

## **DISCRIMINATION - DOES IT MATTER?**

### **Response to European Commission Questionnaire by the Discrimination Law Association**

This reply is submitted on behalf of the Discrimination Law Association. The Discrimination Law Association ('DLA') is a national membership organisation based in Great Britain, established to promote good community relations by the advancement of education in the field of anti-discrimination law and practice. It achieves this by, among other things, the promotion and dissemination of advice and information; the development and co-ordination of contacts with discrimination law practitioners and similar people and organisations in the UK and internationally. The DLA is concerned with achieving an understanding of the needs of victims of discrimination amongst lawyers, law makers and others and of the necessity for a complainant-centred approach to anti-discrimination law and practice. With this in mind, the DLA seeks to secure improvements in discrimination law and practice in the United Kingdom, Europe and at an international level.

The DLA has a wide and diverse membership, currently consisting of approximately 400 members. Membership is open to any lawyer, legal or advice worker or other person substantially engaged or interested in discrimination law and any organisation, firm, company or other body engaged or interested in discrimination law. The membership comprises, in the main, persons concerned with discrimination law from a complainant perspective.

**Were you aware that European Union legislation bans discrimination on grounds of race or ethnic origin in education, social protection and health care?**

**Yes**

We are also aware that EU legislation, Directive 2004/113/EC, bans discrimination on grounds of sex in the provision of public or private sector services, which should cover health care services, but specifically excludes discrimination in education and omits reference to social protection.

**Were you aware that there are European Union laws which ban discrimination on grounds of race or ethnic origin in buying goods and paying for services, as well as in housing (e.g. renting or buying accommodation as well as access to public housing)?**

**Yes**

We are also aware that Directive 2004/113/EC bans discrimination on grounds of sex in buying goods and paying for services, which we would expect to include these same aspects of "housing".

**Were you aware that there are European Union laws which ban discrimination on grounds of age, disability, religion and sexual orientation in work and training?**

**Yes**

We are aware that in the fields of employment and vocational training EU legislation bans discrimination on all of the grounds referred to in Article 13 of the EC Treaty. Without the obligation on all Member States to ensure that their national laws provide protection against discrimination on all six grounds - racial and ethnic origin, disability, religion or belief, sexual orientation, age and sex – at least to the standard in EU legislation, we do not believe that the UK or a number of other Member States would today have national legislation for this purpose. There can be no doubt that the anti-discrimination directives approved after incorporation of Article 13 have been the main driving force for new and stronger protection against discrimination in the UK. Unfortunately, because of the more limited scope of protection for certain grounds under EU legislation, now reflected (inadequately in some respects) in national law, the UK, like some other EU countries, now has anti-discrimination legislation that is unduly complicated because of its inconsistent levels of protection on different grounds in respect of different areas of activity.

**Do you think people should be protected from discrimination on grounds of age, disability, religion and sexual orientation in education, social protection or health care?**

**Yes**

**Do you think people should be protected from discrimination on grounds of age, disability, religion and sexual orientation when they buy goods or pay for services, as well as in housing?**

**Yes**

We recommend that EU legislation should provide protection against discrimination on grounds of disability, religion or belief, sexual orientation, age and sex and any combination of these grounds, across all of the areas beyond employment and training which are currently covered under the Race Equality Directive 2000/43/EC; this should include social protection, including social security and health care, social advantages, education, access to and supply of goods and services which are available to the public, including housing. We believe EU legislation should extend protection against discrimination on all grounds to cover all functions of public authorities (to the extent that these functions are within the competence of the EU).

Based on our experience of UK legislation, the Discrimination Law Association believes very strongly that there should be no hierarchy of equality, and there should be equivalent protection from discrimination on all of the grounds within Article 13 of the EC Treaty. Further, EU legislation should specifically provide for protection against discrimination on multiple/intersectional ground, which will be more easily

achieved when any hierarchy of rights is removed.

If the same protection is provided on all six protected grounds, then it would be appropriate for EU legislation to require that equality bodies specified under Art. 13 of the Race Equality Directive 2000/43/EC and Art.12 of the Gender Goods and Services Directive 2004/113/EC should take on responsibilities for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on all six grounds.

If the objective of the EU is to give full and real effect to the principle of equal treatment on all of the grounds (or combination of grounds) referred to in EC Treaty Article 13, then it will be essential that any new legislation should permit and encourage positive action to prevent or compensate for disadvantages in any of the areas within the scope of the legislation related to any, or any combination, of the protected grounds. There should also be an obligation on public and private sector providers of social protection including healthcare, social advantages, education, and goods and services to provide reasonable accommodation for disabled people as users or prospective users comparable to the obligation on employers under Art. 5 of Directive 2000/78/EC.

One of the important features of the Directives 2000/43/EC and 2000/78/EC is that they do not permit direct discrimination to be justified, other than in the very narrow provisions relating to genuine and determining occupational requirement. We were concerned that the same strict protection against direct discrimination has not been maintained in Directive 2004/113/EC, as Article 4(5) appears to allow justification of direct sex discrimination in provision of goods and services. We strongly recommend that new EU anti-discrimination legislation should permit direct discrimination only where it is wholly consistent with the principle of equal treatment, ideally only where it would comprise a form of permitted positive action.

**Do you think that combating discrimination outside of the work context on grounds of age, disability, religion and sexual orientation should be a priority for the European Union?**

**Yes**

Recital 12 of the Race Equality Directive states, "To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self employed activities and cover areas such as education, social protection including social security and healthcare, social advantages and access to and supply of goods and services." We submit that to ensure societies in all Member States are truly democratic with full and effective participation by all persons with different and complex identities, then specific measures to prevent discrimination and harassment must go beyond employment to cover all of the other (public) areas that affect people's lives. Evidence from different Member States disclosing gross inequalities in access to social protection, education, housing, healthcare and the impact of such

inequalities on society generally and especially in terms of social cohesion and solidarity, should indicate the urgent need for wider protection against discrimination to be made a priority for the EU.

We do not believe that there is a need to wait for more “evidence” that discrimination is a problem for people with particular identities in particular areas of activity. From our experience, if national laws do not prohibit discrimination on particular grounds or in particular areas, then the number of complaints will not be an accurate measure of the extent of the problem, since victims firstly may feel that they have no real basis for complaining and secondly may not have anywhere to go to complain.

**Do you think that all people in the European Union should have the same protection against discrimination on grounds of age, disability, religion and sexual orientation outside of the work context?**

**Yes**

The Discrimination Law Association believes there should be no hierarchy of equality, with equal protection for all grounds, and any combination of grounds, not only in employment but in all areas outside of employment within the competence of the EU to regulate.

We recognise the key role of EU legislation in securing legislation in all Member States providing protection against discrimination in the work context. On issues which remain politically or socially sensitive in some Member States, the obligation to comply with the content and timetable of recent EU anti-discrimination directives has been a crucial factor; we believe that without such obligation some Member States may have avoided legal protection against discrimination on grounds of sexual orientation, may have enacted weaker legislation on race and religion and may have omitted the duty on employers to make reasonable accommodation for disabled employees.

Therefore, in order to remove any hierarchies or inconsistencies that may operate in some Member States, we recommend that EU legislation should be drafted that would provide the same protection against discrimination outside of the work context for all of the grounds within Article 13 of the EC Treaty. There should be good opportunity for consultation on the contents and means for enforcement of such legislation with organisations and individuals across the EU.

Discrimination Law Association  
PO Box 49064  
London N11 2 UX  
United Kingdom  
Email: [info@discriminationlaw.org.uk](mailto:info@discriminationlaw.org.uk)

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