trevor Phillips, Chair of the Commission for Equality and Human Rights (CEHR) and formerly Chair of the Commission for Racial Equality (CRE).

The Review considered the opportunities for creating a clearer and more streamlined discrimination legislative framework. The Green Paper is broken down into:

Part 1: Harmonising and simplifying the law.

- Promoting compliance and good practice, simplifying definitions, tests and exceptions.
- Goods, facilities and services, and public functions.
- Equal pay.

Part 2: More effective law.

- Balancing measures.
- Public sector equality duties.
- Promoting good equality practice in the private sector.
- Effective dispute resolution.

Part 3: Modernising the law.

- The grounds of discrimination.
- Age discrimination beyond the workplace.
- Gender reassignment.
- Pregnancy and maternity.
- Private clubs and associations.
- Improving access to and use of premises for disabled people.
- Harassment.

This policy briefing aims to inform you about the key features of these proposals. It will be followed up with a consultation event that we are organising on 27th July with London Voluntary Service Council, Third Sector Alliance and London Civic Forum. We will then make a submission to Government.

AN OPPORTUNITY NOT TO BE MISSED

Since the 1960s, anti-discrimination laws have been passed in this country to deal with less favourable treatment of people on the grounds of:

- Sex, including gender reassignment.
- Disability.
- Religion or belief, including the freedom not to have a religion or belief.
- Sexual orientation.
- Age.
- Race, including nationality, ethnic and national origins.

These are also known as “the six equality strands”. The laws cover areas of activity such as education, vocational training and employment, the provision of goods and services and the exercise of public functions. Due to the piecemeal approach that was adopted to address discrimination, and in the absence of a constitution or a Bill of Rights that would bring all strands under the same roof, discrimination law appears to be fragmented. It requires a great level of expertise, effort and time to be able to go through the hundreds of Acts of Parliament, regulations and orders that challenge discrimination. In addition, as society advances, new areas of discrimination are put on the statute (e.g. sexual orientation or faith), and the question of multiple discrimination opens up new debates on the need for a more holistic approach to equality. Our Policy Briefing 17 discussed the concept of “the human rights vision of equality” and its significance for the CEHR, the new body for equalities and human rights. After fierce campaigning and policy discussions, the Government promised in its last manifesto to legislate for a Single Equality Act that will bring harmony to the discrimination laws of this country, simplify them, update them, and make them accessible and comprehensive, providing the CEHR with a modern framework that reflects the values of today’s Britain. The voluntary and community sector (VCS) played a crucial role in making this happen and will be essential in seeing the outcomes delivered successfully. This is an opportunity not to be missed and hence ROTA has made it one of its key policy priorities. ROTA adopts a holistic approach to race equality and works in partnership with other VCS organisations that complement its expertise and have a similar vision.

THE PROPOSALS IN BRIEF

Part 1 of the Green Paper puts forward proposals that aim to harmonise and simplify existing discrimination law. **Chapter 1** focuses on making sure that businesses and other organisations have proper guidance to support them in meeting the requirements of discrimination law. It proposes the simplification of a number of definitions (e.g. disability discrimination, indirect discrimination) and exceptions (e.g. occupational qualification exceptions). It also asks whether insurers should treat people differently on the grounds of sexual orientation. The CEHR is proposed as the body with primary responsibility for issuing guidance and codes of practice. It is expected to work in partnership with private, public and voluntary sector bodies. **Chapter 2** looks at service provision by public bodies while **Chapter 3** concentrates on the issue of equal pay. For instance, it asks whether equal pay provisions should be included in the Single Equality Act and what else needs to be done to simplify them considering at the same time the complexity of the settled principles that have come out of jurisprudence.

Part 2 seeks views on the creation of a Single Equality Duty for public services, how this can be extended to organisations contracted to provide public services and how private sector organisations can be encouraged to improve equality practice. In particular, **Chapter 4** looks at provisions that could allow positive action to be taken by public bodies. Positive action is generally defined as “a range of measures which employers can lawfully take to encourage and train people from under-represented (racial and ethnic groups) in order to help them overcome disadvantages in competing with other applicants” (see ROTA Policy Briefing 15). **Chapter 5** goes into the details of a Single Equality Duty. It outlines the current duties (i.e. the race, disability and gender equality duties) and how these can be replaced by a single equality duty, extending coverage across all the protected grounds. It then examines the role of the public service inspectorates in assessing compliance and what sort of guidance public authorities should receive on procurement. **Chapter 6** proposes the development of a “light touch equality check tool” for employers to use and consider introducing a voluntary equality standard for businesses. **Chapter 7** seeks views on how to encourage the use of Alternative Dispute Resolution, such as mediation, to resolve discrimination disputes in the non-employment field.

