

Equality Bill

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**Equality and
Human Rights**
Commission

The Equality and Human Rights Commission

The Equality and Human Rights Commission (the Commission), established on 1st October 2007 is working to eliminate discrimination, reduce inequality, protect human rights and to build good relations, ensuring that everyone has a fair chance to participate in society.

Our approach to equality, opportunity and human rights builds on the achievements of our predecessors, the Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC). We are here for the 60 million people of Britain and Parliament has set us the task of:

- Protecting and promoting equality
- Protecting and promoting human rights, and
- Ensuring good relations.

The Equality Bill

Equality to drive our recovery

The Commission strongly welcomes the Government's Equality Bill. It will ensure Britain is well placed to find and support the talent we need to drive our economic recovery. It will ensure this recovery is founded within a cohesive society, where difference is a cause for celebration and where all citizens are treated fairly and with dignity and respect allowing them to flourish and make their contribution to the society we share.

21st century equality legislation

Overall, we think the Bill is well framed and proportionate. It will help unblock some of the systemic problems that get in the way of equality and achievement for everyone in Britain. By simplifying legislation, it will improve public service delivery and business performance whilst extending equality protection to the wide range of groups that still face discrimination today.

The importance of partnership

The Bill promotes a partnership approach to equality which the Commission supports. It acknowledges that the public and private sectors need practical support and guidance to deliver equality objectives, but recognises these must exist within the context of a strong legislative framework, particularly when necessary progress is slow.

Fairness at work

For business, we believe the Bill will ease the burden of complying with equality legislation, providing for a more proportionate and level regulatory playing field that will encourage companies to treat staff fairly and root out inequality. We will continue to work with the business community to develop the most practical ways of delivering equality objectives.

For staff, it provides a guarantee that merit and hard work will be rewarded, irrespective of attributes like age, gender or race.

A fairer, more efficient use of public money

For public bodies, simplifying the currently complex legislation into one single duty will make it easier to tailor public services to meet their communities' needs. The simplified approach and improved targeting should increase the effectiveness and efficiency of public spending.

The Equality Bill contains a series of measures to tackle entrenched inequalities including particular measures on equal pay, age discrimination and socio-economic disadvantage which we particularly welcome.

Does the Bill go far enough?

As the Bill represents a once in a generation opportunity to improve the way fairness and equality are pursued in Britain, the Commission will use its passage to argue in favour of additional elements which are not already present in the Bill, including:

- abolition of the mandatory retirement age
- protection from age discrimination for young people
- an Equality Guarantee
- a Purpose Clause, and
- further streamlining of existing legislation, including in relation to harassment.

The Commission will use the next few weeks to study the Bill in detail and continue to suggest how we feel the legislation could be improved or where we feel it is important that the Bill goes further.

Key issues

1. Socio-economic duty

We welcome the Government's decision to require public authorities to consider socio-economic disadvantage in the planning and monitoring of the services they provide. The Commission was an early supporter of this provision because we believe that by ignoring socio-economic disadvantage, you ignore some of the most pernicious causes of discrimination in the UK.

Socio-economic disadvantage is one of the many complex structural causes of discrimination and inequality. Factors such as changes in the labour market, the delivery of public services such as education and health, and the immediate impact of the economic downturn can negatively affect the life chances of individuals.

Considering socio-economic disadvantage will be important in driving social mobility.

Failing to tackle the root causes of this inequality early on in life could cost the taxpayer more in the long term. For example, young people who are not in education or employment are far more likely to go to prison, each one costing between £15,000 and £50,000 per year for each prison place.

Allowing public bodies like health authorities to take into account deprivation in their area will help them properly tackle issues like preventing heart disease and obesity-related illnesses, potentially saving the NHS money in the long term.

2. Age discrimination

We welcome the measures outlined in the Bill to ensure providers of goods, facilities and services (such as high street shops, sports clubs, holiday resorts, and doctors) treat older people fairly and equally. We would, however, like the Bill to go further, for example by abolishing mandatory retirement ages.

