



Round Table Report  
**Positive Action in Theory and Practice:  
Experiences from the UK and Europe**

A UKREN Round Table Held On  
27 March 2009  
At  
**Eversheds Law Firm**

**TABLE OF CONTENTS**

Introduction and Background to the Seminar.....	2
The Government's Approach Towards Positive Action .....	3
The Concept of Positive Action.....	3
Positive Action in Practice – Comparing UK and European Experiences .....	5
Good Practice Panel Discussion .....	6
Points of Consideration .....	8

## **Introduction and Background to the Seminar**

### **Background**

UKREN aims to ensure that national and local UK organisations are informed on the latest European race relations developments and act as a link between UK non – governmental organisations (NGOs) and Europe.

Representing a unique structure for channelling the views of the UK voluntary sector to European policy makers UKREN regularly organises national consultations, annual roundtables, training and seminars on relevant issues debated at EU level and maintains a formal relationship with the European Network Against Racism (ENAR). Based in Brussels and established by the European Commission in 1997 as a major outcome of the European Year Against Racism, ENAR is a network of European NGOs working to fight racism, xenophobia, anti-Semitism and Islamophobia in all EU member states. Acting as the national co-ordinator of ENAR in the UK, UKREN aims to ensure that UK NGOs have an opportunity to effectively influence EU policy making on issues of race equality.

### **Positive Action on the Agenda**

The European Network Against Racism (ENAR) Policy Seminar, *“Understanding Positive Action: From Theory to Practice”*, was held during the 2007 European Year of Equal Opportunity. The purpose of the seminar was to discuss the concept of positive action and its use in addressing discrimination.

It was decided that over the following three years the network would carry this forward through a series of national roundtables on positive action, supporting the ENAR national co-ordinations to take forward the work and to lobby at the national level for effective positive action measures. On 27 March UKREN held the roundtable *Positive Action in Theory and Practice: Experiences from the UK and Europe*.

By inviting speakers from a range of different backgrounds, UKREN has tried to gather a wide variety of perspectives on positive action including from representatives of equality organisations, local authorities, businesses and academics. The UKREN roundtable was also intended as an opportunity to explore examples of positive action and the challenges organisations and companies might face when implementing positive action measures. This was particularly apposite in the UK context due to the introduction of new equality legislation and opportunities to influence parliamentary discussions.

### **Positive Action in Theory and Practice: Experiences from the UK and Europe**

This report consists of presentations by the speakers, who addressed the topic of positive action from various points of reference, panel discussions and then questions from the audience.

To open the day, Melanie Field from the Government Equalities Office gave a presentation on positive action and the forthcoming Equality Bill. The next session featured a panel of four speakers representing different perspectives on the concept of positive action. Audrey Williams from Eversheds Law Firm began with the legal case for positive action, with Maleiha Malik from Kings College University London focusing on the moral and political case. From the Equality and Diversity Forum, Amanda Ariss highlighted positive action in relation to the other equality strands. Razia Karim from the Equality and Human Rights Commission (EHRC) then concluded the panel with the role of the EHRC in relation to positive action.

The second set of panel presentations focused on positive action in practice in two cases. Michaël Privot from European Network Against Racism (ENAR) began with positive action in Europe, with Maggie Beirne from the Committee on the Administration of Justice drawing on experience from Northern Ireland.

Moving to consider practice in an organisational context, Mebs Amhed of the Lancashire Black Police Association spoke of positive action within the Lancashire police service and Sushel Ohri spoke of initiatives within Transport for London (TfL). Becky Mason brought examples from British Telecom (BT). To conclude the panel presentation, Simon Woolley of Operation Black Vote then discussed positive action with relation to politics.

## **The Government's Approach Towards Positive Action**

Melanie Field from the Government Equalities Office gave an update on the new Equality Bill with particular emphasis on positive action for the purposes of the roundtable. The positive action roundtable came two weeks before the release of the Equality Bill, which will streamline and strengthen existing equality legislation, introduce a single public sector equality duty, and was anticipated to have consequences for positive action.

In UK law there are currently public sector duties for race, gender and disability. These will be extended to other protected identities to include religion or belief, sexual orientation, and age. The main elements in the duty will be to tackle discrimination, advance equal opportunities, and advance community relations. Provisions will be extended to age, as there is currently no protection against age discrimination outside employment, as well as gender reassignment.

