
Race and the Criminal Justice System

The Legal Context

Background

In 1963 the chairman of the Bristol Omnibus Company openly admitted to his company's racist practices and refusal to employ ethnic minorities during a BBC interview. A four month boycott of Bristol buses followed, bringing about Britain's first ever race relations legislation – the Race Relations Act 1965. (1)

In 1968 an amendment to the 1965 Act was brought in to strengthen the original legislation. While the first Act outlawed racism in employment, the 1968 amendment made racial discrimination in any public place, including cinemas or hotels, illegal.

The original Act was replaced a new Race Relations Act in 1976 – the most significant amendment to the legislation so far. For the first time, race relations legislation defined direct and indirect discrimination, making both a criminal offence. The law also gave those affected by discrimination redress through employment tribunals and the courts. It also founded the Commission for Racial Equality. (2)

Key changes since the Race Relations Act 1976

The Race Relations (Amendment) Act 2000 (3)

The Race Relations Act in 1976 provided legal protection from racial discrimination in employment, education, training, housing and other public services. However, the murder of the teenager Stephen Lawrence in 1993 exposed major flaws in the criminal justice system.

The government established an inquiry led by Lord Justice MacPherson, whose findings and recommendations, published in 1999, became the catalyst for the most significant change to race relations legislation in the form of the Race Relations (Amendment) Act 2000, which came into force on 2 April 2001.

This strengthened and extended the original Race Relations Act 1976. It outlawed racial discrimination – direct, indirect and victimisation – in public institutions not previously covered by the Race Relations Act 1976, including prisons, the probation, immigration and customs and excise services. (4)

The new legislation made the promotion of racial equality and protection of the public from racial discrimination a legal requirement and a ‘general duty’ of public authorities such as police forces, prisons and local authorities. This ‘general duty’ means that in everything they do, public authorities should have ‘due regard to the need’, in carrying out their functions, to:

- tackle unlawful racial discrimination;
- promote equality of opportunity; and
- Promote good relations between people from different racial groups. (5)

In addition to the general duty, the Race Relations (Amendment) Act 2000 placed two specific duties on the public authorities:

- Publication of a Race Equality Scheme, which must detail the policies and functions relevant to meeting the ‘general duty’, and the arrangements that will help to meet it in policy and service delivery.
- Detailed monitoring of employment procedures and practice. (6)

The Race Relations Act 1976 (Amendment) Regulations 2003

This additional amendment changed the definition of indirect discrimination, removed a number of exemptions and changed the way in which the burden of proof applies. (7)

The new amendment also implemented EC Article 13 Race Directive, which “guarantees a minimum standard of legal protection for individuals from discrimination or harassment on the grounds of racial or ethnic origins and ensures a right of redress for all individuals who have been the victims of such discrimination.” (8) The EC Article also applies to employment and training, social protection and social security, social advantage, education, access to goods and services and membership of a workers’ or employers’ organisation.

Prisoners’ rights (9)

While prisoners do not have the right to vote, they do have a right to basic safety and a right to the courts. The principle upon which prison authorities can limit prisoners’ rights is based upon whether the right is fundamental and whether there is anything in the Prison Act 1952, the Prison Rules 1999 or elsewhere that authorises it. This legitimises limiting prisoner rights if prison security and safety were at risk.

The main source of information for prisoners' rights and entitlements are the Prison Service Orders and Instructions. These are internal directives issued to prison governors and prison officers and are designed to ensure uniformity in the treatment of prisoners throughout the prison estate. They do not have any direct legal authority and can be challenged if they breach the scope of the Prison Act or Prison Rules or if they are simply irrational.

Prison Rules do have legal force and provide a structure and framework for the regulation of prison life. However, a breach of the Rules by the prison authorities does not confer the right to sue in the courts for damages.