Currently it is legal, and normal practice, for insurance companies to dramatically increase premiums or refuse to quote based on age. This means that some healthy, active older people find it difficult to travel abroad to visit relatives or to travel. Older people are also denied access to some health services, such as mental health care. The Commission announced earlier this year that it plans to research the extent of ageism in health and social care.

The Commission believes the law should help service providers and employers consider people's abilities rather than simply their date of birth. If the Bill does not abolish mandatory retirement, at the very least the Commission would like to strengthen the right to request to carry on working, with employers required to give a business case for refusing any requests.

We also believe young people under the age of 18 should be protected from age discrimination in the provision of goods, facilities and services and we are calling on Government to ensure the UK is in line with international standards.

Following the publication of the Bill, the Commission will produce statutory and non-statutory guidance on the implementation of the new Age Goods, Facilities and Services provisions. We are already working with the NHS on implementing the new provisions throughout the Health Service, and we will also work with other organisations on this issue.

3. Public Sector Equality Duty

Today's economic climate increases pressure to deliver effective, efficient public services to all parts of the community. The Commission believes the new Public Sector Equality Duty will encourage public sector bodies to tailor public services, like education and health, more closely to community need. The new outcomes focussed, streamlined approach will help public bodies deliver fair public services more efficiently.

Under the current public sector duties, public authorities are required to consider race, gender and disability issues when developing their policies and delivering their services. However, they don't legally have to take into account the specific needs of other groups, such as older people or those with different religious backgrounds.

The Commission therefore welcomes the introduction of a single Public Sector Equality Duty covering all the different types of inequality people may face. We will work to ensure that the new legislation focuses on results (such as health services that reflect the health trends associated with different ethnic groups in their areas) rather than on box-ticking and bureaucracy.

We believe a more coherent approach to equality and undertaking useful Equality Impact Assessments could also save money. For example, when a local council spent money on better fitting, non-slip footwear for elderly people, the results were a significant reduction in the number of people needing hip replacements following a fall. This meant local people had a better quality of life and saved taxpayers' money.

Similarly, one fire department discovered that local Bangladeshi homes were more likely to experience chip pan fires. After outreach work with the community, the number of fires dramatically reduced, saving money and reducing risk to life. In another example, a local authority found that very few Muslims and Jewish people were taking up their meals on wheels service, despite a large number being eligible. After consultation, the authority renegotiated its contract to bring in a caterer who could supply kosher and halal options. Take up increased and the existing users also said they appreciated the greater range of food.

Specific duties

As well as a general duty to require all relevant public authorities to proactively work to eliminate discrimination and unlawful harassment, and promote equality and good relations, the Commission also believes the new legislation should include specific public sector duties.

These include requiring public authorities to prioritise their activities to focus on what the evidence points to as the most pressing inequalities: ensuring that they properly involve those who use their services in any consultations; conduct effective Equality Impact Assessments to ensure they are basing their policies on the right evidence and periodically take stock and report on progress towards achieving equality targets.

Disability

The Commission recognises the distinctive nature of disability discrimination and will scrutinise the Bill carefully to ensure that this is adequately addressed. In particular, the Bill must be clear that in eliminating discrimination and promoting equality of opportunity for disabled people, public authorities may be required to treat disabled people more favourably.

Religion and belief

The Commission recognises that there are concerns about extending the Duty to include religion and belief, mainly due to fears that this will lead to the active promotion of religion and belief in Britain. The Duty is designed to protect people from discrimination on the grounds of religion and belief and to promote equality of treatment for people of different religions or beliefs. There is no requirement on public sector organisations to promote particular religions or belief systems and in fact doing so may run counter to the Duty.

The Commission believes that to exclude religion and belief from the Public Sector Equality Duty would create a two-tier system of protections which will lead to unfairness, not just between different religions or belief groups, or between religious and non-religious groups, but also between religion and belief and other protected grounds.

