

Equality Priorities and Equality Objectives – the Equality Act 2010, a cautious welcome

Robin Richardson

'I will just make one short observation,' said the Conservative peer Lord Tebbit, rising to his feet to intervene in a House of Lords debate on the evening of 26 January 2010. The general topic under discussion was the Equality Bill; the specific topic was the strand in the Bill known as religion or belief. 'It seems,' he continued. 'from what has been said from the Benches opposite and from the noble Lord, Lord Lester, that we have a choice tonight – whether we walk in fear of the law of the Lord or in fear of the law of Brussels. I know which way I am going.'

Hansard records that Lord Lester himself rose to his feet at this point saying: 'Before the noble Lord sits down, would he agree that the rule of law...' How exactly he finished his question, if he did, is not recorded, for his voice was drowned, Hansard reports, by several other noble Lords (as the Hansard term always is) crying out 'No!' It can be assumed, however, that he intended asserting the primacy of the law of the land *both* over religious interests *and* over partisan views on how closely the United Kingdom should be aligned with 'Brussels', a symbol of pan-European integration.

The exchange was one of the few occasions, though by no means the only one, as the Equality Bill proceeded on its way through the House of Commons and House of Lords during 2009 and early 2010, when there was passionate disagreement on party lines. Most disagreements were civil and courteous, and did not correspond to political affiliations. On the vast majority of the Bill's fundamental principles and elements, however, there was agreement between Conservatives, Labour and Liberal Democrats, and in the upper house between those with party loyalties and those who are crossbenchers. In relation to the topic on which readers of *Race Equality Teaching* are most interested, namely the parts dealing explicitly with ethnicity, nationality and colour (these three known collectively in law as 'race'), there were next to no disagreements at all. More accurately, no disagreements explicitly surfaced.

Can readers of *Race Equality Teaching* therefore look forward with hope and enthusiasm to the day when the Bill's provisions and supplementary requirements become law? That is the question explored in this article. The article's answer to its own question, readers are warned, is that the jury is still out. In a different metaphor, all is still to play for. Mainly, the article describes the principal implications of the Bill in relation to ethnicity equality for schools and local authorities. But also, it quotes from an important speech by Lord Ouseley in the House of Lords warning that the new legislation risks being no more effective than what it is replacing.

The Bill's progress and provisions

It was on 26 June 2008, following representations by campaigning organisations, legal specialists and official committees over many years, that Harriet Harman, leader of the House of Commons, announced the new Single Equality Bill. It was about a year later, 27 April 2009, that the Bill was actually published. On 9 February 2010 the Bill concluded its committee stage in the House of Lords and on 2 March it concluded its report stage. At the time of writing (a day or two after the Lords report stage) it is confidently expected that the Bill will receive royal assent, and that its requirements will be introduced gradually from October 2010 onwards.

The aim is to harmonise, and in certain respects to extend, the various pieces of discrimination law that have been introduced piecemeal over the last 30 years. This involves replacing about 116 different acts of parliament, regulations, codes of practice

and establishing eight strands, to be known in legal parlance as eight protected characteristics. In alphabetical order, but in some instances using different terms from those which appear in the Bill itself, these are to do respectively with: 1) age 2) disability 3) ethnicity 4) gender 5) gender identity and reassignment 6) faith, religion and belief 7) marriage and civil partnership and 8) sexual identity and orientation. The most significant features of the Bill are that it:

- creates a unified 'public sector duty' (PSD – see below), intended to summarise, under three headings to be known as three limbs, what every public body must do in relation to the eight protected characteristics
- proposes a new public sector duty related to socio-economic inequalities – an authority to which this applies must have 'due regard, when making decisions of a strategic nature about how to exercise its functions, to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage'
- provides powers to extend age discrimination protection outside the workplace
- clarifies protection against discrimination by association, for example in relation to a father who cares for his disabled child
- extends protection from discrimination on the grounds of gender reassignment to school pupils
- extends discrimination protection in the terms of membership and benefits of private clubs and associations
- provides for legislation requiring that employers review gender pay differences within their organisations and publish the results
- provides for changes to the way that individual claims are enforced, and gives employment tribunals wider powers to make recommendations for the collective benefit of employees
- allows a minister to amend UK equality legislation to comply with European law without the need for primary legislation
- extends the period for which all-women shortlists may be used for parliamentary and other elections until 2030 and allows parties to reserve places on shortlists of candidates for people on the grounds of race or disability.