As far as racial incidents are concerned, a prisoner can complain about 'any incident which is perceived to be racist by the victim or any other person' as quoted on Prisoners Advice Service (PAS) website. If the incident is minor, then an informal, verbal complaint may be sufficient. If the outcome of this approach is unsatisfactory, a prisoner should submit a written complaint on a Racist Incident Report Form, which should be available on all prison wings, or using a standard COMP1. The complaint should be addressed to the Race Relations Liaison Officer or the governor/director.

Prison Service Order 2800, issued in 2006, outlines how prisons should consult with prisoners over the management of racial equality. Prisoners are also consulted with over anti-bullying strategies.

A prisoner is entitled to pursue a claim through the county courts, regardless of the internal complaints system, and is entitled to seek legal advice from a solicitor or the Prisoners' Advice Service (PAS).

The Equality and Human Rights Commission (10)

In October 2007 the Equality and Human Rights Commission (EHRC) was launched, replacing bringing together the work of the three previous equality commissions: the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission. The EHRC also has responsibility for other aspects of equality, including age, sexual orientation and religion (or belief).

The EHRC has enforcement powers to secure equality where this is not forthcoming; it also has a mandate to promote understanding of the Human Rights Act.

It is a non-departmental public body (NDPB) established under the Equality Act 2006. It is accountable for its use of public funds, but is independent of government.

Useful links

- www.prisonreform.org – lists government sites, campaign groups, support groups, charities and other organisations related to prison, prison reform and penal reform
- www.equalityhumanrights.com/Documents/Race/General%20advice%20and%20information/Code%20of%20practice%20on%20the%20duty%20to%20promote%20race%20equality.pdf
the Code of Practice on the Duty to Promote Race Equality.
- www.prisonersadvice.org.uk – Prisoner’s Advice Service
- www.yourrights.org.uk – useful source of legal information

References and sources

- (1) <http://news.bbc.co.uk/1/hi/uk/4510062.stm>
BBC News, 2005, by Cindi John
- (2) www.guardian.co.uk/politics/2005/nov/10/race.immigrationpolicy
The Guardian Leader article, 2005
- (3) www.opsi.gov.uk/acts/acts2000/ukpga_20000034_en_1
Office of Public Sector Information
- (4) www.crimereduction.homeoffice.gov.uk/legislation13.htm
Home Office
- (5) www.equalityhumanrights.com/Documents/Race/General%20advice%20and%20information/Code%20of%20practice%20on%20the%20duty%20to%20promote%20race%20equality.pdf
Code of Practice on the Duty to Promote Race Equality
- (6) <http://inspectorates.homeoffice.gov.uk/hmic/about/race-equality.html>
HMIC (Her Majesty’s Inspectorate Constabulary) Race Equality Scheme 2002-2005 article
- (7) www.iwf.org.uk/police/page.22.258.htm
Internet Watch Foundation
- (8) www.homeoffice.gov.uk/documents/ria-article-13
- (9) www.yourrights.org.uk/yourrights/the-rights-of-prisoners/the-basic-rights-of-prisoners.html
Your Rights – the Liberty guide to human rights
- (9) www.prisonersadvice.org.uk/info/inforacismcompl.html
- (10) www.equalityhumanrights.com/en/Pages/default.aspx
The Equality and Human Rights Commission

Glossary

Direct discrimination

Treating one person less favourably than another on racial grounds. Direct discrimination is unlawful under the Race Relations Act.

Indirect racial discrimination

Occurs when a rule or condition which is applied equally to everyone:

- Can be met by a considerably smaller proportion of people from a particular racial group;
- Is to the disadvantage of that group; and
- Cannot be justified on non-racial grounds.

All three conditions must apply for an act or omission to be considered indirect discrimination.

Institutional racism

Defined as: 'The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.'

Racist incident

Defined as any incident that is perceived to be racist by the victim or any other person.

Victimisation

Punishing or treating someone unfairly because they have made a complaint of racial discrimination, or are thought to have done so; or because they have supported someone else who has made a complaint of racial discrimination. Victimisation is defined as unlawful discrimination under the Race Relations Act.