Not extending the duty to religion or belief will also amount to a missed opportunity to improve relations and cohesion between different groups and to tackle disadvantage and discrimination based on religion or belief which has hitherto been lost in the focus on discrimination on the grounds of race.

4. Gender pay gap

Nearly 40 years after the Equal Pay Act, we still live in a society where for every pound earned by our sons, our daughters will take home less than 85 pence.

In some areas, we know that the gender pay gaps are particularly stark. A report issued recently as part of the Commission's Inquiry into the Finance Sector revealed significant gender pay gaps of up to 60 per cent in that sector and evidence that women are overwhelmingly concentrated in lower-paid administrative jobs.

There are strong economic reasons for eliminating the gender pay gap. The Women and Work Commission concluded in 2006 that removing barriers to women working in occupations traditionally done by men, and increasing women's participation in the labour market, would be worth between £15 billion and £23 billion: equivalent to 1.3 to 2.0 per cent of Gross Domestic Product (GDP).

Statistics show that the gap is wider in the private sector than in the public (a full-time gap of 21.7 per cent as compared to 13.8 per cent) and evidence produced for the Commission in 2008 showed that far fewer private than public sector employers are taking action to close the gender pay gap by carrying out equal pay reviews (23 per cent as compared to 43 per cent).

The Commission therefore welcomes the intention to create transparency around pay by lifting gagging clauses and allowing colleagues to discuss their pay.

Gender Pay Reporting

We therefore welcome the Government's request for the Commission to embark on a programme of work with the private sector to develop a set of metrics for reporting on the gender pay gap.

The Commission will be consulting with the CBI and other business bodies, the TUC and individual trades unions, women's groups and other stakeholders throughout Britain on the most appropriate ways for measuring and publishing pay differentials.

The Commission aims to publish a consultation document in the summer, followed by initial proposals on headline indicators. Leading on from this consultation, the Commission will produce an annual report on the gender pay gap. By 2012/13, the Commission will produce a final report which will set out the reporting structure to be adopted by all companies with more than 250 employees.

To maximise the effectiveness of the Bill on Equal Pay we are supporting:

- representative actions
- hypothetical comparisons
- the extension of powers of employment Tribunals, and
- root and branch review of the equal pay legislation to secure long term reform.

5. Procurement

The public sector spends billions of pounds every year on procurement. The Commission welcomes measures that will enable public bodies to choose suppliers who treat their workers fairly and equally, as well as delivering value for money for the taxpayer.

Many businesses, small and large, want to access these contracts available through the public sector and we need to provide them with simple and clear guidance to help them do so.

We believe that the single Public Sector Equality Duty should therefore make explicit the need to give due consideration to equality and diversity when making procurement decisions. The Commission has been working with the Government Equality Office and Office of Government Commerce (OGC) to reform the Pre Qualification Questionnaire used in public sector procurement, which we hope will simplify the process for both contractor and bidder. We will continue to work with the OGC to streamline the procurement process and to develop clear equality standards.

6. Enforcement and clarifying the law

The incremental way our discrimination laws have developed has resulted in unnecessary complexity and has left some gaps where protected grounds are not afforded similar protection under the law.

The Commission therefore welcomes the Government's proposals that the Bill should bring together the three existing equality duties into a single Public Sector Equality Duty. We support the extension of the Duty to cover age, sexual orientation, and religion and belief, as well as the clarification and extension of existing coverage for gender reassignment. Clarifying these laws will help businesses and public services avoid confusion, and provide consistency across different groups rather than risk the growth of a 'hierarchy of rights'.

The distinctive nature of disability

The Commission recognises the distinctive nature of disability discrimination and will scrutinise the Bill carefully to ensure that the current protections available to disabled people are carried through to the new Act.

Malcolm vs. Lewisham

We also believe the Equality Bill offers an ideal opportunity to restore the original purpose of the Disability Discrimination Act, following a recent House of Lords judgement. In the Malcolm vs. Lewisham case, a council tenant with schizophrenia was evicted for sub-letting his home without seeking prior permission from the council. Mr Malcolm's solicitors argued that the subletting was caused by his schizophrenia, which involved a susceptibility to distortions in thinking. The council was therefore seeking possession for a reason related to his disability, in breach of the DDA.

