Managing Competing Equality Claims

A paper for the Equality and Diversity Forum

July 2010

Asif Afridi and Joy Warmington, brap

About the Equality and Diversity Forum

The Equality and Diversity Forum (EDF) is a network of national organisations committed to equal opportunities, social justice, good community relations, respect for human rights and an end to discrimination based on age, disability, gender and gender identity, race, religion or belief, and sexual orientation.

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About brap

The paper was researched and written by brap, a strategic equality and human rights-focused charity based in Birmingham but with a local and national remit. brap was created in 1998 to provide a progressive, twenty-first century, evidence-based approach to mitigating widespread inequality and discrimination in the UK. brap's work is located in a number of policy areas (health, housing, education, employment). brap houses a comprehensive research and policy function, a learning and professional development service, consultancy support for service delivery and a third sector service which supports traditionally excluded groups. Working in these different contexts enables us to take a unique perspective on some of the key problems that contribute to inequality and exclusion in society.

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Foreword by the Equality and Diversity Forum

The Equality and Diversity Forum commissioned this paper to stimulate a wider debate in Britain about how to address situations in which individual rights come into conflict or are perceived to conflict with one another. [i] These conflicting claims can occur in a variety of settings – employment, service provision and in public space. An earlier EDF paper with a legal focus found that conflicts between equality rights occur much less frequently than is often assumed to be the case. [ii] However if, when they do occur, these situations are badly handled, they are likely to undermine progress on equality and human rights. They may damage good relations at local level, entrench opposing interests and overshadow the broader consensus on the benefits of equality that often exists. And as we begin to see the impact of significant cuts in expenditure, there is a risk that what are in reality conflicts over reduced resources will be presented as cases of competing rights.

EDF members have a long-standing interest in these issues, recognising that progress on equality and human rights relies on genuinely good relations between different groups. And none of this can take place when individuals feel that their equality and rights are threatened by those of other people.

This paper takes a practical perspective, incorporating case studies of some recent 'conflicts' and identifying lessons for the future that can be drawn from them. It shows that the landscape is complex: while there clearly *are* cases in which one equality claim is in conflict with another, the evidence here shows that 'there is no single template': conflicts arise in relation to rights, identity and resources or a combination of these and other elements. The factors that cause a specific disagreement to explode in the workplace may appear to be about competing equality claims but in reality have more to do with weak management or uncertainty about job responsibilities. In public services, assumptions about the allocation of resources are often a factor, with the media playing an significant role – for good or bad. And in general, a lack of confidence in dealing with equality claims can be seen in many cases where things go wrong.

brap have thought creatively about how to address the problems they identify: on a broad level, their suggestions include bringing concepts such as dignity and human rights into every day use; on a practical level, they identify a clear need for better guidance and training. We look forward to exploring some of these options with brap, with EDF members and more widely.

We hope the Equality and Human Rights Commission will find this paper of use in addressing cases of potentially competing rights and in developing their work on good relations, including their good relations monitoring framework. Equally, we hope that individuals, employers and service providers will find useful strategies here for improving practice on a day-to-day basis.

Amanda Ariss
Chief Executive, Equality and Diversity Forum

(i)   The views expressed in the paper are those of the authors and are not necessarily those of the Equality and Diversity Forum or its members.

(ii) Malik, M., From conflict to cohesion: competing interests in equality law and policy – A paper for the Equality and Diversity Forum (2008). http://www.edf.org.uk/blog/?p=1803.

Managing Competing Equality Claims

Executive summary

1) This paper was commissioned by the Equality and Diversity Forum (EDF), a national membership network committed to equal opportunities and social justice. The paper was researched and produced for EDF by brap, a strategic equality and human rights-focused advisory organisation.

2) It considers the issue of 'competing equality claims', by which we mean instances where the 'equalities' claimed by one group or individual threaten, or are perceived to threaten, the equality of others. One such recent example is the controversy about the rights of same sex couples to adopt children from a Catholic adoption agency.[1]

3) Although legal protection has been in place for the majority of protected groups included in the Equality Act 2010[2] for some years now, this widening of protection to more vulnerable groups has resulted in a significantly more complex equalities 'environment'. There is also evidence to suggest that this greater legal protection is increasing the instances in which groups or individuals resort to the law to uphold, protect or enforce their rights. In some cases, this is being encouraged by pressure groups, lobbying organisations and political groups.

