

Winning the race: The final stages of the Single Equality Bill

Building a coalition of equality organisations in the Third Sector to influence the last stages of the Bill

1. Introduction

Race on the Agenda (**ROTA**) with the support of Voice4Change England has formed a national coalition of equality Third Sector bodies to influence the last stages of the Single Equality Bill. The bulk of the work on the Bill has now been completed and the consultation phase is finished. This Policy Briefing aims to:

- build on the work that ROTA, London Voluntary Service Council, London Civic Forum and HEAR have done¹
- complement our campaign letter to Rt. Hon. Harriet Harman QC MP by providing a more detailed account of our recommendations;
- inform you about the latest developments and next steps in relation to the Bill.

The campaign's focus is primarily on race equality and the discrimination faced by Black, Asian and minority ethnic (BAME) groups. However, the coalition also aims to make the argument for cross-equality and human rights issues where appropriate. Our recommendations are underpinned by the following principles:

- The new Act should strengthen existing equality legislation and provide consistent, clear and enforceable standards that are user friendly and accessible;
- Acknowledge persistent inequalities, and enable victims to have easily accessible remedies through fair, inexpensive and expeditious procedures;
- Acknowledge that to achieve equality and eliminate discrimination there needs to be a holistic approach that takes into consideration the different roles of public, private and third sector organisations, and the support needed by those working in these three different environments.

2. Coalition's recommendations

Public Sector Duty

We recommend that the new public sector duty is extended to all strands (including socio-economic status), but each strand should be considered in a way that best suits its needs.

This is particularly true for race equality due to its long history and rich case law. The Stephen Lawrence Inquiry saw a qualitative step forward in recognition of the reality of

institutional discrimination. As a result the Race Relations Amendment Act 2000 introduce the race equality duty on all public authorities and services.

The Single Equality Bill proposes to consider broadening the public sector duties to cover three new grounds of age, religion and sexual orientation – and most recently socio economic status – important positive step. However, we are concerned that the wording of the Act might weaken enforcement of the existing race equality duty.

The 2007 Green Paper proposed that public authorities be required to set priority equality objectives – and take *'proportionate'* action to achieve these. This would be instead of embedding equality in all their policies: at the moment, public authorities have to take equality into account in everything they do. While it is important to have clear objectives, these must be in addition to the current requirement on public authorities to consider equality in all their work.

Secondly, the changes would remove the clear obligation to take steps such as consulting those who will be affected, use evidence, monitor, assess the impact of policies and actions. Public authorities would no longer be required to produce three-year schemes with detailed requirements. The Green Paper also stated: *'Our proposed approach would therefore mean that the law would no longer specifically require, for example, employment monitoring of racial groups?'* Without such data collection it will be impossible to judge progress in employment equality, for example. The proposals would also remove the legal requirement to consult and involve people. All this would be replaced with 'principles' to *'underpin effective performance of public sector duties'*. This far less specific duty will also be much harder to enforce.

We are supportive of a qualitative measurement of the duty's implementation and of outcome focused targets as opposed to process focused. However, we are unclear as to how the wording of the Bill will capture this, and whether bodies such as the Auditors, Regulators and Commissioners have been involved.

Thirdly, the changes would remove the provision for individuals, trade unions and other groups to challenge decisions where they do not take equality into account. It is proposed that this will no longer be the case with only the EHRC being able to take enforcement action. EHRC's capacity is limited while the role of Race Equality Councils and Equality Bodies is still uncertain.

The Single Equality Bill clearly states in practice "the duty will require public bodies to consider how their policies, programmes and services affect different disadvantaged groups in the community". This is significant for the BAME Third Sector given the disproportionate negative impact that some policies, programmes and services have on the BAME groups that they serve. Under this new duty, there will need to be a consideration on the potential detrimental impact that some services may have on BAME communities as well as to assess whether they meet the needs of BAME communities.

The Act should clearly define what constitutes a public authority covering all bodies (including private and third sector organisations) that provide public services.

