

## Discrimination Law Review – A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain

The Ann Craft Trust, VOICE UK and Respond are three separate learning disability charities which focus on abuse, crime and protection issues.

VOICE UK supports people with learning disabilities and other vulnerable groups who have experienced crime or abuse. We also support their families, carers and professional workers.

The Ann Craft Trust works with staff in the statutory, independent and voluntary sectors to protect people with learning disabilities who may be at risk from abuse. We also provide advice and information to parents and carers who may have concerns about someone they are supporting.

Respond offers a range of services which provide emotional and psychological support to victims and perpetrators of abuse who have learning disabilities. It also provides training and support to professionals and carers working with them.

Our three charities cooperate on issues of public policy and have used the disability equality duty to draw attention to issues affecting people with learning disabilities.

Respond, the Ann Craft Trust and VOICE UK welcome this opportunity to comment on the Government's proposals for reform of discrimination law.

Our charities' particular expertise is in the field of crime and abuse against adults and children with learning disabilities. Crime and abuse disproportionately affects this group, as it disproportionately affects other groups protected by discrimination law. Our comments primarily focus on how the proposals for reform discrimination law are likely to affect public authorities efforts to address this issue and so allow people with learning disabilities to participate equally in society.

While we are broadly supportive of the move to a single public sector equality duty, we believe that the approach to such a duty suggested in the consultation document is **not** the best means to further equality and may be counter-productive. Instead, we hope that the Government will implement a single equality duty that builds upon the good work of the current equality duties by utilising their approach rather than adopting a new approach to promoting equality. In particular, we ask that the requirement on public authorities to have due regard to promoting equality in all of their activities and decisions be retained in a single duty. Our organisations also ask that the proposed statement of purpose for the single public sector equality duty make explicit reference to crime, abuse and discrimination

**Do you agree that the race, disability and gender equality duties should be replaced with a single duty on public authorities to promote race, disability and gender equality?**

Respond, the Ann Craft Trust and VOICE UK believe that integrating the race, disability and gender equality duties into a single duty could be helpful and support the principle behind it. Such a move has the potential to reduce administration and clarify responsibilities. The current equality duties provides a solid foundation that a new, single duty can build upon. We would be opposed to a single equality duty that adopted a new approach to disability equality or otherwise weakened the existing duty of public bodies to promote equal opportunity for people with disabilities.

**Do you agree that it would be helpful to provide a clear statement of the purpose of a single public sector duty which public authorities should use as a foundation for taking action to promote equality and good relations?**

We are in favour of a clear statement of the purpose of a single public sector duty.

**Do you agree with the four areas set out in the proposed statement of purpose? If not, please give your reasons and any alternative suggestions.**

The four areas set out in the proposed statement of purpose address the majority of the scenarios to which we can envisage a single equality duty applying. However, there are two issues which the proposals do not address.

We believe that it is vital that the statement of purpose of a single equality duty explicitly state that public authorities should try to prevent and tackle crime and abuse affecting groups protected by discrimination law. Many of these groups have a higher risk of being a victim of crime and abuse than members of the general population. People with learning disabilities, for instance, have a higher chance of being victims of rape and sexual assault. The British Crime Survey has found that having a limiting illness or disability is associated with all types of domestic violence, with women with a limiting disability or illness three times more likely to experience non-sexual abuse by family members than women without a disability<sup>1</sup>. For people with learning disabilities, this increased chance of being a victim of crime is largely a consequence of their vulnerability and the fact that people take advantage of this. Members of groups protected by discrimination law are also specifically targeted for race hate crime, homophobic crime and disability hate crime. No one in our society can enjoy equality of opportunity and participation in society if they live in fear of crime and abuse and/or suffer its consequences.

Preventing and combating this form of inequality is not simply a matter for criminal justice agencies, the Home Office and Ministry of Justice - it is something that can and should be integrated into the activities of all public bodies. We believe that the current wording of the four areas is insufficient to guide public authorities in understanding the vital need to prevent and combat crime and abuse which targets or disproportionately affects particular groups.

We note that the general duty of the Commission for Equality and Human Rights does not explicitly address the need to prevent and combat crime and abuse. However, as crime and abuse clearly infringe the human rights of those who experience them, the focus in the general duty on ensuring human rights are respected and protected places a duty on the Commission to act. A similar approach would be an acceptable compromise if the government feels that an explicit statement on crime and abuse will not fit well in the statement of purpose.