4) The issue of competing equality claims, then, *is* a real-life problem faced by many organisations, and one that presents them with major challenges. Evidence, case law and wider guidance regarding the handling and resolution of such situations is, however, extremely thin on the ground and consequently expertise and confidence in identifying, understanding and addressing such situations is also very limited.

5) However, this research has also revealed that a key equality challenge for organisations and individuals involves conflicts that are strictly speaking 'extra-legal' – i.e. that involve 'values', interests, or matters of conscience rather than rights specifically protected by equality or constitutional law – and that it is necessary to consider these as part of the wider picture of competing equality claims. For this reason, this paper takes a much broader view of competing equalities and does not restrict itself solely to instances in which legally protected rights are involved.

6) And yet, as our wide-ranging literature review revealed, there is transferable good practice from other contexts and disciplines which might help those who are faced with situations in which equalities conflict – if only they had the time and energy to identify it and apply it to their particular circumstances.

7) For these reasons, this paper starts from basics. It explains some of the most fundamental issues involved in competing equality claims and considers:

- The nature of a rights-based equality environment and the ways in which this might be fuelling competition and the invoking of rights.

- How and why competing equality claims differ from other sorts of conflicts.

- Why it is important to resolve competing equality claims and minimise their duration and fall-out.

- The challenges people face in handling such situations.

- Guidance and good practice for employers and service-providers.

- Decision-making in instances of competing equality claims.

- Implications for UK public policy.

8) It closes with practical conclusions and recommendations that consider the implications for public understanding and awareness campaigns, decision-making (especially in the provision of public services, for example), and longer-term 'big picture' public policy.

'And whilst each fights for a slice of the cake, we are failing together to fight for the bigger and different flavoured cake we all need.'

– Jane Campbell, speaking at St John's College, Cambridge, 29 April 2008

1.0   Background and context

This paper was commissioned by the Equality and Diversity Forum (EDF), a national membership network committed to equal opportunities and social justice. The paper was researched and produced for EDF by brap, a strategic equality and human rights-focused advisory organisation.

This publication follows on from earlier work commissioned by EDF, including a previous publication 'From conflict to cohesion' (November 2008).[3] While 'From conflict to cohesion' examined conflicting equality claims from a legal perspective, this paper examines such conflicts as they are manifested on the ground – in the workplace, in schools and colleges, and in a range of other contexts. Its aim is to raise awareness regarding the benefits of handling competing equality claims effectively, inform policy and practice, and provide practical examples of new approaches to dealing with such instances.

What we mean by 'competing equality claims'

The paper examines the issue of potentially competing equality claims – instances where the 'equalities' claimed by one group or individual threaten, or are perceived to threaten, the equality of others. One such recent example is the controversy about the rights of same sex couples to adopt children from a Catholic adoption agency.[4]

Recent experience has shown that such conflicts have the potential to become particularly divisive and if handled or portrayed insensitively can undermine good relations between individuals, groups and communities and in some cases lead to intractable long-term conflict. This paper is about handling such disputes more effectively, precisely to ensure that their potentially damaging consequences are minimised.

It is important to emphasise at the outset that in considering competing equality claims this paper does not focus solely on instances where legally protected equality rights are concerned. Rather, it takes a much broader view than just legally protected equalities and in doing this reflects the widely differing interpretations and understanding of equality claims that our analysis of the available evidence revealed. In terms of the equality challenges that organisations and individuals are actually struggling with, it is perhaps more accurate to think not just in terms of legally defined rights being in conflict, but of competing interests, values, and matters of belief or conscience. This is explained in more detail below.

1.1   Scope and Nature of the Evidence Considered

The starting point for this research was a call for evidence issued by EDF. This sought active examples of competing claims involving equality rights *per se*. But the call, despite being issued twice, did not produce a high number of responses. This material was therefore augmented with wider desk and literature research, and also individual telephone interviewing with national equality organisations and local/regional organisations operating in the South East, South West, the East of England, Yorkshire and Humber, and the West Midlands. When this additional material too was considered, it increasingly became apparent that the quality and extent of available evidence speaking directly to the original focus of the call for evidence was exceptionally limited. An initial analysis quickly revealed that:

- Amongst organisations, employers and practitioners, there are widely differing interpretations and understanding of what constitutes a competing equality claim. At the heart of this lies a lack of clarity regarding when rights as such are in conflict. The real-life equality challenges that organisations are facing on the ground do not conform to neat rights-based templates. Indeed, the very concept of competing equality claims requires a sophisticated interpretation of equality law and the key issue at present is that the vast majority of organisations do not and cannot make such an analysis.