The Lords decided that there was no breach of the DDA, as his case should be treated in the same way as any other tenant who had sublet, regardless of his disability.

The Government pledged to address the gap left by the Malcolm judgement and consulted on its proposals in late 2008. The Commission and others were critical of the Government's proposals to rely entirely on 'indirect discrimination'.

The Commission subsequently proposed a model which combined indirect discrimination with a modified version of ‘disability related less favourable treatment’. The Commission will closely scrutinise the final proposals contained in the Bill to ensure the Act resolves this situation to the benefit of disabled people.

Discrimination by association

The Bill should also help carers by ensuring that they do not suffer the type of ‘discrimination by association’ experienced by Sharon Coleman. Sharon, who has a disabled son, brought a case claiming she was forced to resign from her job as a legal secretary after being harassed by her employers and refused flexible working, which was allowed to other employees. The European Court of Justice (ECJ) has found that treating employees less favourably because of their caring responsibilities for disabled relatives is unlawful and that ‘disability discrimination by association’ should apply to British law. We therefore welcome the Equality Bill’s inclusion outlawing this type of discrimination.

7. Positive action

Many employers understand the value of a diverse workforce. However, the law around positive action is confusing with many well-intentioned employers fearful of breaking anti-discrimination legislation and confusing positive action with positive discrimination, which is unlawful. The Commission welcomes the provisions in the Equality Bill to clarify the existing legislation and promote positive action.

Lots of businesses recognise that a more diverse range of employees may give them a greater insight into new markets by helping identify the needs or preferences of certain sectors of society. A more diverse workforce may attract a wider range of customers, such as taxi companies that employ women drivers appealing more to women travelling on their own. Many employers also recognise the reputational benefits of a representative workforce. Consumers and shareholders have shown the competitive benefits that companies can gain through sustainability programmes and fair trade principles.

Public bodies also understand the need for a diverse workforce to better represent the communities they serve. For example, many recognise the problem of under-representation of male primary school teachers, which means that many boys grow up in an environment without positive male role models.

Positive action would allow employers choosing between two equally-qualified candidates, if they wish, to select the successful candidate on the grounds that they are from an under-represented or disadvantaged group. In other words, the fact that a candidate is from one of these groups would lawfully be considered as a ‘tipping factor’ in a tie-break situation. It should be stressed that this is a voluntary process.

Positive discrimination, on the other hand, means that applicants from particular groups receive preferential treatment in the recruitment process; so that a less well qualified applicant might be given a job over a better qualified rival, solely because they come from an under-represented group. This would remain unlawful.

Following the publication of the Bill, the Commission will consider issuing guidance for employers and stakeholders on positive action.

8. What else would the Commission like to see?

We believe the Equality Bill represents a once in a generation opportunity to improve the way fairness and equality are pursued in Britain.

Thus, while we welcome the Bill, the Commission will also use this opportunity to also argue in favour of:

- **An Equality Guarantee:** An Equality Guarantee would extend the commitment to equality beyond this Bill and would mean equality was considered in every action of the state and in every piece of future legislation.
- **A Purpose Clause:** A provision at the start of a Bill which states the goals and underlying principles of the Bill. This is a useful tool in clarifying the law and is particularly helpful in ensuring legislation is not misinterpreted.

- **Protection from age discrimination for under 18s:** We believe everyone should be protected from age discrimination not just those over 18. While older people face the most obvious discrimination, younger people are still unfairly judged by their age. We believe extending the law to protect younger people will also go some way towards addressing the alienation young people experience.
- **Abolishing mandatory retirement age:** Being forced to stand down from a job because of your age not your ability is one of the most blatant forms of age discrimination older people face. The Commission would like mandatory retirement ages to be abolished through the Equality Bill. If this is not possible, the Commission is calling for a strengthening of the right to request to carry on working, with employers required to give a business case for refusing any requests.

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