It is important that the Acts builds upon and use the existing jurisprudence as set out in the Race Relation Amendment Act in regards to the definition of a public authority. This is necessary to avoid narrow interpretations, which will result in victims of discrimination being left vulnerable whilst new case law is established . **ROTA** would strongly suggest that the definition as set out in 'SCHEDULE 1A Bodies and other persons subject to general statutory duty' in the Race Relations (Amendment) Act 2000 is applied to the

Single Equality Act and that the lessons from the implementation of the Human Rights Act are considered.

Positive Action measures

We recommend that the Act aligns domestic legislation with EU law and in particular the Equality Framework Directive (2000/78/EC) and European Race Directive (2000/43/EC). The directives allow positive action to be undertaken, and do not regard it as infringing the principle of equal treatment. They cover access to employment, training or promotion, and are relevant to public, private and Third sector organisations.

The Bill states that in order 'to end inequality you have to take positive action to redress disadvantage as well as tackle discrimination'. Therefore, 'the Bill will extend positive action so that employers can take under-representation into account when selecting between two equally qualified candidates'. What this actually does is to allow employers to use positive action but there is 'no strict rule that this must be done in all cases'.

The EU Directives leave open the possibility for states to adopt "specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin" (Art. 5). Under the test of indirect discrimination, it should be possible for states to adopt measures which give preference to members of minority groups which have historically been the victims of discrimination, if (a) such measures have the legitimate aim of reducing *de facto* inequalities which stem from past discriminatory practices, and (b) the nature and extent of the present inequalities make the preferential measure proportionate. What is currently proposed is much more limited, for example, than the targets on women in senior positions introduced in Norway and Spain for example, or provisions in place in Northern Ireland.

The clear danger is that weak legislation may fail to address the levels of under-representation in key services, employment and public life. If organisations are unclear as to what steps are permitted under law many may not risk doing anything, and many more will have little incentive to do so.

The Equality Bill states that they 'will also extend the permission to use women-only shortlists in selecting parliamentary candidates to 2030'. However, they 'will not legislate to allow ethnic minority shortlists at this stage' and instead will 'pursue non-legislative measures to increase the number of ethnic minority elected representative in both Parliament and local councils'. It is not clear why this decision has been made apart from the statement that there is not consensus that a shortlist would be the best way forward. The statistics offered in the Bill state that 19% of MP's are women while BAME individuals only represent 2.3% of all MP's. It is evident from this that concrete action is needed to address this disproportionality. We are awaiting confirmation on what non-legislative action will be taken.

Remedying discrimination in the private sector

We recommend that the Act places an explicit legal duty to make equality part of procurement. In this way, the Act will ensure that public contracts are awarded only to those who are prepared to provide equal opportunities and not to contractors who are willing to cut costs by adopting poor equality practices.

Over £175 billion is spent each year in contracts for works, goods or services. This represents approximately one-third of total public expenditure. It is important to ensure that

employees in the private and third sector do not receive less protection than those in the public sector.

The current equality legislative framework has not provided consistency and a clear picture on the consideration and implementation of equality standards by private and Third sector contractors who have been procured to deliver public services. We have evidence to suggest that despite the existing guidance, there is inconsistency in its implementation. This is not only seen across different public bodies, but also within a single body. We also have evidence to suggest that some public authorities are ignoring equality throughout the procurement process including management, planning, performance and monitoring.

The Single Equality Bill enables the public sector to use their spending power to deliver greater transparency and improve equality performance in the private sector. While there is already some legislation that allows for the promotion of race equality and equality through procurement, this bill aims to strengthen that by using greater transparency. The Bill states that policymakers will be looking at both legislative and non-legislative means of maximising these proposals and **ROTA** will follow, and encourage other BAME Third Sector organisations, to be aware of how this is played out.