Positive action has been one of the most difficult areas of the Bill. The aim was to allow the widest range of positive action measures possible within EU law. The problem with the current provisions is that they are highly fragmented because each strand has its own provisions. In the past this fragmentation and lack of clarity of the current legislation has led to employers applying positive action wrongly, resulting in positive discrimination in some cases. The aim of the harmonised approach to positive action across equality strands is to increase transparency so employers and service providers will be encouraged to implement positive action measures.

In relation to the EU the challenge is that the law is expressed on a high level and is largely untested. There are some particular cases that come up in the Bill on sex discrimination in employment. There has been a case where two candidates were equally suitable and under-representation was factored into the decision-making process. This is important because until recently in the UK, training and encouragement have been the primary initiatives to enable a level playing field and initiatives have stopped short of being able to influencing decisions.

## **The Concept of Positive Action**

The speakers addressed various aspects of positive action in the national context by addressing the provisions in current legislation, with speculation on what the Equality Bill would contain and may allow. Audrey Williams from Eversheds Law Firm began with the legal case for positive action, with Maleiha Malik from Kings College University London focusing on the moral and political case. From the Equality

and Diversity Forum, Amanda Ariss highlighted positive action in relation to the other equality strands. Razia Karim from the Equality and Human Rights Commission (EHRC) then concluded the panel with the role of the EHRC in relation to positive action.

### **The legal framework**

Currently there are two models for positive action. The first is restricted and narrowly defined in terms of race and gender: in order to implement positive action measures, an organisation must have no members of the under-represented group (or very few) employed when compared to the local area or Great Britain as a whole. An organisation can encourage under-represented groups to apply for positions, but cannot prefer the under-represented candidate.

The threshold for the implementation of positive action measures on the grounds of sexual orientation, religion or belief and age is much looser in that organisations can identify a group that faces disadvantage. Organisations do not need to consult statistics, unlike in the cases of race and gender.

Many organisations are reluctant to take measures because others may see the action as unfair and disadvantageous and then be motivated to bring the process under scrutiny. Measures on the grounds of sexual orientation, religion and belief are rarely taken.

### **The moral and political case**

Positive action can arguably be translated into minorities asking for a fairer distribution of economic, political and social power to overcome structural disadvantage. With respect to racial minorities, disadvantage has not been significantly reduced despite 10 years of government and legal intervention. There have been examples in British contemporary history where racial disadvantage has been linked to public disorder. Long standing discrimination is problematic, unfair, unjust and counter productive, and legislation alone has not been able to address these challenges.

A commitment on the fair distribution of power will require thinking on how to present messages of equality and respect that all members of the society can believe in and will endorse. Equalities organisations such as the Equality and Human Rights Commission (NDPB) and the Equality and Diversity Forum (NGO) have a role to play in reflecting back to people the values of rights that they already espouse.

### **Other strands and positive action**

The framework for positive action is very different regarding disability as the law allows for more favourable treatment of disabled people. Discrimination law in this area is asymmetrical, as one is not protected on the grounds of not having a disability. The law also requires employers and providers of goods and services to make reasonable adjustments. The concept of reasonable adjustment has controversial elements as historically legislation has been about treating disabled people as more vulnerable rather than equal.

In relation to gender, the provisions are similar to race in that they are narrow. In practice, most initiatives are around training, leadership development or about providing facilities that are not restricted to women but are likely to benefit women, such as childcare provision. Employers and service providers are also enabled in the Sex Discrimination Act to have single sex initiatives, such as swimming pools with women-only hours or domestic violence units providing women-only services and employing only women. As well, the Sex Discrimination Act permits single sex shortlists for political parties to boost the number of women in elected office.

There are similarities in the challenges to adopting positive action measures on the grounds of sexual orientation and religion or belief because many employers have not monitored new employees on the basis of these characteristics. The scope for genuine occupational requirements is wider in the area of religion or belief as faith-based organisations have wider scope to use it. There are some initiatives outside mainstream employers and educators (usually run by organisations of particular religious groups) such as training schemes which are aimed at people of a particular religious group.

The provisions on age are less similar to the other equality strands; in some cases discrimination based on age is lawful. Many trainee and apprenticeships use age restrictions which is lawful but at the same time decreases opportunity and equality.

### **Positive action and the Equality and Human Rights Commission**

The UK government is introducing a broader range of positive action measures through the Equality Bill. It is important to bear in mind that these measures are voluntary and that the main purpose of these additional measures is to ensure UK law complies with European case law.

