

Discrimination Law Review – A Framework for a Fairer Future: Proposals for a Single Equality Bill for Great Britain

Refugee Council's Response¹

Overview

The Refugee Council is the largest charity working with asylum seekers and refugees across the UK. We campaign for their rights and help them to rebuild their lives in safety.

The Refugee Council welcomes the Government's consultation for a Single Equalities Bill. We also welcome the integration of human rights with the equality streams through the Commission for Equality and Human Rights. At present, refugee status, humanitarian protection, discretionary leave to remain and claiming asylum are not explicitly protected under the current equality streams. This is one reason why asylum and immigration is missing from the Review. We hope that this will change as a result of the consultation and through the work of the Commission.

At present, refugees and asylum seekers are being brought under the race equality provision. For example, the Audit Commission has advised public authorities that newer communities, such as asylum seekers and refugees, should be explicitly addressed in race equality provisions and initiatives.² However, this is not consistently applied nor promoted by other leading bodies. There is a clear need to formally adopt refugees and asylum seekers as protected under legislation and through the CEHR's guidelines. The reasons for doing so are demonstrated by a number of distinct examples of discrimination on the basis of an individual's asylum status.

- the asylum process itself allows for discrimination on the basis of nationality³. For example, the certification of claims as "clearly unfounded" means that claiming asylum from a country pre judged to be safe limits your legal entitlements.⁴
- Asylum seekers are confined to poverty levels of support that is only 70% of income support, and some of them are destitute because they don't have access to any support. Asylum seekers are very often isolated and as a result do not have access to other mainstream services either. Their destitution and isolation impacts on community cohesion.

¹ Refugee is used to include asylum seekers granted humanitarian protection and discretionary leave to remain. Where this is not inferred, refugee status will be used.

² The Audit Commission (2004) *The Journey to Race Equality* p.2

³ Race Relations (Amendment) Act 2000 Sec.19D and Sec.71A

⁴ Certification under s.94 *Nationality, Immigration and Asylum Act 2002* provides for a statutory presumption that all claims from the countries listed shall be certified as 'clearly unfounded' unless the Secretary of State is satisfied that it is not.

- most asylum seekers are unable to engage in employment and training opportunities; where an asylum seeker has permission to work, she is unable to access mainstream employment support through Job Centre Plus
- asylum support accommodation is provided on a no choice basis that regularly removes asylum seekers from community networks, college courses, etc. And there should be some minimum safeguard in the provision of accommodation for asylum seekers – so that accommodation provided to asylum seekers should not fall below the minimum standards set in housing law.
- asylum seekers are unable to access a range of other mainstream services. For example, health access, particularly to asylum seekers whose claims have been refused, is restricted.⁵
- Refugees and asylum seekers have very different sets of rights that has an impact on how we understand equality. In most situations, refugees can expect equal treatment with other long term residents and so anti-discrimination legislation applies to them more clearly than it applies to asylum seekers, who have less rights.
- refugees are restricted in the length of training opportunities they are able to access and potential funding through having limited leave to remain. For example, Indefinite Leave to Remain (ILR) is required in order to apply for a Career Development Loan; providers can refuse for funding reasons applicants who may not be able to finish a programme of study or training

Indirect discrimination results from embedded practices and attitudes that favour certain applicants, service users, traditional forms of personal identification, qualifications and experience. These include

- employers and service providers who do not or choose not to recognise non traditional forms of personal identification (i.e. Immigration Service Document issued to asylum seekers when granted leave to remain)
- sections of the press and wider media that use asylum in misleading and potentially racist ways, affecting public attitudes
- lack of commitment within Government to ensure asylum seekers and refugees are aware of their rights and entitlements, including what constitutes discrimination
- financial exclusion: this can result from financial service providers not recognising Immigration Status Documents and refugees gaining a low credit score due to not being able to register on the electoral role⁶
- funding regimes requiring ILR or leave to remain beyond the end of the training course
- the distinct needs of refugees and asylum seekers not being addressed within mainstream provision of services; instead they are included in broader categories, usually ethnicity

At present, asylum seekers and refugees who have a protected characteristic fall under an equalities stream directly. However within these groups (ie ethnic or gender), refugees and asylum seekers are often disadvantaged. For example, the rate of refugee employment is estimated to be around half that of ethnic minority people⁷.

⁵ Whilst asylum seekers' claims are being decided, they are entitled to free NHS care. Once they have exhausted their appeal rights, they remain entitled to continue any treatment they were already receiving, but all other secondary care is chargeable. The regulations encourage trusts to monitor patients' immigration status with care. The Department of Health guidance states that "trusts should be prepared to check that the application is still ongoing at intervals if treatment is being provided over a long period". Department of Health (2004) *Implementing the Overseas Visitors Hospital Charging Regulations: Guidance for NHS Trusts in England*, HMSO (London) p21

⁶ See <http://www.refugeecouncil.org.uk/policy/briefings/2007/financeaccess.htm>, last searched 19 August 2007

⁷ Bloch (2004) *Making it work: Refugee Employment in the UK*, ippr, (London)

The Refugee Council recommends that discrimination law recognises the status of refugees and asylum seekers as a protected characteristic. Discrimination law should also recognise the overlap between groups, that there is multiple or intersectional discrimination. Multiple comparisons should be expressly permitted. For example, experiencing discrimination as a refugee, as a woman, as a black woman and as a refugee woman.

