

**Equality and  
Human Rights  
Commission**

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## **Speech - What will the Equality Bill mean in practice?**

**Speech by Trevor Phillips at the NHS London Equality Conference**

**Wednesday 8 July 2009**

The NHS in London provides vital services to 7 million of some the most diverse people in the world. You give them security, peace of mind, and the support to lead independent, dignified lives.

If the NHS's role as a service provider is important, so too is its role as an employer. Only the Chinese Army, Wal-Mart and Indian Railways can match the might of its workforce. A single decision by the NHS can do more to reshape the world of work in this country than any amount of well-meaning research and reports.

So for the Equality and Human Rights Commission - with our brief to build a better society, free of prejudice, with fair chances for all - you couldn't be more important, as an ally in guaranteeing that every single person, no matter what their origins or circumstances, gets treated with decency, dignity and respect.

Easy to say, harder to do. Any organisation of the size and complexity of the NHS will have its challenges. Sometimes, as employers and employees, you are treading difficult ground.

But when I look at what is already happening in many places around the capital, I know that there is a lot of good will out there. Many of London's Trusts aspire to lead the way. Ealing, Haringey, Lambeth, Wandsworth and Westminster have been frontrunners in the 'Race for

Health' programme. Tower Hamlets PCT is one of Stonewall's top 100 employers. We in the Commission are working closely with the health service unions, particularly Unison, to find a practical solution to their problems, especially that of equal pay.

So I welcome the chance to share thoughts with you today about the Equality Bill. Because the Bill could be a vital tool for building a fairer society together.

I want to say a few words today to put the Bill in context: to illustrate what it might mean for you: and explain the Commission's role in helping you negotiate those changes.

For the best part of forty years, British equality legislation has worked like this. If an individual has been underpaid, mistreated at work, or overlooked by public services - because of their gender, the body they were born into, or the colour of the skin - the onus has been on the individual to pursue justice through the courts.

This approach has helped thousands access justice. The most egregious examples of discrimination have been consigned to the dustbin. Employers have attempted to put their house in order, knowing that they can be brought to account.

But we all know that disadvantage and inequality persist. That half of disabled people are out of work. That a Bangladeshi woman is six times as likely to be unemployed as a white woman. That a young black man is more likely to end up in jail than in university. That a child's postcode at birth is a reasonable predictor for their lot in life as an adult.

In short, our choices and chances in life are still, to much too great an extent, determined by our origins.

The reasons are complex. It is not conscious ill will on anyone's part. It comes down to fundamental assumptions which underlie the way public institutions and private firms work: assumptions which may not explicitly exclude any one individual, but which remain weighted towards the privileged or the majority. Some people (actually, if I'm honest, mostly me) have called it systemic bias.

To put the problem at its simplest, the approach has been: 'that's just the way we do things around here. And if it doesn't work for you, too bad.'

So the old approach to equality won't be enough for the future. Individuals might chip away at the edifice, with small victories here and there, but progress will always be piecemeal at best. Most of all we don't want people to have to be heroes to make a difference, to have to put their lives on hold while they pursue a remedy against the might of their employer or a public service.

The real challenge is achieving a wholesale shift in attitudes. That takes positive steps, a fresh look at our systems, structures and fixed ways of doing things.

This is what the Bill calls for. It marks a welcome shift towards fully-fledged institutional reform. By bringing together and expanding on existing public sector duties, it spells out that organisations like the NHS have to look at the evidence, examine their processes, and find ways of delivering for everyone – regardless of race, gender, disability, age, religion or belief, sexual orientation or gender identity. And this Bill does not ignore the impact of the background you came from or the place you grew up or live now. A new socio-economic duty will mean that, as they plan their services, strategic authorities will have to take into account the single most decisive determinant of life chances in the UK: socio-economic status, or, as we used to say in the old days, class.

The institutional change we're talking about is similar to the examination and re-invention of services that many public organisations undertook in response to the Human Rights Act. Earlier this year our Commission published a Human Rights Inquiry report, examining what difference the 1998 Act had made, ten years on. One of the overwhelming – and heartening - messages was that a human rights-based approach could help motivate staff and deliver better services. Mersey Care Trust found that involving the people who used service in decisions about who delivered them, and when and where, actually helped people's recovery. The Royal National Institute for Deaf People praised the mental health team in the North of England who installed a textphone to make their services more accessible.

The Equality Bill underlines that this kind of thoughtful and inclusive approach should be everyday business for the whole public sector.

To match those expectations, the Bill provides public authorities with new clarity and flexibility about what they can do to put fairness into practice.

On one hand, the Bill could be regarded - and welcomed – solely as a heroic exercise in simplification. It brings existing law – currently contained in 35 acts, 52 statutory instruments, 13 codes of practice and 16 European directives – into one place. It updates and modernises to reflect how case law has clarified and strengthened people’s rights. And it comes with a Plain English translation.

All of this will make the law easier to access, easier to understand, and easier to enforce. It will give organisations who want to lead the way confidence. And it will mean that those who drag their feet will no longer be able to hide behind the excuse of saying that 'it's all too complicated.'

But the Bill offers much more than consolidation. It takes significant strides forward that give public authorities – and private firms – new flexibility.

Provision on positive action will give employers the option, when interviewing two candidates of equal merit, to take into account whether either candidate is from a group currently under-represented in their workforce. Many organisations, public and private, recognise the benefits of having a diverse workforce. Think of the primary headteacher who believes that her pupils would benefit from a male presence among the staff (bearing in mind that in most primary schools the vast majority of teachers are women.) The police chief responsible for working in an area with a significant Pakistani community, yet without a single Pakistani officer.