The Equality and Human Rights Commission will produce comprehensive guidance on positive action in order to let employers know what actions they are able to take under the law. Without clear guidance employers may not take up measures because they tend to be risk-averse. They will also be promoting the business case for positive action - that diversity is good for the workforce and good for the customer base – through reinforcing the rationale for positive action over commercial benefits (i.e. profits).

The EHRC has also been discussing how to go further with preferential policies like in some test cases from other EU Member States. This would require looking at the proportionality of the measures and subjecting them to strict scrutiny.

## **Positive Action in Practice – Comparing UK and European Experiences**

In the panel session, Positive Action in Practice, examples were given from EU Member States by Michaël Privot (ENAR), as well as from Northern Ireland by Maggie Beirne (Committee on the Administration of Justice). The case of Northern Ireland is particularly unique and insightful as it has been part of a broader programme to increase equality and resolve conflict, and is based on grounds of religion and belief.

### **Europe**

Interesting approaches and examples of good practice have emerged during the other national roundtables on positive action. In Germany and Denmark for example, the existence of discrimination is generally denied yet there are examples of good practice. In Denmark companies have sought to increase the number of women in the board room to become more competitive in international business. This practice is framed as good business rather than positive action.

Similarly, projects aimed at the Roma populations in Slovakia and Hungary are framed as social inclusion policies and general strategies to improve the situation of the group rather than positive action. In Slovakia for example, a training programme has been in practice for a number of years to get more people from Roma backgrounds to become teachers.

The national roundtables have shown that positive action is often confused with positive discrimination, which would involve the use of quotas, preferential treatment and taking into account the group membership when selecting candidates for a job. The lack of understanding of positive action and a lack of support might lead to negative consequences and a backlash on individuals that should benefit from these measures. Positive action tends to be seen as undue favouritism and leads to an exclusive attitude on the part of the majority population towards colleagues who are from minority backgrounds. But as in the cases mentioned above, many organisations do not perceive their strategies as positive action. The realisation that these measures are positive action might help to remove some of the tensions around the debate and help develop clarity on the differences between positive action and positive discrimination.

### **Northern Ireland**

The case of the Northern Ireland Police Service is an interesting example of positive action practice over a longer period of time. Policing has been a key issue in the conflict in Northern Ireland, and so police service reform featured as a cornerstone of peace building solutions. A number of recommendations were made for policing reforms: making sure it would be a police service rather than a police force, it would be comprised of all members of the community, and serve all members of the community equally. Therefore the key positive action measure for the police service was a 50-50 recruitment system between Catholics and non-Catholics.

Prior to the changes in 1998, the composition of policing was 8% Catholics and 92% Protestant whereas the population was 45% Catholic and 55% Protestant. In a period of ten years, the proportion of Catholics in the police service has increased to 23.7%.

In the last two recruitment campaigns 42% of applicants were Catholics, which has highlighted that even with positive action measures in place, there are barriers preventing Catholics from securing employment. Additionally, between the period of 2001-2006, 67.5% of those who left the police service were Catholics. These trends have been used to evaluate recruitment and retention policies to try to address the problem of a lower proportion of Catholics not getting into the final merit pool and higher proportions leaving before retirement.

Because the police have had to think about recruitment and training of new applicants and the barriers they may face it has had a very positive impact on other under-represented groups. So for example, statistics showed that female recruits were consistently under-performing in medical tests, which made the police service reconsider the appropriateness of the current mental health and stress tests.

From the experience in Northern Ireland comes some key lessons: political will is crucial, business will come on board if the legislation is clear, the conception of merit should not be solely based on characteristics of those already in power, transparency and openness is important, as is the collection of statistics that can identify clear inequalities. Maggie Beirne also emphasised the importance of the involvement of civil society organisations in decision-making to ensure that they commit to a shared responsibility.

### **Good Practice Panel Discussion**

Instead of holding different workshops, the UK roundtable opted for a panel of four speakers who presented positive the action measures adopted in their respective organisations, and the challenges they had faced in making the case for and implementing positive action measures. The speakers represented civil service (Mebs Ahmed from the Lancaster Black Police Association), business (Sushel

Ohri from Transport for London and Becky Mason from British Telecom), and the voluntary sector (Simon Woolley from Operation Black Vote).