Finally, the Refugee Council is concerned that the Review does not cover children and young people. We work extensively with separated children claiming asylum in the UK. We are also involved in direct services and research to children of asylum seekers and refugees. For example, we regularly advocate on behalf of young people trying to access mainstream, further or higher education. Schools are sometimes reluctant to take new entrants during the school year. Many young people are initially given limited leave to stay but their status is not fully resolved for some time. Young people also face discrimination in the support services they receive; within the cohort of “looked after” children in some areas, the proportion of separated children with an allocated social worker is significantly lower than the proportion of indigenous children.

Response to Questions

Chapter 4: Balancing Measures (Questions 23 to 26)

The need to address refugees and asylum seekers as distinct protected groups is evidenced in positive action measures. Refugees and asylum seekers are clearly disadvantaged groups. In the area of employment, positive action programmes rely on the individual views of employers as to whether the status of being a refugee is protected. This is not satisfactory and has meant that schemes with significant potential to tackle refugee unemployment have been frustrated.

The Refugee Council believes reasonable freedom should be given to employers and service providers, including those in the third sector, to establish positive action measures. However, the Commission for Equality and Human Rights should support such initiatives through

- establishing the status of asylum seekers and refugees as protected characteristics and issuing guidelines on how this can underlie positive action measures
- provide formal guidance as to whether positive action measures qualify where disagreements exist

Chapter 5: Public Sector Equality Duties (Questions 29 to 33)

The Refugee Council is concerned the move to a single public sector equality duty risks losing much of the practice that has been built up, particularly under the race equality stream. We would want a clear commitment to refugees and asylum seekers being protected and integrated into the single equality duty.

We are concerned that allowing public authorities to set local priorities objectives under these streams may disadvantage refugees and asylum seekers. We would not want the priorities to be set according to numbers. Refugees and asylum seekers are part of growing communities around the country, but would not always be of a significant size to attract local authority prioritisation. However, protection and positive action measures for these groups are critical to good community relations and promoting equality of participation.

The Refugee Council wants to see a public duty that covers all the protected characteristics and is able to cover asylum seekers and refugees. People claim asylum because of persecution as a result of their religion and sexual orientation, as well as their race and gender. The public duty should reflect the intersectional aspects of discrimination.

There is the wider issue that many public bodies do not know how the duty relates to migrants in general and to what extent they are covered. Research by the Commission for Racial Equality and the Institute for Public Policy Research found that the public bodies, including local authorities, did not consider new migrants as within the remit of 'race relations'. This also affected the delivery of public services which were not adapting to the new diversity of race equality which was still seen in 'black and white' terms. The findings also revealed local authority representatives reporting a low priority awarded to race relations among their leader.⁸

It is important for public authorities to be challenged on their performance by members of the public and civil society organisations. There should also be the continuing requirement to make its evidence and progress on the single duty public, to involve and consult stakeholders, and to monitor.

Chapter 6: Promoting good equality practice in the private sector (Questions 46 to 47)

The Refugee Council considers that an independently assessed "Equality Standard" would prove beneficial to promoting equality and diversity in the private sector. We know that the commitment to equality and diversity has to be led from the top of an organisation. This is true for business and Government.

We believe that there is a key role for professional bodies and trade associations in championing the importance of equality and diversity. Developing initiatives with appropriate government departments or regional/local authorities is valuable. The Quality Mark partnership between the Department for Innovation Universities and Skills and the Recruitment and Employment Confederation (REC) is one example.⁹ Trade Unions also have a central role to play.

Equality and diversity should also be incorporated into the recently launched Skills and Jobs Pledges. The growing use of procurement as a tool also need to be strengthened. The public sector is a significant contractor with businesses and this relationship needs to establish equality policies as the norm.

The Refugee Council is concerned that guidelines for employers covering the prevention of illegal working have the potential to discriminate against refugees and asylum seekers with permission to work. The recent consultation issued by the Home Office sees an increasing role for employers in checking and monitoring that their employees are still entitled to work. Employers, particularly small and medium sized, are likely to be limited in their human resources capacity. It is unrealistic to assume that some employers will not favour those individuals who hold passports/on the basis of having traditional, established documentation (ie a national passport) or who do not have restrictions on their leave to remain.

⁸ ippr (2007) *The receptions and integration of new migrant communities* p52. The research also found that the behaviour and attitudes of individual councillors were often in direct conflict with the duty to promote good race relations.

<http://www.cre.gov.uk/downloads/newmigrantcommunitiesresearch.pdf>

⁹ See also REC's Diversity Pledge in association with Job Centre Plus (<http://www.rec.co.uk>)