



Equality and Human Rights
Commission Triennial Review Call for
Evidence:
A response from brap

January 2010

INTRODUCTION

About brap

brap is one of the country's leading equalities and humans rights charities inspiring and leading change to make public, private and third sector organisations fit for the needs of a more diverse society. brap offers tailored, progressive and common sense approaches to equality training, consultancy and community engagement issues. brap is a national organisation, having previously worked with the Equality and Human Rights Commission, the Home Office, the Department of Health, the National Council of Voluntary Organisations, and Yorkshire and Humber Improvement Partnership.

About this submission

brap welcomes the opportunity to share its experiences of discrimination and disadvantage with the Equality and Human Rights Commission (EHRC). Although the EHRC has allowed organisations to feed back their views using a number of formats and methods, we still thought it might be useful to explain the structure and nature of this response.

As explained in the section below, brap has amassed a lot of qualitative and quantitative data regarding inequality. We didn't feel it was appropriate to simply repeat this evidence here, partly because of the sheer amount of information we would have to reproduce and partly because we expect the EHRC's call for evidence to uncover a lot of similar evidence anyway. Instead, we thought it might be more effective to present our experiences thematically around certain issues and topics where we feel we can offer a useful analysis or a tested solution arising from our work.

How we compiled evidence for this submission

Over the past 11 years of working on equality issues, brap has built up a considerable evidence basis of discrimination and disadvantage. While this informs our response, we took additional steps to ensure we garnered views that were as up-to-date and relevant as possible.

Firstly, we set up an online survey asking people to record their experiences of discrimination over the past three years. The survey was online from 4 December 2009 to 11 January 2010. A link to the survey was emailed to brap's database of community and voluntary organisations, which includes over 400 recipients.

Secondly, brap ran special surgeries after meetings of its black and minority ethnic third sector network, the Collective. The Collective has over 60 signed-up members who meet on a quarterly basis. The surgeries allowed more expansive, in-depth, and wide-ranging discussions to take place.

Finally, brap drew upon its extensive experience of working with public sector agencies. In the timescales relevant to the submission of this response, brap is working or has worked with organisations from a range of sectors, including:

- health
- community and voluntary organisations
- housing
- education

- the police service

brap's work across these areas varies and includes service design, equality training, and community engagement.

EVIDENCE

As stated in the introduction, we have amassed a lot of anecdotal evidence and simply repeating it in this submission would be rather unwieldy. This section is best seen as directly answering question 5 in the Call for Evidence framework, that is, solutions we have encountered to equality challenges and issues.

1. The nature and availability of support

One of the most striking features in many cases of discrimination is the reluctance of the person affected to take matters further. This is often for a number of reasons, including:

- many people are unaware of the legal and emotional advice and guidance that is available to people who have suffered discrimination
- not only is knowledge about protection from victimisation limited, but people do not feel adequately protected from the repercussions of raising discrimination issues (some people, for example, reported that they were reluctant to take a case to an employment tribunal for fear of losing their jobs). Within this context, individuals are often worried about getting a reputation as a trouble maker
- in our experience, people are often unsure of what discrimination actually is and don't want to be seen to be overreacting or appear unreasonable

In response to these issues, it is clear that there needs to be a recognised, tiered pathway for people to progress complaints on an informal, semi-formal, and formal basis. An informal space would allow people to freely and openly discuss their problems and get feedback on whether what they were experiencing was actually legal discrimination. It would also be useful if this informal place could offer the emotional support that is often lacking to people who experience discrimination. A semi-formal space is necessary because often people don't want to take punitive action taken against discriminatory employers or services providers – they simply want the discrimination acknowledged. A formal option is, of course, necessary as a final recourse.

We are aware that something approaching this structure exists in terms of the informal support available from the EHRC, the conciliation services offered by ACAS, and, of course, the legal redress offered by Employment Tribunals and the law courts. However, in our experience people are often only aware of one or another of these bodies and so are denied the complete range of options when dealing with discrimination. Not only could more be done to increase awareness of these organisations and their functions, but it may also be useful to package these various avenues of redress as part of a clear pathway open to people faced with discrimination.

