

EQUAL
OPPORTUNITIES
Legislation and Good
Practice

1: LEGAL AND GOOD PRACTICE FRAMEWORK

A: COMMISSION FOR RACIAL EQUALITY (London & Regions):

RACE RELATIONS ACT (RRA) 1976

- 1 The RRA makes it unlawful to discriminate against a person, directly or indirectly on racial grounds, in the area of employment and in the provision of goods, facilities or services. **Direct** racial discrimination consists of treating a person on racial grounds less favourably than others are, or would, be treated in the same or similar circumstances. **Indirect** racial discrimination involves applying a requirement or condition which, although applied equally to all persons of all racial groups, has a disproportionately adverse effect on a particular racial group and cannot be justifiable on any grounds other than racial grounds.
- 2 Racial grounds include race, colour, nationality – including citizenship, or ethnic or national grounds. Every race etc. is protected, but in practice most racial discrimination in Britain is against ethnic minorities.
- 3 Section 71: Local authorities must ensure their functions are carried out with regard to eliminating unlawful racial discrimination and promoting good race relations.

RACE RELATIONS AMENDMENT ACT (RRAA) 2000

- 1 The RRAA has brought the whole of the public sector within the scope of race discrimination legislation, including the police, prisons and immigration services. It aims to combat institutional racism and places a positive duty on all public bodies to promote equality. Public bodies will have to examine their career structures and their workforces and account for the lack of black people in senior positions. Local authorities' regulatory, economic and social policies are also covered.
- 2 The new enforceable positive duty to promote racial equality is anticipatory meaning that public bodies need to take action to avoid racial discrimination before it occurs by examining their policies and procedures for discriminatory impact including institutional discrimination.
- 3 The Government will bring in specific racial equality duties which will include making impact assessments and consulting on them, conducting a wide range of ethnic monitoring and publishing reports of their racial equality work in Race Equality Schemes.

Both the RRA and the SDA (next page) have specific sections that allow for employers to specify that a job is for one sex or race only - known as a Genuine Occupational Qualification (GOQ) e.g. a personal carer.

Neither law refers to harassment as such, but case law has defined it as treating a person less favourably on racial grounds or on grounds of sex and/or subjecting them to a detriment.

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B: EQUAL OPPORTUNITIES COMMISSION (Manchester):

SEX DISCRIMINATION ACTS (SDA) 1975 AND 1986

- 1 The SDA makes it unlawful to discriminate against a person, directly or indirectly on grounds of sex and/or marriage, in employment or in the provision of goods, facilities or services. **Direct** sex discrimination occurs when a person of one sex is treated less favourably, on the grounds of sex, than a person of the other sex would be treated in the same or not materially different circumstances. **Indirect** sex discrimination occurs where a requirement or condition is applied equally to both women and men, but a proportion of one sex which can comply with it is much smaller than the proportion of the other sex which can comply.
- 2 Marriage discrimination occurs when a person of one sex is treated less favourably, on the grounds of marital status, than an unmarried person of the same sex would be in the same or not materially different circumstances.

EQUAL PAY ACT 1970 (EqPA)

- 1 A man and woman working for the same employer should receive the same pay and be subject to the same contractual terms if –
 - (A) they are doing similar work; or
 - (B) there has been a job evaluation scheme and the specified work has been rated as equivalent; or
 - (C) they are doing work of equal value;
unless a 'material factor defence' applies (the employer can prove that the variation in pay is **genuinely due to a material factor which is not the difference in sex**).
- 2 Women still only earn 80% of average full-time male hourly earnings, while adult men's average income is almost twice that of women. The Equal Opportunities Commission's Code of Practice on Equal Pay recommends that employers introduce an equal pay policy and review and monitor their pay systems for sex bias. The EOC has just launched a major campaign to bridge this gap.

SEX DISCRIMINATION (GENDER REASSIGNMENT) REGULATIONS 1999

- 1 The Regulations extend the SDA 1976 insofar as it refers to employment and vocational training, to include discrimination on gender reassignment & prevent discrimination against transsexual people on the grounds of sex in pay and treatment in employment and vocational training. Employers who breach the Sex Discrimination Act 1975 in respect of discrimination on gender reassignment grounds will be liable in the same manner they would, for example, for discrimination against a woman on grounds of sex. There are limited exceptions.
- 2 **Good employment practice** includes:
 - (a) Not requiring disclosure of transsexual status (limited exceptions)
 - (b) Agreeing a plan for managing the change process (covering records, dress code, any necessary briefing of colleagues/service users, use of single sex

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facilities, insurance matters, pensions).