- Consequently, available case studies and examples of good practice regarding the handling of competing equality rights claims are extremely limited. Where examples of conflict are available they tend to refer mainly to religion or belief and sexual orientation. While practitioners are very aware that widening the 'net' of rights to more protected groups has the potential to create additional conflicts where these rights are perceived to be in competition, practical experience of such situations, and more importantly practical expertise and the confidence to handle such situations, is incredibly limited.

- Nonetheless, some contributors clearly do feel that the balancing of competing equalities – not necessarily protected rights – is presenting them with major challenges. And moreover, there is little in the way of directly applicable, up-to-date guidance available that can help organisations and individuals resolve such conflicts.

- On the other hand, our literature review – which was conducted across multiple disciplines, including international conflict studies, management studies, economics, legal theory, equality theory and practice, social policy etc – revealed that transferable practice does exist which might help those who are faced with scenarios in which equalities conflict, if only they had the time and energy to identify it and apply it to their particular circumstances.

For these reasons it was considered important to use this paper as an opportunity to explain some of the basic issues involved in competing equality claims and it therefore considers:

- The nature of a rights-based equality environment and the ways in which this might be fuelling competition and the invoking of rights.

- How and why competing equality claims differ from other sorts of conflicts.

- Why it is important to resolve competing equality claims and minimise their duration and fall-out.

- The challenges people face in handling such situations.

- Guidance and good practice for employers and service-providers.

- Decision-making in instances of competing equality claims.

- Implications for UK public policy.

- Conclusions and recommendations.

2.0 Thinking about 'rights'

Although legal protection has been in place for the majority of protected groups included in the Equality Act 2010 for some years now, the new law is further raising expectations that public authorities and employers will respond effectively *and* consistently to a wider range and type of discrimination than ever before. Although the Equality Act has sought to rationalise and address some of the complexity of previous equality legislation, the widening of protection to more vulnerable groups has arguably resulted in a significantly more complex equalities 'environment'. This is an environment where the interests and needs of a wider range of protected groups are visible and deemed worthy of legal protection. The development of the Equality and Human Rights Commission (EHRC) has to an extent been driven by an inherently political challenge of how to respond to the diverse interests and needs – and in some cases the entrenched positions – of disparate excluded groups.

There is also evidence to suggest that greater legal protection will increase the instances in which groups or individuals resort to the law to uphold, protect or enforce their rights, and in some cases the rights of these individuals and groups will be in conflict with the rights of others. However, research for this paper reveals that a key equality challenge for organisations and individuals involves conflicts that are strictly speaking 'extra-legal' – i.e. that involve 'values', interests, or matters of conscience rather than rights specifically protected by equality or constitutional law – and that it is necessary to consider these as part of the wider picture of competing equality claims.

Wider Legal Protection and the Invoking of Rights

The use, then, of the language and law of rights as one specific way of conceptualising entitlement and obligation is now dominant around the world. A heightened awareness of rights – coupled with widened legal protection – makes it inevitable that legally defined rights will sometimes be in conflict. But it also seems to be increasing the likelihood that individuals in dispute will invoke what they believe to be their rights, whether or not these meet strict legal definitions.

Because of this, some – predominantly but by no means solely from a conservative perspective – have begun to talk of a 'rights culture' which lacks a corresponding framework of responsibility or reciprocity, 'infected' perhaps by the extreme individualism of celebrity culture.[5] Anthropologists have also recently noted an increasing tendency for rights to be deployed as part of a 'rhetoric of culture', in which a marked shift is evident in the kind of equality claims made – away from social equality to the assertion and protection of 'group difference'.[6]

A preoccupation with the self and personal identity does appear to present particular problems, then, certainly as far as a popular interpretation of rights is concerned, and it is noticeable that the most intractable instances of competing

equality claims do appear to be those where one or other party feels that personal identity is at stake.

These and related ideas prompt a recognition that not all equality claims necessarily involve 'rights' as such. They also prompt some consideration of how to define competing equality claims and whether they lend themselves to some kind of 'typology' of underlying causes. The next section examines these and related questions.

