

## Positive Action: What's in it for Employers?

Speech by Trevor Phillips, 1 December 2009, Kings Fund, London

The Equality Bill is without question the most significant piece of equality legislation for years. It is the culmination of years of work by lots of people. It will, we hope, be on the statute book in a matter of months. Therefore there is absolutely no time to waste in preparing for it. That's why the Equality and Human Rights Commission is preparing to publish draft guidance on the Bill: and it's why we've organised this afternoon's event - designed to offer clarification on one of the Bill's most significant and least understood measures.

Positive action is a special kind of legal provision. It is not mandatory: it is permissive. It is not something organisations have to do: it is something they may choose to do, if they wish. And as we will explore this afternoon, it represents a significant opportunity for employers who want to get ahead.

This summer, Harriet Harman joked that the banks might not be in such a sorry state if instead of Lehman Brothers it had been Lehman Sisters. Her comments were met with indignation. Maybe, like me, you were puzzled by that reaction. Surely it's common sense: surely a team enriched by a variety of viewpoints is going to be better at making informed decisions than one in which everybody thinks the same. (I think if we've learnt one lesson over the past 24 months it is that "groupthink" is fraught with risk.)

A growing body of research has begun to set out the hard evidence to support that intuition. In many circumstances, diverse teams objectively do a better job.

For private firms – the insight brought by staff of different backgrounds can unlock new markets. The industry I come from, TV, is increasingly looking to diversity to find new ideas and new ways of doing things.

In the public sector – a workforce that looks like the people it serves can meet the needs and win the confidence of every part of the community.

In fact: demographic change already means that barely a quarter of the workforce now fits the old model of the ‘standard worker’ – white, male, under 45 and non-disabled.

As the country grows ever more diverse in the years to come, employers have a simple choice: keep up or get left behind.

In this context, the drive for greater diversity is far from being a distraction from the job of recovering from recession. It is essential to getting the economy firing on all cylinders again.

This is not just what we in the Equality and Human Rights Commission think. It’s also what a great number of companies think. They tell us that diversity isn’t a fluffy indulgence, it’s a business imperative – and that’s why among us today there are lots of businesses.

But those firms also know that the challenges and frustrations of trying to build a more representative workforce are manifold. Some universities face the same quandary. Even once you put the right steps in place so that people from under-represented groups can compete on a fair footing, you have to encourage those people to apply in the first place.

Some would-be employees lack confidence. Some look at the existing workforce and see no women or see nothing but white faces and assume ‘they wouldn’t welcome me.’ And some haven’t had the opportunity or encouragement to develop the right skills.

That’s why many firms already use positive action of various kinds. The Fire Service, for example, with a recruitment event designed to attract

people from ethnic minorities. The construction firm with a training programme specifically designed for women.

I'm delighted that we have Sandra Kerr from Race for Opportunity, Becky Mason from BT, and Sally Boyle from Goldman Sachs here to share stories of how positive action has helped companies deliver.

There's a specific point I want to make – a critical distinction that needs to be drawn. Positive action – based principally on training and encouragement – is legal. And it is clearly distinct from positive discrimination. Positive action is about putting people in a position to compete, not nobbling the competition. Positive discrimination is gaining an advantage without evidence of merit: that's getting ahead because of what you are rather than what you do. Except for a very few narrowly defined cases of 'genuine occupational requirement,' it will remain unlawful for anyone to have their job application dismissed out of hand simply because they happen to be a straight white man. Rightly so. And of course you'd have to be a very strange employer indeed to make anything other than talent your primary criterion for recruitment.

The Equality Bill does two main things in relation to positive action. First, it clarifies and updates what's already legal – the kind of examples I've already mentioned.

Second, it broadens the voluntary measures that employers can take to the full extent allowed by EU law.

What does the new element of the law mean? In a nutshell, if you're an employer, then you will have the option – when choosing between two equally qualified candidates – of using the fact that one candidate would make the workforce more representative as a 'tie-break.'

There are some ideas we'll be coming back to this afternoon. How do you know, and show, where there's a balance to be redressed? What exactly does 'equally qualified' mean? What process would an organisation need to follow to use the measure?

The Commission has produced a straightforward briefing which sets out some answers to these questions. It's a start, rather than a definitive guide – that will come later. This afternoon is a chance to give your

reactions. The Commission will be listening hard so that, as we prepare that more comprehensive guidance on the Bill, we can tailor support to your needs.

But we shouldn't forget that this new measure is just one aspect of what positive action means: so I look forward to hearing more about the many good things employers are doing already, and the difference it makes to them today. I hope that you will all come away with a better understanding of the law and how it can work for you.