Finally, many respondents pointed to the lack of emotional support available after experiencing discrimination. People reported feeling a range of emotions ranging from guilt to stress and anxiety, and low self esteem. Nearly all agreed that the lack of support made it more difficult to progress complaints and made them more accepting and resigned to unfairness (especially in the workplace).

2. Discrimination in the workplace

A lot of discrimination in the workplace goes unchallenged and unaddressed, mainly for the reasons outlined above (that is, uncertainty over what constitutes discrimination and a pragmatic approach to maintaining cordial working relations). In brap's experience, organisations can benefit from considering the following issues:

- since most people don't want legal solutions to discrimination issues – and since most organisations are also keen to avoid costs and negative publicity – it is helpful to develop the capacity of staff to deal with equality issues. A recent organisational diagnostic needs assessment that brap conducted with a public authority was typical of the level of understanding of most staff in relation to equalities issues, with respondents rating their confidence in the following skills as 'non-existent' through to 'low'¹:
 - a) knowledge of equality legislation (50%)
 - b) recognising discrimination (29.2%)
 - c) mediation and conflict resolution (51%)
 - d) building good quality practice into your day-to-day role (41.6%)
- just as there needs to be a tiered approach to addressing discrimination complaints that is external to organisations, many of our clients, beneficiaries, and partners have benefited from having a tiered complaints procedure. This allows staff members to talk about potential cases of discrimination in a safe, confidential setting, which side steps issues of appearing to overreact. An effective procedure should be written down and communicated to all staff. A typical process might be:
 1. an informal chat with a staff member trained in all the skills above
 2. a formal complaint made to suitably senior member of staff
 3. the use of independent mediators to resolve disputes

3. Equality in the public sector

There are many barriers stopping the implementation of effective equality practice in the public sector. Many of these problems stem from a model of equality which emphasises the 'group' identity people have by being part of a marginalised community. This group could be based on a characteristic that is covered in discrimination law – such as gender, age, or sexual orientation – or it could be a group within those strands, such as the way we classify people into different ethnicities.

In terms of equality practice, this way of thinking has particular problems associated with it, including:

- bureaucracy: the overly burdensome nature of current equalities legislation has been well-documented and the EHRC is no doubt aware of the frustration arising from undertaking equality impact assessments and producing equality schemes to cover race, gender, and disability.²
- confusion: in brap's experience, measures to address inequality based on improving people's 'cultural competence' often lead to confusion and 'equality fatigue'. For example, one LEA developed five different achievement plans for pupils from different ethnic groups. Each plan set out different behaviours,

¹ online survey of 30 staff members, 10 December 2009 to 22 January 2010

² see, for example, Schneider-Ross (2009) *Assessing the Cost Effectiveness of the Specific Race, Disability & Gender Equality Duties*, available at: www.schneider-ross.com/resources.pubs.php

policies, and behaviours teachers had to follow to improve outcomes. The result was a confusing and hugely inefficient set of practices as teachers struggled to devise and implement different strategies for 'different' groups. It's becoming increasingly clear that practitioners benefit more from a set of measures they can use to improve the lives for as many people as possible *at the same time*

- competition: with a number of 'equality groups' making different 'equality claims' for improvements to public services, public authority staff can find it hard to reconcile those claims in way that pleases everybody. A new approach to mediating 'competition' of that type is needed and will be increasingly important as the Government encourages services users to speak up, as society becomes more diverse and public sector resources become more squeezed through the recession.

4. Human rights

For many years, brap has been pioneering the use of a human rights based approach to equality as a means of overcoming some of the problems outlined above. In this respect, we've worked with local authority departments, housing associations, PCTs, mental health trusts, and cancer networks to explore different ways human rights can make service delivery more effective and equitable.