3.0   Competing equality claims

3.1   Overview

The concept of competing equality claims and experience of managing them is relatively new. By 'competing equality claims' we mean instances where the rights claimed by one group or individual threaten, or are perceived to threaten, the rights of others, or where equalities legislation is invoked to protect or uphold rights. Recent examples include:

- London Borough of Islington v Ladele – Ms Ladele, a Christian marriage registrar, unsuccessfully claimed that she had been subject to religious discrimination when she was disciplined for refusing to participate in civil partnership registration ceremonies for same sex couples. [7]

- Guide dogs not being allowed into mosques leading to incidences where disabled people have been refused entry into mosques. [8]

- The controversy about the play *Behzti* in Birmingham in 2004, where Sikh religious sensitivities were in conflict with artistic freedom of expression, but also issues of gender equality (discussed in section 5 below).

Many of these examples involve religion or belief. This reflects the frequency with which religion or belief-based cases are coming forward; it also reflects the wide media coverage such cases receive. Hanne Stinson, former Chief Executive of the British Humanist Association, has said, 'Somehow, when people mention equality and human rights and "conflicting rights", they always seem to be talking about religion.'[9] It is worth noting that the predominance of sexual orientation/ religion or belief cases in the media and in the courts could be explained in part by the vigorous backing for legal cases of this type from a number of organisations (e.g. Christian Concern for Our Nation and the Christian Legal Centre). [10]

And yet disputes can take many forms and a key issue is that of deciding in the first place whether competing 'equality claims' are an aspect of the dispute and whether rights *per se* are involved.

This raises some complex definitional issues and reinforces the view that situations in which there may be an element of 'competing equalities' cannot be reduced to a single template. There are different kinds of competing equality claims and this will almost certainly have implications for how such claims are identified, managed and resolved. It may also have implications for how such competing claims play out in practice.

Nor will all scenarios in which competing equality claims may be present necessarily result in conflict. The literature on conflict and conflict resolution, for example, distinguishes between 'conflicts' and 'disputes'. Some conflict theorists regard only disagreements that are 'intractable' or involve 'non-negotiable' interests or demands as 'conflicts' *per se*; scenarios in which negotiable interests are involved are regarded as 'disputes', their successful resolution amenable to negotiation between the

disputants. The issue of 'intractability', then, is significant to competing equality claims and this is considered further later in this paper.

3.2   Competing equality claims – a possible typology?

With these ideas in mind we sought to develop a working framework which would help differentiate various types of competing equality claims. We identified four main types:

1. **Protected groups/issues covered by anti-discrimination law:** Competing claims made by protected equality groups or individuals regarding issues covered in anti-discrimination law (discrimination, harassment and victimisation in employment, training, provision of goods and services).

2. **Protected groups/issues beyond the scope of anti-discrimination law:** Competing claims made by protected groups or individuals regarding issues outside the scope of anti-discrimination law (e.g. freedom of religion vs. freedom of expression in the public arena).

3. **Protected groups/not 'rights':** Competing claims made by protected groups or individuals regarding issues that don't relate specifically to 'rights' (e.g. differing interests or moral values).

4. **Non-protected groups/issues beyond the scope of anti-discrimination law:** Competing claims made by groups or individuals outside protection of anti-discrimination law (e.g. involving homeless people or human rights issues relating to broader society such as the ongoing debate around ID cards).

And even this is arguably far from exhaustive. There will be other variants or permutations not covered here, as well as instances which further blur the boundaries between types of claims. This paper covers the first three types of conflicts in particular.

But beyond what might be called a technical typology, do competing equality claims conform to any other defining characteristics? It is possible to discern at least three key issues around which competing claims often seem to revolve. These can be described as:

• Rights-based claims

• Identity-based claims

• Resources-based claims

The nature of the claims being made in a conflict will play an important role in determining how amenable that conflict will be to resolution. Each of the common causal factors above bring with them particular challenges. While space prevents an exhaustive analysis, in brief these challenges include the following.

Rights-based claims

In her book 'Rights Talk: The Impoverishment of Political Discourse',[11] Mary Ann Glendon describes how the act of making a claim into a 'right' has the effect of reducing the grounds on which compromise might be achieved: rights can become 'trump cards' that outweigh other claims or positions.[12] Similarly, opportunities for compromise also decrease when issues are elevated to 'absolutes'. These are win-lose scenarios with little middle ground for compromise and often end up requiring formal and in some cases legal resolution. Even where rights are accepted as qualified and are subject to an assessment of their proportionality and reasonableness the act of invoking 'a right' can dramatically reduce a claimant's willingness to compromise.