C: DISABILITY RIGHTS COMMISSION (Manchester):

THE DISABILITY DISCRIMINATION ACT (DDA) 1995

1 The DDA introduced new rights for disabled people and new duties on employers and suppliers of goods, services and facilities.

2 The main effects of the Act are:

(A) New rights for those defined as 'disabled':

- Not to be discriminated against in employment.
- Not to be discriminated against in the provision of goods, services and facilities.

Except where exemptions may apply or if the discrimination is considered justified.

(B) New duties for employers/providers to make reasonable adjustments unless refusal is justified.

(C) Most key sections (the green card registration scheme etc.) of the 1944 Disabled Persons Act are repealed.

(D) All employment sections of the Act came into effect in December 1996.

(E) From October 1999 service providers have to take reasonable steps to change policies, practices or procedure which make it impossible or unreasonably difficult for disabled people to make use of a service.

(F) By 2004 service providers have to take reasonable steps to remove alter or provide reasonable means of avoiding physical features which make it impossible or unreasonably difficult for disabled people to use a service.

3 The DDA introduced a new definition of a disabled person. A person has a disability if s/he has:

(A) A physical or mental impairment which has -

(B) A substantial -

(C) And long-term

(D) Adverse effect on their ability to carry out normal day to day activities.

D: THE HUMAN RIGHTS ACT (HRA) 2000

- 1 The Human Rights Act 1998, implemented in October 2000, has far reaching implications for a wide range of public bodies, according to a report by the human rights organisation, Liberty. The report highlighted the effects of the Act, which incorporates the European Convention on Human Rights (ECHR) into domestic law, on bodies ranging from the courts and the police to local councils and health authorities.
- 2 Legal challenges expected by Liberty under the Act included those on the use of force by police and prison officers, stop and search provisions, the fairness of criminal trials, prisoners' conditions, privacy rights in relation to new technology, the right to free expression for the media, and union rights to organise. Liberty's director, solicitor John Wadham, said the Act was a "landmark in human rights protection, and is the most significant human rights reform in the post-war period".

SUMMARY OF THE HUMAN RIGHTS ACT:

- 1 **The right to life**
- 2 **Freedom from torture and degrading treatment**
- 3 **Freedom from slavery, or compulsory labour**
- 4 **The right to liberty**
- 5 **The right to a fair trial**
- 6 **The right to respect for privacy and family life**
- 7 **Freedom of thought, conscience, and religion**
- 8 **Freedom of expression**
- 9 **Freedom of assembly**
- 10 **The right to marry**
- 11 **The right not to be discriminated against - in respect of these rights and freedoms**
- 12 **The right to own property**
- 13 **The right to an education**
- 14 **The right to free elections**

E: FORTHCOMING AREAS OF EQUALITY LEGISLATION

The first legislation in Britain to outlaw discrimination on grounds of religion and sexuality

must be in place by 2003 following a landmark 2000 European Directive. The directive covers protection against discrimination at work on the grounds of religion or belief, disability, age and sexual orientation. Discrimination on the grounds of gender and race has already been covered. Legislation on age and disability discrimination will need to be effected by 2006. The new legislation will give anti-discrimination protection to Muslims for the first time. However, the armed forces are exempted in relation to age and disability.

DISCRIMINATION ON THE GROUNDS OF SEXUALITY

- 1 All relevant legislation promotes discrimination against lesbians and gay men (e.g. Section 28 of the 1988 Local Government Act, the Human Embryology and Fertilisation Act 1990, Section 25 Criminal Justice Act). In meeting possible requirements under the Rehabilitation of Offenders Act 1974 and Exemption Order 1975, it is important to remember the discrimination gay men face by being liable for supposed crimes for which there is no heterosexual equivalent. Lesbians are not explicitly referred to in the relevant legislation (with the exception of the HEF Act), this invisibility compounds discrimination against lesbians, particularly in family law.
- 2

A Recent case law (October 2000) has ruled that discrimination against lesbians and gay men at work is unlawful. The Sex Discrimination Act 1975 has been held to cover lesbians and gay men. Employers need to ensure their policies and *practices* do not discriminate against lesbians and gay men, especially in relation to harassment (including behaviour and language) and that the content of policies is drawn to the attention of employees.

B In 1999 the Law Lords gave a landmark ruling that a homosexual couple in a stable relationship could be defined as 'family'. The greatest impact will be in immigration, social security, taxation, inheritance and child support. Though the Lords said that their ruling did not equate homosexual partnerships with unmarried heterosexual relationships, one Lord admitted that this could be discrimination.