As we enter a commissioning environment, it is crucial that those commissioned to carry out work deliver on equality. The positive duty included in the Race Relations (Amendment) Act could now be extended to private and Third Sector organisations either through legislation or non-statutory guidance. Furthermore, the bill highlights that there are stark inequalities in specific industries such as 'in the construction industry, 2.5% of the workers are from BAME groups, whereas the average workforce as a whole is 8%.

ROTA would call for a statutory obligation placing anti-discrimination measures at the heart of the function of public sector procurement. The 2007 Green Paper rejected this saying that: *'the CBI agrees that this [equality] can be achieved through the development of clear, consistent and practical guidance'*. This route has failed. There has already been a range of such guidance and policy initiatives such as: the National Procurement Strategy for Local Government, the Commission for Racial Equality's Guide on Race Equality in Procurement and the Equalities Standard for Local Government. Despite these initiatives, Communities and Local Government's 'Two Years On' report on the National Procurement Strategy for Local Government identified that in 2004 only 34 per cent of authorities specifically addressed equality and diversity in their procurement strategies, and in 2005 only 40 per cent of authorities specifically addressed equality and diversity with examples or targets. In other words, these voluntary schemes have not produced the change in public procurement that is required.

In the 2007 Green paper the introduction of positive equality duties in the private sector were rejected as entailing a *'significant regulatory burden'*. Such duties have worked well in Northern Ireland. Given the difference in scale between Northern Ireland and Britain, the detailed content of duties may well differ, but the idea that encouragement to good practice will work if unaccompanied by the incentive of legal backing is wishful thinking. Equality monitoring and positive duties are vitally important steps towards making workforces more representative of the entire population – addressing the under-representation of sectors of the population in senior jobs, professions, and sectors, and tackling inequality in pay and employment.

Enforcement

We are concerned that existing protection of equality strands with longer history (such as race equality) might be levelled down. Existing protection must be streamlined and strengthened.

Representative claims should also be allowed. Where tribunals find cases of unlawful discrimination that apply more broadly than the individual claimant, its decision should have collective effect and provision should be made for collective implications

Anti-discrimination legislation is only as good as the enforcement that accompanies it. **ROTA** and other stakeholders have made clear that this is a big area of concern yet unless this is rethought, the Single Equality Act will not lead to the improvements in outcome that are needed for millions of people.

3. What's Next?

We have requested a meeting with the responsible Minister Harriet Harman QC MP and we will be updating you on whether this has been accepted. We would like to hear from organisations interested in attending the meeting or who have additional points to make.

The equality Third Sector is a critical friend and a partner in helping public bodies deliver on the equality agenda and the agreed equality PSAs. The Equality and Human Rights Commission has been supportive in our initiative and its Chair, Trevor Philips has facilitated two meetings to take these matters forward. It is now the time for the sector to lead on this campaign with a key objective to make our outlined concerns heard.

A dialogue with government will also ensure that the equality Third Sector is kept fully engaged. We hope that this will also be the first step in identifying the right kind of support that is needed in providing appropriate capacity building services that will enable the equality Third Sector to respond to the challenges introduced by the Bill.

For any questions regarding this briefing please contact Dr Theo Gavrielides on theo@rota.org.uk or 020 7729 1310

ROTA uses the term BAME to refer to all groups who are discriminated against on the grounds of their race, culture, colour or nationality.

Race on the Agenda is a social policy think-tank set up in April 1997 to take over from Greater London Action on Race Equality which started in 1984. As a charity and a company limited by guarantee, we work with London's Black, Asian and minority ethnic (BAME) communities and others interested in race equality, towards achieving social justice by the elimination of discrimination and promotion of human rights, diversity and equality of opportunity. We achieve these aims by informing London's strategic decision-makers about the issues affecting the BAME third sector and the communities it serves and by making government policy more accessible to London's BAME organisations.

ⁱ <http://www.lvsc.org.uk/Templates/information.asp?NodeID=98115&i1PNID=90619&i2PNID=98111> and <http://www.rota.org.uk/pages/PolicyBriefings.aspx>