The win-lose nature of conflicts like this can make it much harder to repair relationships between parties involved in a conflict in the longer term. Equality claims of this type, particularly those that have required recourse to the law, can be motivated by a sense of injustice. At times, a desire for justice can also become a desire for revenge or retaliation. All of these factors can limit the potential for discussion, negotiation and compromise between groups

It is also worth noting that absolute, win-lose scenarios can be exacerbated – even to some degree created – by external interventions from pressure and interest groups and sensationalised media coverage. Such external pressure can polarise issues, especially when organisations, groups, individuals or media commentators pursue their own agenda regardless of the impact this may have on others. An example of this might be the inter-communal riots in the Lozells district of Birmingham in 2005 sparked by rumours of rape that appeared to be groundless but were widely circulated via local community-based radio stations. The case is discussed below.

Identity-based claims

It is significant that so many of the recent high-profile instances of competing equality claims have involved religion or belief, but this may not necessarily indicate that religion or belief issues *per se* are particularly prone to conflicts of this type. It may be better explained by the fact that in such instances, the original equality claim is frequently closely bound-up with the disputant's sense of self-identity.

Although identity can play a positive role in affecting what we value and how we behave, it can also have negative effects. For example, identity can fuel stereotypes of 'the other', and may also be developed in direct opposition to others (anti-Muslim, for instance), particularly in times of conflict. In identity-based conflicts, the repertoire of possible responses can sometimes be limited to yet more identity-based claims. In his book 'Identity and Violence'[13] Amartya Sen uses the example of religion-based violence to make this point. Rather than this being challenged through civil society, he suggests it is often challenged instead through the deployment of different religious leaders with more moderate positions or alternative liturgical arguments: one identity-based claim or position being responded to by the launching of an alternative one.

Conflicts that are closely bound up with self-identity may also encourage groups and individuals to feel that their 'freedom to believe' enables – even *obliges* – them to exercise a similar 'freedom to act'. This is a concept explored in EDF's earlier paper: in this Malik argues the importance of maintaining a 'belief-conduct distinction'. The belief-conduct distinction (as set out in US constitutional law, for instance) distinguishes between the freedom to believe, and the freedom to act: the former is 'absolute', 'the second cannot be'.[14] Or to use a term closer to UK law, the freedom to act is 'qualified' and dependent on other circumstances. The following case study provides an example of an 'identity based' conflict like this.

CASE STUDY – BALANCING THE RIGHTS OF CHILDREN AND THE RIGHTS OF THEIR PARENTS IN SCHOOL (2009)

What was the issue?

In a primary school, staff were seeing a potential conflict between the rights of children to explore their own identities (culture, gender etc) and the rights of their parents to shape and direct their children's upbringing. For example, one parent lodged a complaint because every time they came into the classroom, they saw their son playing in the 'home corner' (pretending to cook and clean). An underlying assumption here from the father was that their son would 'become gay' if he kept doing that, and he advised the staff member to encourage his son to play elsewhere.

Another example related to a parent who was concerned that their daughter had been eating ham sandwiches (because she had swapped her sandwiches with a classmate). This was seen by the parent as being against her religion, however the child in question had expressed a desire to try ham to see what it tasted like (age equality related rights of the child vs. religion or belief equality related rights of the parent).

What was done?

In this school, the headmaster advised teachers to talk to parents to make them aware that there are some values which teachers cannot guarantee to protect while in school. Teachers can try to be sensitive to particular concerns that parents have (e.g. their child not eating food that is against their religion). However, the school could not be held responsible if children wanted to do otherwise.

Despite receiving this advice, teachers still found it very difficult to broach the subject with parents. Some teachers felt that telling parents this would be tantamount to criticising or disregarding parents' religious or cultural values. They did not feel comfortable or confident enough to suggest that children should have an opportunity to explore and sometimes question the culture or religion into which they are born.