### **Lancaster Police Service**

In the Lancaster Police Service positive action strategies have been aimed at addressing the severe under representation of ethnic minorities in the police service. They began with appointing a positive action coordinator. The main area they focused on was the recruitment process in order to identify any obstacles that might exist for potential BME candidates. They developed a range of engagement initiatives such as policing debates that addressed issues people had with policing to move them into careers, and also uniform service access courses that would help candidates at the application stage. There were also familiarisation days for those interested in joining the police service that focused on recruitment and selection.

The challenges that they faced in implementing positive action derived from a lack of expertise. Initially staff were chosen for their affiliation to a BME group rather than their experience. Black and minority ethnic people were treated as a homogeneous group failing to recognise that there are different issues for people of different ethnic and faith backgrounds. Reforms were needed to ensure that the police service was seen as a desirable career choice for all groups. Finally work had to be undertaken to change the mindsets towards positive action within the police service clarifying that positive action is not positive discrimination.

### **Transport for London**

Transport for London (TfL) has a number of schemes in place to increase staff from under-represented areas, namely women, disabled people and people from BME backgrounds.

Mentoring schemes have been put in place, and while they are available to all staff, 50% of the take up are women despite only constituting 24% of the workforce; BME staff at entry level were also over-represented. Another initiative that has benefited women has been flexible rostering for buses and the Underground. TfL has done this so that female staff with childcare concerns can pick shifts to suit their circumstances rather than have preference be tied to the number of years employed.

There are also a number of initiatives that promote working for TfL to younger people. There are internship schemes targeted to BME young people and graduates, an apprenticeship programme for girls, and open days where young people from inner-city schools are invited into the offices.

The Break-through Project, research project looking at recruitment policies for the London Underground, has been completed to collect robust evidence and inform future policies.

### **British Telecom**

The presentation on positive action measures implemented by British Telecom focused on one initiative for Open Reach Business. They were going to implement a large recruitment campaign seeking 1,500 new engineers for the extension of broadband services. As most of the staff in Open Reach were white males, they set targets for an increase of BME staff from 6% to 15% and women from 2% to 10%. To do this, they mentored BME people in inner city areas to ensure they understood the recruitment process, they used a different range of imagery in advertisements, used a range of media, and worked with their recruitment agency and recruiting managers to ensure they took in a wider talent pool and that they weren't adversely disadvantaging any particular groups.

Although the targets were not quite reached, the campaign made a considerable impact on the workforce of which at the end 8% were women and 12% from a BME community.

### **Operation Black Vote**

Operation Black Vote was commissioned by the UK government to present a report on increasing representation of BME people in parliament; they made the case for all-Black shortlists for political parties. Currently only 15 MPs in the House of Commons are Black while if proportionate to society, the number should be nearly 60<sup>1</sup>. Highlighting the success of all-women shortlists, women have been able to overcome disadvantage in elected positions. The proportion of women in parliament has increased from 10% to between 25% and 30%.

It was recognised when implementing all-women shortlists that women bring a dynamic and history to government which is crucial to having a representative government. This can also be said for people of different ethnic and cultural backgrounds. As all-Black shortlists have not been implemented, other positive action measures will have to be pushed such as mentoring the next generation of magistrates and politicians.

### **Points of Consideration**

Rob Berkeley (Runnymede Trust) highlighted some of the content of the roundtable for further thinking. Pakistani women who are seeking work are four times more likely to be unemployed, where even if you control for free school meals and class background, black boys are three times more likely to be excluded from schools, and those same Black young men are eight times more likely to be stopped and searched by the police. Keeping these figures in mind, it is an important time to be discussing issues around positive action in the UK.

The presentations have made clear that there is a lot of practice and work going on in the area of positive action. The issue is now how to capture the best of this work and predict the difference it will make for the future. There is a continued need to not only get people through the door but also to create a more diverse workforce.

Messages from government on the issue have been mixed, as organisations which seek to respond to disadvantage and inequality are portrayed as divisive, especially with reference to a decrease of government funding for organisations that cater to 'single' identity groups. Additionally, as the Labour Party becomes less successful, the number of BME councillors in local government will most likely fall. Under these circumstances it is important for those espousing ideals of equality and social justice to capitalise on the forthcoming Equality Bill which should improve the existing legislation. However, legislation alone is not enough; change will also require a marshalling of political will. The new cross-departmental Race Equality Strategy will also provide an opportunity to emphasise the continuing importance of keeping race equality on the government's agenda.

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<sup>1</sup> Black in this sense reference to politically Black, which encompasses people from black and minority ethnic backgrounds