C Also in 1999 the European Court of Human Rights unanimously ruled that the Ministry of Defense's ban on lesbian and gay men serving in the armed forces was illegal and violated human rights, and the Home Office announced that same sex partners need to have lived together for only 2 years before being allowed to stay in Britain, reduced from 4.

D Train operators have changed their policy on travel benefits for employees' same sex partners to match the benefits for heterosexual employees.

E The gay age of consent has been equalised at 16 and Section 28 may be repealed by a forthcoming Labor Government.
- 3 Anthropological studies show that same sex relationships are a feature of many different cultures being regarded as normal and even desirable. The perception of lesbians and gay men as unnatural is cultural and lacks scientific basis. Heterosexism believes that heterosexuality is superior to lesbianism or gayness and promotes discrimination against lesbians and gay men because of their alleged

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deviancy from the norms of heterosexuality.

AGE DISCRIMINATION

- 1 Age discrimination consistently disadvantages older people. In addition, women returners, older disabled people and older ethnic minorities face double or treble jeopardies. Young people may be denied access to certain jobs because they are regarded as being too young and/or lacking in experience.
- 2 The Government published a voluntary Code of Practice on Age Diversity in 1999. The Code covers recruitment, selection, promotion, training and development, redundancy and retirement. Employers are advised not to use phrases in job advertisements that imply age restrictions such as "young graduates", or "mature person" and not to make age an integral part of the selection process. Age should not be a criteria in selection for redundancy, or in early retirement schemes (subject to pension rules). The Code contains detailed guidance and case studies.
- 3 While welcomed as a step in the right direction the Code "is clearly not enough", according to a coalition of major national organisations dedicated to promoting the interests and welfare of older people. *Equal Rights on Age* is campaigning for a statutory ban on all forms of age discrimination. Chaired by Don Steele of the Association of Retired and Persons over 50, its members include Age Concern, Help the Aged, the Carnegie Third Age programme and the Third Employment Network. Sally Greengross, director general of Age Concern England, the first charity to campaign against age discrimination in the workplace, believes that whilst a voluntary Code of Practice is an important first step, "only comprehensive equal opportunities legislation will enable the victims of age discrimination to challenge employers effectively".

RELIGIOUS DISCRIMINATION

- 1 Only Northern Ireland in the UK, has legislation covering religious discrimination. Religion is not mentioned in the Race Relations Act. 1983 case law ruled that "ethnic" groups possess both a long shared history and a cultural tradition of their own, which they and outsiders regard as characterising them as a distinct community. Both Sikhs and Jews have been held to meet these requirements. However, in several cases more recently Muslims have been held not to be an ethnic group. This is because, being members of a universal faith resident in a range of world cultures they are not considered to have a shared history.
- 2 The former chair of the CRE, Herman Ouseley, has stated that "The urgency and importance of this are very clear - as documented by the report of the Islamophobia Commission established by the Runnymede Trust, there is now a serious problem of anti-Muslim prejudice in Britain".
- 3 Merton Borough Council in London recently attempted, unsuccessfully, to get the existing racial hatred provisions extended to cover Muslims. The Council was seeking judicial review of a Crown Prosecution Service decision not to prosecute a British National Party organiser for issuing posters and stickers which opposed a new mosque in the borough.

2: BASIC PRINCIPLES

- 1 **DISCRIMINATION** – Is at the root of everything to do with equal opportunities. There are 2 forms of discrimination:
- 2 **INDIVIDUAL DISCRIMINATION** – Or individual prejudice - the form of discrimination we may be most familiar with. It is when an individual has negative ideas based on inadequate facts or stereotypes, about another person or a group of people, because of a characteristic of the person or group. This characteristic is believed to be absent from the individual's own group which they therefore feel is superior.
- 3 **INSTITUTIONAL DISCRIMINATION** – The negative ideas are in organisations, institutions and society rather than just individuals. The collective failure of an organisation to provide an appropriate and professional service to people because of their sex, colour, culture, religion or ethnic origin, sexuality, disability, age or other factor. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and sexist, racist, disablist or heterosexist or other stereotyping which disadvantages women, minority ethnic people, disabled people, lesbians and gay men or other people.
- 4 **DISCRIMINATED-AGAINST GROUPS** – Discrimination operates against specific groups in society e.g. women, black people and ethnic minorities, disabled people, working class people, older people, young people, lesbians and gay men. This is the reason that women form the majority of the low paid, that there are extremely few black chief executives and fewer lesbian, than gay male, MPs.
- 5 **UNEQUAL OPPORTUNITIES/DISADVANTAGE** – The result of discrimination. Discriminated against groups do not have equal access to opportunities for work, housing, education, family life, leisure etc. and may also suffer lack of respect, abuse and violence.
- 6 **EQUAL TREATMENT** – Treating everyone in the same way without favouring some people and discriminating against others. It was the original answer to unequal opportunities, but assumes that everybody is at the same starting point. Now understood to be inadequate on its own, because it ignores institutional discrimination.
- 7 **POSITIVE ACTION** – The umbrella term for all the steps and forms of change which aim to increase access to equal opportunities. Positive action ranges from changing buildings to enable disabled people to have equal access to changing the way that jobs are advertised, recruited and selected to, so that those who experience discrimination have equal opportunities in employment and equal access to services.
- 8 **POSITIVE DISCRIMINATION** – One very particular form of action taken just to benefit a discriminated against group because of the degree of discrimination and disadvantage that they face. This is often confused with positive action but whilst