Resource-based claims

These are amongst the scenarios in which misinterpretation of the 'facts', inadequate data, and downright untruths are most likely to play a key part in escalating the conflict. This was seen in the Lozells riots (see case study below) and more recently in research debunking the British National Party's claim that immigrants routinely enjoy priority access to social housing.[15]

Not all resource-based disputes necessarily become intractable conflicts. When resources are plentiful and everyone can 'have their share', disputes of this type are more amenable to negotiation and compromise. It is when resources are scarce that conflicts of this type become most challenging and take on a clear 'win-lose' characteristic. If public resources are scarce (as they are now), how should they be used to protect the rights and interests of (the largest number of) excluded groups in an increasingly diverse and unequal society?

Yet it is important to recognise that conflicts of this type are frequently informed – even fuelled – by a wide range of social and political factors in addition to the ostensible economic or resource issue in question. In fact, managing conflicts of this type is often a fundamentally political rather than legal process. Commentators have argued that the resolution of conflicts based on 'positive rights', such as social and economic rights, which require the state to 'do something' – to provide resources or services, for example – are extremely difficult to resolve judicially.[16] The law is a much more appropriate instrument for addressing 'negative rights', such as civil and political rights, where the action required of the state is non-interference, or to refrain from doing something.

CASE STUDY – LOZELLS: COMMUNITY CONFLICT IN THE INNER CITY (2005)

What was the issue?

On Saturday 22nd October and Sunday 23rd October 2005 riots occurred in the Lozells area of Birmingham. The riots derived from 'racial' tensions between the Black British and South Asian British communities, the flashpoint being an alleged gang rape of a teenage black girl by a group of South Asian men. It was alleged that the young woman had been caught shoplifting and that this attack was effectively a 'punishment rape'. A local community radio station broadcast the rape allegation as fact but no evidence was found either at the time or subsequently to support the rumour nor has any victim come forward. The riots were also connected to the deaths of two men, 23-year-old Isaiah Young-Sam, who was fatally stabbed, and 18-year old Aaron James, who was shot.

What was done?

Both at the time and subsequently it proved virtually impossible to determine who precisely was involved in the conflict. The violence was not carried out by 'representatives' of particular groups, although there is evidence to suggest that some community activists played a part in fanning the flames.

Subsequently, the incidents were interpreted as being caused by inequitable funding decisions which historically had favoured the Asian community over the Black community. There was also a deep-seated view that the local economy (especially the retail sector) had become dominated by the Asian community.

Meetings were arranged involving representatives from the local communities, Government Office for the West Midlands, the police, the Commission for Racial Equality and Birmingham City Council. Most meetings rapidly descended into shouting matches and few if any tangible decisions were made. An enquiry into the riots took almost eighteen months to complete.[17] There was a widespread feeling that the enquiry failed to offer any definable ways forward for improving community relations or public sector decision-making, especially regarding resource allocation.

Learning – the intractability of some community conflicts and the limitations of conventional tools in handling these

- The Lozells disturbances illustrate how community tensions can escalate into violent conflict. People believed what they heard about the circumstances preceding the riot. This narrative had validity in that it spoke to their own experiences, prejudices, or fears, but it wasn't 'the truth'.

- Lozells demonstrated the limitations of the tools available to authorities in resolving such community conflict. They were operating with a vocabulary

and an equalities-set which were largely irrelevant to the circumstances: identity-based equalities thinking might be said to represent the chains which shackled all of the parties to this dispute.

• Although tension monitoring procedures were subsequently put in place, the usefulness of the intelligence these furnish remains debatable. The orthodoxy of decision-making, point-scoring between agencies and poor partnership behaviour all had to be navigated at the time and have continued to further complicate the legacy of this incident within the community.

3.3   Why managing and resolving competing equality claims is important

It is important that competing equality claims are identified, addressed and managed as early as possible in order to prevent them escalating into wider and more intractable disputes – perhaps even into confrontation and violence.