The second issue is that the proposed statement of purpose does not directly address the need to tackle discrimination. The need for public authorities to prevent and combat discrimination through their activities might be implied by the references in the four areas to promoting dignity and respect. However, we believe that tackling discrimination needs to be at the heart of a single equality duty and an

explicit reference in the statement of purpose is necessary for this. The general duty of the Commission for Equality and Human Rights directly addresses the need to tackle discrimination and so including an explicit reference in the statement of purpose of a single public sector equality duty would be consistent.

Lastly, we are concerned about the use of the phrase “taking steps” in the proposed statement of purpose. There is a danger that a public authority with little commitment to equality, or whose performance at meeting a single equality duty is poor, will find it convenient to interpret this phrase as “do something” rather than “do as much as you can”. We would be worried if this phrase were to be used as an excuse to do the minimum to meet a single equality duty. Our organisations suggest that this phrase be replaced with a phrase that encourages public authorities to do all that they can to promote equality of opportunity.

**Do you think that the proposed statement of purpose adequately captures the need for work to build good relations and promote positive attitudes within and between groups and underpins efforts to build integration and cohesion?**

The proposed statement of purpose largely succeeds in capturing this need, although we qualify this comment with reference to our comments above.

Our one addition to those comments would be that the proposed statement of purpose seems to be weighted towards ensuring good relations and understanding “within and between groups”. A strict reading of the text suggests that this means positive relations within and between groups protected by discrimination law, e.g. good relations between people with disabilities and people of a particular religious faith. While we welcome this, we hope that the statement of purpose will be clearer in giving equal weight to ensuring good relations and understanding between groups protected by discrimination law and society in general.

**Do you agree that a single public sector equality duty should require public authorities to identify priority race, disability and gender equality objectives and take proportionate action towards their achievement? If not, please give your reasons and any alternative suggestions.**

We are in favour of a single equality duty requiring public authorities to identify equality objectives and taking proportionate action towards their achievement. However, this should be in addition to the requirement in the existing duties for public authorities to have “due regard” to the need to promote equality across all of their activities and decisions. It should not be a replacement for this approach.

Promoting equality must be at the core of all activities and decisions undertaken by public authorities. The current equality duties ensure that public authorities are mindful of this. Replacing this requirement with a focus on a particular, limited number of priority areas will inevitably mean that public authorities will fail to consider, or not fully consider, promoting equality in much of what they do.

Equality objectives can be a useful tool to focus attention and resources on particular issues of inequality. However, if achieving these objectives is all that is required, then the incentive for public authorities with limited resources and faced with many demands is to only act to meet those equality objectives. Equality issues with less profile or which appear too hard to address will be left by the wayside.

**We would welcome views on the proposed new approach to supporting effective performance of a single public sector equality duty by requiring proportionate action towards the achievement of priority equality objectives, and on the four key principles**

**we have identified. Do you prefer this approach, or an extension of the type of specific duties adopted so far in the race, disability and gender equality duties? Please give your reasons.**

Our organisations are strongly opposed to the proposed new approach to supporting effective performance of a single public sector equality duty. We believe that the approach embodied in the current equality duties should be retained in a single equality duty. While requiring public authorities to focus on taking action in a limited number of priority areas might lead to greater progress on certain issues which are deemed to be major points of inequality, we fear that it will inevitably be at the expense of action on other inequalities. A requirement for public authorities to work towards the achievement of priority equality objectives must therefore be combined with the existing approach for public authorities to have due regard to promoting equality in all that they do.

Underlying the proposed new approach is the premise that public authorities may lack the resources to do everything necessary to address discrimination and disadvantage. We do not dispute that public authorities will have to carefully consider how to use their limited resources, but it does not follow that this means public authorities can not consider promoting equality in all that they do. Activities and decisions which are not aimed at promoting equality may still affect equality for better or worse. In all of their activities and decisions public authorities should consider what the consequences will be for the groups protected by discrimination law. Without doing this it is inevitable that simple lack of thought or awareness will lead to public authorities creating inequality, furthering existing inequality or missing opportunities to address inequality.