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positive action is legal, positive discrimination is illegal.

9 EQUALITY TARGETING

- 1 In the equalities context **targeting** is a positive action strategy which **aims to increase numbers** of job applications or service use from specific groups, communities and areas where there is current evidence of **under-representation** of specific groups. Targeting **does not** involve more favourable treatment or positive discrimination.
- 2 **Under-representation** is usually defined statistically on a percentage basis, by comparing the numbers of job applications or service use from or by different groups, communities, geographical areas in the country/region/district as a whole. Awareness of under-representation should trigger a review of policies, processes, practices to check for indirect discrimination, and may need to lead to changes in approach.
- 3 **Monitoring** - To make such comparisons, effective monitoring requires :
 - A A reliable **comparator database** (population profile, district based deprivation and disadvantage indices etc) as well as openness to incoming information from other sources, formal and informal, quantitative and qualitative and an ability to undertake/commission approach research to fill gaps in this database;
 - B A reliable **data input system** that is consistent and comparable with the source/reference data referred to above;
- 4 **Target Setting** - To undertake positive targeting an organisation needs to decide which group/community/area it wishes to focus on in the light of its mission, UK/relevant country/regional priorities, and the results of monitoring of applications and service use. This could be described in a statistical way, e.g. increase number of applications/ successful applications from groups of disabled people, or for and organisation such as the Charities Lottery Board – the number of grant applications from coalfields communities in north eastern Derbyshire. Employment targets are usually set in percentages and are time limited e.g. to increase the number of women on senior grades by X% by April 2003.
- 5 **Strategies for achieving targets** must involve the active implementation of positive action to increase applications or service use such as advertising in black and ethnic minority media to increase job applications from black and ethnic minority people or promoting a service to a community in a particular area to increase their usage.

3: **BEST VALUE = EQUALITY VALUED**

- 1 A 1994 CRE survey of public and private sector organisations on equal opportunities implementation found that there was a major gap between the good *intentions* of policies – the '*promise*' - and their actual *implementation* – the '*practice*'. The CRE then published their Race Standard in 1995 as the first national equality standard for equality action planning. In October 2001 this was replaced by a generic 'Equality Standard for Local Government' encompassing all areas of discrimination.
- 2 Equality action planning is now recommended good practice. Its aim is to **turn words into action in order to bridge the promise-practice gap**. The process should be mainstreamed – but not subsumed - into an organisation's overall planning work ensuring that equality is centrally considered in every aspect of the organisation's development.
- 3 At Salford Council, equality action planning has been incorporated into the rolling programme of **Best Value Reviews**. When a service is reviewed for Best Value the way in which it impacts on different sections of the community is considered and targets are set to redress the disparities in the provision of services for those who are socially, economically or otherwise discriminated against and disadvantaged. Issues of social exclusion are considered. The Best Value Reviews explicitly consider whether the service is compliant with relevant legislation and the Council's policies.
- 4 Each Best Value Review includes an **equality service review** which is a '*health check*' of the service's equality position. The service is assessed against key equality health criteria. These criteria are based on the Council's equality policies and in the past the Commission for Racial Equality's (CRE) Standard. From April 2002 the criteria will be based on the Equality Standard.
- 5 The equality service review will show the gaps in the service's equality implementation. A plan of what needs to be done to bridge the gaps and meet the equality standard's criteria is produced. The **equality improvement plan** should describe **what** needs to be achieved, **what** action needs to be taken, **who** is responsible and estimated target **dates** for completion of the work. The equality improvement plan is an integral part of the service's overall Best Value Improvement Plan.
- 6 Work is undertaken to achieve the activities and targets specified in the equality improvement plan. Relevant quantitative and qualitative data on the indicators of performance is collected which demonstrates whether or not equality objectives are being achieved.
- 7 Equal opportunities is also required to be mainstreamed throughout the rest of the BV service review. This includes consultation and benchmarking.

