

## Access to justice for Black and Ethnic Minorities

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**Public Law analysis: Dan Bunting, barrister at 2 Dr Johnson's Buildings, explores issues of access to justice mentioned in the recent review by the Equality and Human Rights Commission (EHRC).**

### Original news

Long-term government strategy needed to achieve race equality, LNB News 18/08/2016 158

*While for some people life has become fairer over the past five years, for others progress has either stalled or gotten worse, particularly for young Black people, a report by the EHRC has revealed. In light of this, the EHRC has called for a comprehensive, coordinated and long-term government strategy with clear and measurable outcomes to achieve race equality.*

### What are the primary problems identified in the report regarding the access to justice and security for Black and Ethnic Minority people in the UK?

Fifty years of legislation, dating from the Race Relations Act 1965, has clearly had an impact on attitudes to race in the UK. Although the overt racism of yesteryear has largely gone, negative attitudes to race can still be seen in the hate crime statistics.

The review by the EHRC states that more than, 64% of Black people and 66% of Asian people report that they have experienced racial discrimination in the last two years. Further, there is good evidence of persistent discrimination in employment and education, the two areas studied.

Interestingly, the review stated that:

'...magistrates reported that racism had reduced in recent years and believed that it generally did not exist in this field of work. However, some had witnessed White colleagues employing negative stereotyping or prejudice towards Black or Asian defendants' (see page 66).

The evidence of unintended discrimination in other areas of research would suggest that this is an overly optimistic view. Paradoxically, this could have the effect of providing a real barrier for access to justice as by suggesting that 'all is well' in the legal environment, which means that anything to indicate to the contrary may be ignored.

One of the difficulties that has arisen in recent times is the conflation with immigration and race in the minds of the public and of some researchers. Although, of course, there is an overlap between them, there are obvious difficulties with this, which may distort the problems that exist.

### What are some of the proposals offered to tackle these problems?

There are a variety of proposals offered by the EHRC, all surrounding the issue of education. In this area, as in many others, technology can assist greatly. For example, the use of Virtual Learning Environments (VLE) has made it possible for people from all over the UK, and other countries, to interact at the same time.

This was only analysed at a very small scale—31 students from Wales who took part in a global discussion on racism. It showed an increase in knowledge of racism and cultural issues.

Another example is in the more contentious area of the use of 'stop and search'. EHRC analysed the use of a variety of different training methods that different police forces have used in order to eliminate racial discrimination in its use. Some of these showed an improvement, 'a reduction in race disproportionality', but it was a bit 'hit and miss'—with other forces showing no change. It is not clear from the research why this disparity has occurred, or whether there is some best practice that can be adopted nationwide.

The EHRC report, 'Stop and think: a critical review of the use of stop and search powers in England and Wales' noted that:

'...if you are a Black person, you are at least six times as likely to be stopped and searched by the police in England and Wales as a White person. If you are Asian, you are around twice as likely to be stopped and searched as a White person. Despite years of debate and several initiatives aimed at tackling the problem, these ratios have stayed stubbornly high. The majority of stops and searches in England and Wales are conducted under the Police and Criminal Evidence Act (PACE). The Commission believes that the current police use of PACE stop and search powers may be unlawful, disproportionate, discriminatory and damaging to relations within and between communities'.

### **Are these solutions likely to be successful?**

One difficulty so far is that there has not been a rigorous analysis of what does actually work. The proposals mentioned by the EHRC have either not been properly evaluated (Show Racism the Red Card), or were on a very small scale for which it is hard to draw any general conclusions.

It is very likely that educational interventions will be successful in one way or another, but in the absence of further research it is hard to know which ones will work—certainly more research is needed.

### **How do the conclusions vary between England and Wales and Scotland? For example, how do public sector equality duties differ in each country?**

In most areas of discrimination or potential discrimination, there would appear to be a similarity in attitudes across the country. For example, fear of ethnic minorities 'taking jobs away from people' seems to be fairly similar across the UK.

Although there are differences in attitudes, it is not clear if these are statistically significant, at least in relation to race. (See section 2, 'Stop and Search Statistics' in the Stop and think report mentioned above, including the 'London effect'.)

### **Is there anything else of particular importance regarding the access to justice and security for Black and Ethnic Minority people in the report?**

The report makes it clear that it is important that we can no longer look at individual characteristics in isolation. Further, the intersectionality is not just in the obvious way, race and religion—for example, but it goes wider than that. The impact of mental health stigma can be felt more keenly in Ethnic Minority communities, and among Ethnic Minority groups. In addition, underlying issues of race discrimination can make discrimination in other areas more pronounced.

It is important to remember that, despite all the progress that has been made, things are not perfect. Discrimination on the grounds of race is still a major issue in the UK. To take one example from the review, it is surprising (and quite disturbing) that a third of people spoken to appeared to believe in a natural hierarchy of races. It is important to remember that unintended discrimination still presents a huge barrier to access to justice.

*Interviewed by Evelyn Reid.*

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