Furthermore, the process of identifying and defining priority equality objectives is a process of selection and such processes are susceptible to prejudice and expediency. Our fear is that the process of selecting which discrimination issues to make priority equality objectives will favour discrimination or inequality issues which:

- have a high public profile;
- are accepted by the public authority as existing;
- are accepted by the public authority as being something that the public authority is responsible for addressing;
- clearly defined, low cost and short term action can be taken upon;
- affect notable numbers of the public authority's stakeholders or clients; and
- large or influential stakeholders are concerned about.

The discrimination issues and inequalities which are unlikely to be selected as priority equality objectives will:

- be unfashionable;
- have low public profiles;
- affect stakeholders or client groups which do not elicit much, if any, public sympathy;
- not be accepted as existing by the public authority;
- be seen as the responsibility of someone else by the public authority;
- require concerted, possibly high cost action over a long period to address;
- affect only a minority of stakeholders or clients; and
- not be of interest to large or influential stakeholders.

In this approach, public authorities will effectively go for the easiest options, that win the most obvious support and which conform to the attitudes (including their prejudices) of their workers. Our great concern is that this approach gives those public authorities which are doing too little to combat inequality, or are furthering inequality, the chance to choose to continue behaving in this way. This approach does not require public authorities to confront their own behaviour and tackle those inequalities which are hardest to address. This is why it is vital that these objectives must be balanced with a duty which requires all equality issues to be considered and appropriately acted upon. The existing disability equality duty is an example of this and we see every reason to retain the approach it embodies.

We are broadly in favour of the four key principles which would underpin the effective performance of a single equality duty. However, we strongly believe a single equality duty should require public authorities to produce equality schemes with specified contents, including an Action Plan, as is currently required by the disability equality duty. The requirement on public authorities to produce disability equality schemes already allows scope for flexibility, is not overly prescriptive, ensures accountability and provides a clear structure for public authorities' efforts to promote disability equality. Crucially, it allows for due consideration of issues and for any organisation to request an impact assessment of an issue. We believe this approach is valuable for all concerned.

**If you prefer an extension of the type of specific duties adopted so far in the race, disability and gender equality duties, which elements of the specific duties do you think should be retained for a single public sector equality duty and why?**

While we have no position on the extension of the specific duties that apply to race, disability and gender to other areas (e.g. sexuality, age), our organisations believe that the elements of the disability equality duty should be retained in a single equality duty.

**Do you think that the proposed single public sector equality duty should apply to all public authorities? If not, please say how you think it should be targeted and give your reasons.**

We believe that the proposed single public sector equality duty should apply to all public authorities in the same manner as the existing equality duties.

**What issues would you like to see included in practical guidance on how public sector procurement can be used to achieve equality outcomes in the delivery of public services by the private sector, while ensuring that the guidance works well for business?**

Although local authorities are responsible for the care of many of the most vulnerable people in our society, the majority of these caring services are delivered, under contract, by the private sector. People with disabilities, children and older people are the victims of crime and abuse whilst in care. This is both an infringement of their human rights and a major impediment to their enjoyment of equality of opportunity.

When a private sector care provider has been found to be responsible in some way for such crimes and abuse, the relevant local authority should review whether to continue the contract with this provider. To allow a care contract with such a provider to continue is to risk discrimination and inequality being experienced by those for whom the local authority has responsibility.

Practical guidance on public sector procurement can assist in this area by requiring public authorities to:

- include provisions in contracts allowing for the termination or renegotiation of a contract if the private sector provider has been found to have failed to take appropriate steps to prevent or respond to crime or abuse against service users;
- review whether it is in the best interests of service users to continue a contract if the private sector provider has been found to have failed to take appropriate steps to prevent or respond to crime or abuse against service users; and
- include provisions in contracts requiring private sector care providers to cooperate with investigations by local authorities, regulatory bodies and the police.

We hope that the Government has found these comments and suggestions useful. If you have any questions or we can be of further assistance, please contact our Policy and Campaigns Officer, Robin Van den Hende, at:

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<sup>1</sup> Finney, Andrea, *Domestic Violence, Sexual Assault and Stalking: Findings from the 2004/2005 British Crime Survey*, Home Office, Online Report 12/06, 2006, pg. 10.