The unified public sector duty (clause 148 of the Bill) is modelled on a clause in the Race Relations Act. As mentioned above, it has three components. The full text is as follows:

A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

'Due regard'

In the House of Lords at report stage there was an interesting discussion of the key phrase *due regard*. Lord Ouseley, formerly Herman Ouseley, argued that the phrase is not sufficient. He proposed instead that the law should require public bodies to take 'all proportionate steps' towards the achievement of greater equality. 'The due-regard approach to equality,' he said, 'has got us to where we are now', but the new proposed duty 'takes us no further'. His criticism of the current situation was vigorous, and can be applied to schools and local authorities as well as to all other public bodies:

What we have now are volumes of equality strategies, schemes and policies, but not a great many desired and required outcomes that add up to recorded equality results. Yes, there are statements of intent, declarations, aspirations, commitments, warm words, policy reviews and mountains of reports, all in order to satisfy the requirement to have 'due regard'. Many of our public service authorities will do as much as they have to in order to meet the standard of compliance required to keep the EHRC from enforcement action, but that standard of due regard is, in my view, woefully inadequate.

Lord Ouseley acknowledged that his proposed amendment was 'not nearly as radical as I would like, or would have hoped for, or as many of the intended beneficiaries would want and need'. He continued:

Yet, as drafted, it is absolutely required to give total clarity to all concerned, such as public authorities, private and voluntary bodies carrying out public functions, the EHRC as the lead enforcement agency, the audit and inspection bodies and members of the public, about the proportionate steps they must take across all relevant functions in order to comply with this duty... It would preclude any possibility of adding to the existing tick-box approach by public bodies, as they would be compliant only by meeting their obligation through taking appropriate and proportionate steps towards equality.

This amendment had been developed, Lord Ouseley mentioned, in conjunction with the Discrimination Law Association and the Disability Charities Consortium and in collaboration with the Equality and Human Rights Commission. Further, it was fully supported by a wide range of expert equality groups, including Citizens Advice, Unison, Race on the Agenda, the 1990 Trust, the Equality Bill Alliance, the National AIDS Trust, the Children's Rights Alliance for England and the Equality and Diversity Forum. This wide support amongst key stakeholders representing all the equality groups is not, he said, accidental. Rather, the support:

... reflects the concerns of people in communities with experience of the existing race, disability and gender equality duties who want to ensure that the new public sector equality duty will amount to more than a paper exercise. They want to see public authorities instituting effective changes to policies and practices to achieve real progress towards equality. Many of these organisations have been disillusioned and frustrated by the failure of public bodies to meet their existing duties across all their relevant functions. They support this amendment because they want the legal obligations on public bodies to be clear from the outset, including a minimum standard of compliance.

Several other peers spoke in favour of the proposed amendment but in the light of an undertaking given by a spokesperson for the Government, the debate did not proceed to a vote. She said:

The general duty will be underpinned by a number of specific duties to assist better performance of the equality duty. The secondary legislation sets out the detailed steps that a public authority should take.

Some of the secondary legislation to which she referred is valuably summarised in two recent documents from the Government Equalities Office, published in June 2009 and January 2010 respectively: *Equality Bill: making it work – policy proposals for specific duties, a consultation* and *Equality Bill: making it work – policy proposals for specific duties, a policy statement*. The first of these outlines the Government's initial thinking on – as the new terminology is likely to be – 'equality priorities' and 'equality objectives'. The second reports the views of those who submitted responses, and firms up the Government's initial thinking.

One of the specific duties is likely to be that every public body should publish equality objectives in the light of relevant evidence, and taking account of priorities identified by the relevant government department. It is expected the duties will take effect from April 2011, and that they will be accompanied by a statutory code of practice. One of the most significant changes for schools and local authorities is that they will no longer be required to publish self-standing equality schemes, though there will be nothing to prevent them from doing so if they wish. They will, however, be required to set objectives for themselves, and these objectives will have to be based on gathering and analysing evidence relating to all eight strands, and across all three limbs of the general duty cited above. Amongst other things, the evidence will have to be gathered through consulting and involving people from the protected groups. 'We do not propose to prescribe in legislation exactly what evidence should be gathered and analysed,' the Government says in its January 2010 policy statement, 'but the type and range of evidence expected for different types of public body will be covered in detail in guidance'. The policy statement on this subject continues:

We want to make clear beyond doubt that, to comply with the duty, the objectives setting process needs to be rigorous and comprehensive, including an assessment of all the protected groups of equality in relation to all the limbs of the general duty. Such an assessment will necessarily involve considering evidence gathered through engaging with the protected groups. The fact that organisations will still need to assess the relevance to equality of all their functions and gather and analyse a range of evidence means that equality will continue to be mainstreamed throughout an organisation. However, objective - setting will then allow public bodies to target their efforts and resources in particular to those areas of greatest need, as indeed in any other area of business. Equality objectives should be integrated into the mainstream business planning processes rather than treated as marginal and separate.

Translating this into the language of the education system, the requirement will be that the setting of equality objectives must be integrally part and parcel of more general processes of self-evaluation and school improvement planning. Many schools are already integrating and mainstreaming equality objectives in this way, supported and encouraged by their local authority. The role of school improvement partners (SIPs) is therefore critical. So is the role of the Ofsted. It is significant in this latter respect that new inspection regulations state that if a school is judged to be no better than 'satisfactory' in relation to equality and diversity then its overall effectiveness is unlikely to be better than 'good', and likely in fact to be similarly no better than satisfactory. If the judgement on equality and diversity is 'inadequate' then overall effectiveness is unlikely to be better than satisfactory and likely, indeed, to be inadequate as well. Hopefully, inspection teams will judge whether schools have, in Lord Ouseley's phrase, taken 'all proportionate steps' to promote equality, not just whether they have had 'due regard'.