4: **ADDITIONAL INFORMATION**

- 1 **Recommendation for a single Equality Act** - A report (September 2000) by the Cambridge Centre for Public Law and the Judge Institute of Management Studies calls for a single Equality Act covering a range of grounds for discrimination. It also recommends that employers should be required to conduct periodic reviews and implement plans to reduce under-representation of women, ethnic minorities and disabled people and to eliminate unequal pay. The report argues that current anti-discrimination law is inconsistent, incomprehensible and inaccessible. The forthcoming legislation from Europe makes a single equality Act much more likely.
- 2 **Special Education Needs and Disability Bill** – will extend some of the rights in the DDA to education services. There will be new duties on schools and local educational authorities including a duty not to discriminate against disabled children and to take reasonable steps to change policies, practices, procedures and physical features. LEAs and schools will also have a duty to systematically plan to increase disability access at schools.
- 3 **Employment Rights** – The Employment Relations Act (1999) included new rights on parental and maternity leave and time off to deal with family emergencies. The new rights have attracted controversy with the Equal Opportunities Commission and the Trades Union Congress criticising the proposals for phasing in of parental leave as potentially unlawful. There is also a wide range of criticism of the leave for both parents and family emergencies being unpaid which will severely restrict take up.
- 4 **Career Services are failing** to tackle sex job segregation at the crucial age of 16 according to an Equal Opportunities Commission report. Figures show that:

- 80% of those opting for Business Administration are women
- 97% of those opting for Hairdressing are women
- 97% of those opting for looking after children are women
- 86% of those opting for Travel apprenticeships are women

- 99% of those opting for (Electrical Installation, Plumbing, Construction) are men
- 97% of those opting for Motor Industry are men
- 96% of those opting for Engineering are men
- 67% of those opting for Technology are men

The average weekly wage for an engineering apprentice is £115, whereas for hairdressing it is £62. The sex segregation in jobs reinforces pay inequality.

The EOC states that middle class girls have made more progress in breaking through traditional job roles, but that sex segregation was still pronounced all the way up the ladder. (*Guardian 9.4.99*)

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- 5 **The pay gap between women and men** is examined in a study (*Unequal Pay for Men and Women, MIT Press, 1999*), which explains how the labour market discriminates against women. Recent gains for women have been greatest for an elite of well-educated women, and that deregulation under the Conservative governments worsened the position of part-time workers. Also, as unequal treatment of men and women has abated, inequalities between women (and between men) have increased. Policies are needed to facilitate combining employment and family life, by an extension of maternity leave and also of paternity leave at the time of birth and parental leave at later stages. The level playing field cannot extend to all parts of the labour market unless it also extends to the home.
- 6 **Regions taken to task for ignoring race issues** – The DETR has made six out of the eight English Regional Development Agencies (RDA) aware of shortcomings on equal opportunities & race issues. The West Midlands & the Eastern Agencies were the exceptions. DETR has told all RDAs “We expect that action plans will set clear priorities & targets.” The North East which had limited its EO focus to the workplace & had failed to include detailed information on ethnic diversity in the region. The North West had holes in its consultation process & proposals for rural areas were underdeveloped.
- 7 **“Individual shows extent of race discrimination”** - Tahir Hussain, suspecting that his failure to get job interviews, despite good qualifications, was race related, decided that for every application that he made in his own name he would submit a second in the name of a fictitious white person - who was much more successful at gaining job interviews. Hussain launched race Tribunal discrimination claims winning 5 & settling another four out of court.
- 8 **“Men tend to be chosen in preference to women, since they benefit from deep-rooted prejudices and from stereo-types as to the role and capacities of women.”** Extract from the European Court of Justice landmark ruling on equal opportunities for women, November, 1997.
- 9 **“In a 1997 American survey 57% of non-black people rated black people as less intelligent than whites.”** A current affairs journal commented “Affirmative action is such a threat because it challenges the unseen and unacknowledged privileges of white people”. (The Nation 1.12.97).
- 10 The first research report on **Discrimination and the Irish Community in Britain** (CRE,1997), reports racial harassment of Irish people goes under-reported and unrecognised. Irish people suffer discrimination at work including name-calling and Irish jokes. Irish people who apply for benefits had found obstacles, because of stereotypes that they are scroungers. More Irish people are in overcrowded accommodation and sleeping rough than average.
- 11 **Disabled people felt patronised, avoided, treated as an inconvenience and assumed to be stupid**, concluded a recent NOP survey published by the Leonard Cheshire Charity. The general public’s ignorance and fear of disability lead directly to prejudice and discrimination (EOR July/Aug 1998).