The Bill will also pave the way for greater clarity about procurement. The public sector spends billions of pounds every year buying in goods and services from third parties. We are working with Government to develop measures to go alongside the Bill, which will enable public bodies to choose suppliers who treat their workers fairly and equally, as well as delivering value for money for the taxpayer.

As bodies like the NHS come to terms with these new expectations and new flexibilities, the Commission intends to play an important role.

On one hand, as the regulator, we will hold public bodies to account. Let's be clear here. We are not looking for a plethora of strategies and schemes which don't lead to any change in practice, and which never get monitored. An equality strategy of that kind is proof of little more than good intent. It's a start, but it just isn't enough.

Instead, we will look to public bodies to report on achievements and practical change: not boxes ticked on a form, but the experience of the disabled patient, the opinion of the new mother, the statistics on access to services.

But the Commission is aspiring to be a modern regulator - more a combination of ACAS and OFCOM than Liberty. We will enforce the law where organisations are in breach of their statutory obligations. But crucially we will also seek to enable and encourage, giving organisations the information and the confidence they need to embed equality and human rights in the way they work.

Instead of the being there simply to say 'you must not' or 'you shall not' we want to be ready to say 'you can. You may. You should.'

When it comes to the Bill we will be providing both statutory and non-statutory guidance. These will spell out in clear and straightforward terms exactly what organisations can do.

Though the Bill is not yet passed into law, we consider it absolutely vital to get the guidance spot on, and so are already working on it.

We propose that the guidance should be intensely practical, full of relevant examples. It should not demand that anyone read more than they need to get the answer they want in a particular situation. And as well as spelling out basic legislative requirements, it should include good practice that goes above and beyond the minimum.

Of course it should go without saying that the Commission will seek to work in close partnership with both private firms and public bodies and their employees as it draws up the guidance.

Indeed, partnership is key to translating the Bill into the practical change we all want to see. That is why the Commission is already working closely with the NHS at a national level on how the Bill's provisions on age discrimination will translate into practice. And I hope to keep working with you in that spirit of partnership.

Lastly, let me say a few words on process. The Bill is still going through parliament. We don't expect it to receive Royal Assent before 2010.

The Commission is not sitting idly by while we wait. We have already begun proposing amendments to tighten up drafting, or clarify definitions – and I'm pleased to say that in many areas Government have listened and taken many of our points on board.

However, our interest is not limited to perfecting what is already there, nor to tinkering with technical subtleties. With our mandate to be an advocate, we will speak out where the Bill could go further.

First, we believe the Bill could make an even bigger difference if it abolished the mandatory retirement age. Why should men and women with a wealth of experience, skills and enthusiasm, who want to stay in a job, be denied the choice to do so? Currently businesses don't even have to explain their decision. In as little as twenty years, half the population will be over 50 years old. Making the most of older talent will be crucial to economic success. We squander it at our peril.

Second, there is another type of age discrimination that the Bill doesn't currently cover. That's discrimination against people under 18. I was at a tremendous event last week which the Commission organised to showcase the work of young British artists. It was an inspiration to see so much talent, and hope, and enthusiasm in one room. But one of the recurring themes in their work was frustration – frustration at being labelled, at being stereotyped, at not being allowed to speak for themselves. There is all too much evidence of under-18s being failed by public services who did not take their needs seriously. The young man who becomes homeless, but can't get decent advice about his options.

The young woman who feels as lonely and misplaced in the children's ward as she does in the adult ward. The teenager who has been assaulted, but who doesn't have confidence that the police will listen. Things could be very different for these people if they had the weight of the law on their side.

Third, consider representative actions. I said earlier that people should not have to be heroes to make a difference. 30 years ago, the Equal Pay Act brought in an adversarial, court-based approach to dealing with equal pay claims, that puts the onus on the individual. 30 years on, our daughters still get paid less than 85p for every pound earned by our sons. If the Commission had the power to take representative actions, we could take on some of the burden. We could speak up on behalf of people who want to assert their rights. They would not have to stand alone in the courts. That's a big psychological difference. And grouping cases together could help reduce the backlog of tens of thousands of people waiting to be heard.

Fourth, the Bill could be strengthened by a 'purpose clause' – a prism through which those interpreting and enforcing the law would see all its provisions, to ensure it delivered results in line with the aspirations of the Bill's architects. This is not window dressing: it could help avoid the kind of confusing situation we have seen with the Malcolm case, where we have had a judicial interpretation of the Disability Discrimination Act that seems to be at odds with the law's original purpose.

This is an extraordinary opportunity, and we should not miss the chance to fashion an equalities framework that equips us for all the challenges for the 21st century. The Commission will keep talking to Government, public authorities, enterprise and employees about all these suggestions – and on other important points, such as an equality guarantee - in the months to come. I'm hopeful that we'll be able to find common ground. If we can't get changes on the face of the Bill, then we will look for other ways to achieve the same ends.

In sum, there are areas where we believe the Bill could reach that little bit further. But none of this detracts from what it already does that is positive and ambitious and right.

And whatever changes might be included in the months to come, the Equality Bill will already represent a fundamental change for the NHS all

over London - for nurses, midwives, doctors, care workers, health visitors, managers and administrators alike. It will require you to think and work in new ways. It will call for adaptation and innovation.

But none of this is beyond your imagination, or that of your colleagues. Success is not about introducing new forms or inventing new job titles. It is about providing services and treating colleagues in a thoughtful, respectful way.

Let me end by echoing Steve Barnett, CEO of the NHS Confederation, who said that the Bill should help, not hinder services provided to all patients.

Ultimately the Bill is an opportunity for everybody in the public sector to think afresh about how we can treat colleagues better and improve the service we offer to the public. I look forward to continuing to work with you as we make the most of that opportunity.