National priorities

At two national conference convened by the Department for Children, Schools and Families in February 2010, there was much discussion of national equality priorities. Many of the issues discussed were generic, referring to all eight strands and protected characteristics. Others were specific to a particular strand. The following were considered in relation to ethnicity equality and are listed in alphabetical order:

Childcare and early years play and learning activities

Addressing low take-up of childcare and early years play and learning activities, and the reasons for this, especially low take-up by African, Bangladeshi, Gypsy, Pakistani, Roma and Traveller families, and the resulting impact of this on lower than average achievement by members of these communities in the Foundation Stage at age 5.

Clarifying concepts and terminology

Getting clear on the differences and overlaps between the categories of belief, ethnicity, faith, race and religion.

Cohesion

Making close links between community cohesion and the promotion of equalities.

Continuing professional development

Training for staff in schools and other settings to help them to understand what objectives and action planning in this strand might look like. Including setting aside time to build staff confidence through reflective practice and action research.

Curriculum

Making ethnicity and faith equality issues more visible in curriculum materials, modules and resources in all curriculum subjects and at all key stages

Data

Improving the information base, and in this respect monitoring by gender, and by faith background as well as ethnicity, and by region as well as nationally. And generally, going beyond a simplistic white/ethnic minority dichotomy.

History

Supporting – and challenging – schools in the effective teaching of history, including black history and local community history, in ways that promote and do not risk undermining equality.

Involvement and consultation

Ensuring that people from a wide range of backgrounds are more actively involved in the design, development, review and delivery of policies that affect them.

Multiple identities

Recognising and supporting the development of mixed identities – for example, Black British, Pakistani British, British Muslim, bilingual, multilingual.

Narrowing gaps in attainment

Reducing and removing inequalities in success rates between different communities by raising the attainment and improving rates of progression in English, mathematics and science at Key Stage 2 and GCSE for certain communities, particularly those of African-Caribbean, Bangladeshi, Gypsy, Pakistani, Roma, Somali, Traveller or Turkish heritage.

NEET

Reducing the over-representation of certain communities and groups among young people who are not in education, employment or training.

Networks

Setting up an equality network for LAs (and others) to facilitate sharing of support and challenge for effective practice.

Prejudice-related bullying

Reducing levels of prejudice-related bullying and harassment around racism, culture, faith background, Islamophobia and national origin.

Promoting effective practice

Identifying and sharing effective practice in promoting ethnicity equality, for example the LA initiatives shared at previous DCSF events for the sector, and the Stephen Lawrence Standards shared at the January 2010 conference in Leeds.

Sharing good practice

Encouraging EHRC and others to respond swiftly to the post Equality Act world by identifying and sharing examples of objectives and action plans that show effective practice in local authorities, schools and other settings.

Special events

Observing, supporting and promoting special events such as Black History Month, Interfaith Week, Islam Awareness Week, Refugee Week.

It remains to be seen whether priorities such as these will indeed be widely adopted in the education system. But if they are, readers and users of *Race Equality Teaching* may legitimately look forward with a measure of hope.

Last words

This article began by recalling one of the rare moments of acrimony and anxiety which occurred during the passage of the Equality Bill through parliament in 2009-10. On the one hand, there was Anthony Lester, now Lord Lester, the principal architect of the Race Relations Act 1976, whose whole professional life since the 1960s has been devoted to developing anti-discrimination law and to setting up organisations and agencies to monitor, challenge and support. (Amongst many other such activities, incidentally, he was co-founder in 1968 with E J B Rose of the Runnymede Trust.) On the other side there was Norman Tebbit, now Lord Tebbit, a vigorous, populist and unbowed right-winger whose political career has frequently involved mockery of, and fierce opposition to, not only anti-discrimination law but also (witness his scathing reference to 'Brussels') internationalism.

It would be reassuring to imagine Lord Lester had the last word. It is ironically significant, however, that Hansard does not record beyond doubt what his last word actually was. It is additionally significant that on at least two extremely important matters – the socio-economic duty and the distinction and overlaps between the protected characteristics of race and religion – Lord Lester and his party (the Liberal Democrats) voiced strong criticisms in the House of Lords of the government's approach. There is not sufficient space here to explain, let alone to discuss, the nature of their criticisms. Suffice to note there is still much to be settled before readers and users of *Race Equality Teaching* can breathe anything like a sigh of relief, or have anything like a hopeful glint in their eyes. There are exciting and perhaps turbulent times ahead. Longstanding readers of this journal will reflect it was always thus, though, and will surely remain as unbowed as ever.

Postscript

The text of this article was slightly modified in autumn 2010 to take account of the new government's intention not to make formal statements about national priorities.