Part 3 is focused on modernising the law by adding areas of protections that did not exist before. In particular, **Chapter 8** seeks views on simplifying the definition of disability by removing the list of capacities and adapting the way it affects specific groups such as parents, carers, married people and civil partners. **Chapter 9** calls for evidence of unfair discrimination outside the workplace, and seeks views on how legislation can be made more appropriate and proportionate when addressing the needs of older people. **Chapter 10** is concerned with gender reassignment and whether it should be protected against discrimination when exercising public functions. It also asks whether organised religion should be allowed to treat people differently on the grounds of reassignment. **Chapter 11** looks at pregnancy and maternity and the protection of women in the exercise of public functions. **Chapter 12** deals with the issue of membership to private clubs. For instance, it asks whether to extend the protection against discrimination that disabled people already have as guests in private clubs to race and sexual orientation. It also asks whether to prohibit discrimination by clubs on the grounds of religion or belief except for clubs set up specifically for members who belong to a particular belief. **Chapter 13** proposes that where a disabled person finds it impossible or unreasonably difficult to use the common parts of their let residential premises, the landlord should be under a duty to make a disability-related alteration to the common parts at the disabled person’s expense. Finally, **Chapter 14** deals with the issue of harassment and whether there are grounds that are not currently protected by legislation particularly in situations outside the workplace.

THE GOVERNMENT’S INTENTIONS

The Green Paper promises that it will lead to discrimination law which:

- “recognises that every person has characteristics that may influence how he or she is treated as a citizen, at work and as a consumer of services provided by the public, private and voluntary sectors;
- makes it clear where it is acceptable to treat someone differently on the basis of those characteristics in 21st century Britain; and where it is not acceptable;
- promotes respect by everyone towards others;

- is seen to serve the whole community by helping to produce a fair outcome for everyone in our society, and to address real problems in a common sense way;
- can be understood by everyone and easily applied in everyday situations – for example, by small businesses who do not have a separate human resources department”.

SOME OF THE CRITICISM

Sections of the Green Paper have been heavily criticised by a number of statutory, private and VCS bodies including the Greater London Authority and the existing Commissions. For instance, it is said that it “lacks the comprehensive proposals needed to produce a coherent, effective body of anti-discrimination law, backed by firm enforcement powers (GLA, Equality in our Lifetime? June 2007). Some of the criticism it has received concerns the absence of provisions for:

- A clear ‘purpose clause’.
- Mandatory equal pay audits.
- A duty on public authorities to include equality in procurement.
- A non-discrimination right for carers.
- The establishment of equality tribunals.
- Better access to justice (legal aid).
- Strong positive action measures.
- Workforce equality monitoring.
- More powerful positive equality duties.
- Social model of disability
- The lack of protections around age

Additional criticism includes: weak enforcement, limited definition of “trans people” and their protection, disappointing provisions for preventing multiple discrimination and failure to extend the Equality Duty to the private sector. ROTA will ensure that the views and concerns of Black, Asian and minority ethnic (BAME) communities and the sector that serves them are represented in its response to the Government’s proposals. We would like to see the Race Equality Duty strengthened and more widely adopted by public authorities some of which have been treating it as a “ticking-box exercise”. We are concerned that proposals may lead to a weakened single equality duty that runs contrary to the spirit of the Stephen Lawrence Report.

We will strengthen our voice by working in partnership with the London Voluntary Service Council, Third Sector Alliance and London Civic Forum. If you would like to contribute, then join us on the 27 July at the Resource Centre, London for a free consultation event from 9:30 – 13:00. For more details contact Dr. Theo Gavrielides, Head of Policy, ROTA, Unit 101, Cremer Business Centre, London E2 8HD, theo@rota.org.uk 020 7729 1310.

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