The EHRC similarly explored the advantages and challenges of implementing a human rights based approach in its *Human Rights Inquiry*³. Since the EHRC is already committed to using human rights to tackle discrimination, it's probably not appropriate or necessary to list here the various benefits we've encountered using such an approach⁴. Instead, in this section we'll look at some of the challenges we've come across trying to get service providers to engage with human rights, and some of the solutions we've devised.

The *Human Rights Inquiry* found that there were a number of barriers to the implementation of a successful human rights based approach in service delivery. These barriers included:

- a lack leadership on human rights
- negative perceptions about human rights
- a lack of capacity and confidence to use human rights based approaches
- little advice, guidance, training and information about human rights
- within some organisations, an inertia on equality issues related to culture and structure

These challenges resonate with brap's experience. However, staff working for public services have reported other problems with understanding how human rights can be embedded into their day-to-day roles. These challenges include:

- **ownership:** there is a central question of how rights are defined and what role staff should have in arriving at this definition. Different mechanisms for engaging people – both staff and users – should be explored to help decide upon a definition(s)
- **recognising responsibilities:** the current human rights environment derives in large part from the Human Rights Act and the preceding international legislative framework. Since the notion of people's responsibilities is not inherent within that framework, more work has to be done to make explicit when and why someone

³ Equality and Human Rights Commission (2008) *Human Rights Inquiry: Report of the Equality and Human Rights Commission*, available at: www.equalityhumanrights.com/uploaded_files/hri_report.pdf

⁴ Nevertheless brap is only too happy to provide the EHRC with practical examples if it wishes

may have to forgo a right to protect someone else's. Human rights require people to realise that they have to think about others, and this requires recognition that we live in an interdependent society where our actions have the potential to affect someone else

- **practical examples:** as the *Human Rights Inquiry* states, much more work needs to be done “developing knowledge and understanding of what human rights based approaches mean in practice”.
- **prioritising need:** one of the benefits of a human rights approach is that it distributes resources according to need (as opposed to the traditional strand-based approach to equality, in which different groups competed with each other for scarce resources, with the unfortunate consequence that groups who lobbied most effectively – or shouted the loudest – won). The challenge is to explain to service providers how human rights can be used to identify needs, and use this vocabulary and framework to explain how funding or public service design decisions have been made, whilst at the same time ensuring people from different backgrounds experience the same level of protection of their rights
- **moving beyond representation:** traditional equalities practice has been based on consulting with community representatives to ascertain the needs of particular communities. There is some confusion over what form engagement should take within the context a human rights based approach
- **monitoring impact:** more work needs to be done to identify means of measuring how well service providers are protecting people's human rights
- **efficacy:** human rights are occasionally dismissed as yet another equalities initiative. Without evidence of success, some people are sceptical of human rights based approaches' capacity to genuinely and fundamentally deliver equality

brap is currently developing a practical human rights framework to assist cancer networks⁵ apply human rights principles within the context of cancer care. While it would not be appropriate to look at the specifics of the framework here, it might be useful to highlight some of the general lessons arising from our work which can tackle some of the issues raised above. These are broad principles which must underpin any successful human rights framework.

- the compliance culture associated with current equalities practice has meant that people often lack the confidence to discuss or deal with equality issues for fear of saying or doing the wrong thing. A more open, permissive approach to equality and human rights would allow staff to have more say in what equalities practice should look like and therefore encourage buy in
- whilst recent statutory equality requirements have encouraged organisations to amass data on levels of inequality and recognise that policies have an impact on marginalised communities, they have largely been silent on how this information should be translated into people's day-to-day roles. This is crucial as staff and services users often report that it is in relation to the 'little things' that service improvement could really be improved. As such, human rights based approaches should focus on the way staff act in the workplace on a day to day basis. This has the potential to give people greater agency and independence to act for the benefit of all users

⁵ Cancer networks aim to organise and oversee the local implementation of the NHS Cancer Plan, which in turn aims to improve access to professional support and treatment for those with cancer

MORE INFORMATION

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