While this is widely acknowledged, there is still a tendency for those involved in and responsible for resolving such conflicts to be 'paralysed' by the equalities implications. ACAS, for instance, reports a perception amongst employers that sexual orientation and religion or belief are relatively new legislative areas and that consequently there is a shortage of best practice examples and case law from which to draw guidance. This has resulted, says ACAS, 'in a general view' that organisations need to 'feel their way somewhat carefully around these issues at present, and refer to appropriate advice and support where necessary'.[18] And yet workplace conflicts are also one of the biggest sources of stress and depression amongst employees. Research estimates that 12.8 million working days were lost to stress, depression and anxiety in 2004/5, costing the national economy billions of pounds.[19]

But resolving such conflicts is also vital *beyond* the workplace – in improving community relations and 'cohesion', for example. As society becomes more diverse and as more excluded groups have access to legislative protection under equality law, there is likely to be more competition between groups (not just race and faith groups but all groups) for access to resources or influence to help address 'their' equality issues. The case study below provides an example of this in a voluntary and community sector context. In a period of economic recession and the deepest public spending cuts for a generation, these issues are likely to become even more pressing. These issues are discussed in more detail later in the report.

CASE STUDY – A NETWORK OF VOLUNTARY AND COMMUNITY SECTOR EQUALITY ORGANISATIONS: DEALING WITH DIFFERENCES IN OPINION (2007)

What was the issue?

A third sector pan-equality network found that heated disagreements between those representing religion and belief and sexual orientation strands were becoming more frequent. Matters came to a head around the time that the new Equality and Human Rights Commission was being developed. One of the newly appointed members of the Commission (with a background in religious issues) was believed to have particularly strong views about homosexual people and this issue was debated at length.

What was done?

Early on the network adopted a statement of 'working well with each other'. This emphasised that representatives could have strong views but should listen and respect others too. The network also emphasises that members have 'a shared interest in addressing discrimination' and works to identify commonalities, emphasising the relationship between different kinds of discrimination and disadvantage.

Learning – 'agreeing to disagree'

- The attitudes that representatives/members display towards each other is critical. It is important to support groups to put forward their views but this must be done in a respectful way.

- The network now runs an event every year for each of the strands and ensures that a representative from all strands is invited to pan-equality network board meetings.

- An under-rated but important skill is facilitation and an ability to negotiate when running networks of this type. It is also important to recognise that in some instances a shared pan-equality position will not be possible.

- Trust between members is essential.

4.0 Guidance and good practice for employers and service providers

4.1 Overview

There is a wealth of existing literature and guidance on managing equality and diversity in the workplace, and on managing and resolving disputes and conflicts.[20]

While the full range of equalities and anti-discrimination legislation has gradually come to be reflected in this guidance, the issue of potentially conflicting or competing equalities has not yet fully entered the lexicon. For example, ACAS's booklet, 'Managing conflict at work: your six-step guide', does not cover assessing the equalities implications of a given conflict situation.[21]

This is gradually changing, but primarily only from one perspective: that of sexual orientation and religion or belief. ACAS and the Chartered Institute of Personnel and Development (CIPD), for example, were among the first to issue comprehensive guidance when the Regulations on Sexual Orientation and Religion or Belief (SORB) came into force in December 2003,[22] and have since jointly sponsored research to examine current managerial and employee experiences of handling instances where SORB legislation is involved.[23] This, and subsequent research by Stonewall, has confirmed a widespread view amongst employers that there is a shortage of best practice examples and case law in this area and that they consequently lack confidence in dealing with incidents that involve these types of discrimination.[24]

4.2 Transferable good practice

And yet there is transferable good practice that could inform the handling of competing equality claims, if only it were used. The 'learning' section of the case studies above begins to identity some of the learning from previous conflicts. Here are some other examples of good practice.

(i) Being prepared to prevent and handle conflicts

Research by Stonewall demonstrates that the employers and service delivery organisations that are most confident about handling potential competing equalities claims are those that have thought in advance about how they will respond to issues of conflict, and have established clear demarcations, for example, between acceptable expressions of faith and unacceptable discrimination. They have ensured that senior staff, including those at the very top of the organisation, agree with these positions and have communicated these policies to all staff. When incidents do occur, successful organisations use internal consultation and third party mediators to try to resolve issues, but they also have robust disciplinary procedures to help resolve more complex issues.

Other measures that might be adopted by well-prepared organisations include:

- Setting out clear statements in advance regarding the expectations and requirements of the job in question, including the circumstances (and their limits)

in which employees might be exempted from particular tasks or functions on the grounds of religion, belief, sexual orientation or any other equality consideration.

- Putting in place an equality impact assessment [25] system so that in any given situation (conflict, dispute or otherwise) an initial assessment can be made of the equalities implications. [26]

The following case study exemplifies this approach.

CASE STUDY – PENSIONS ADVICE (2009)

What was the issue?

A Pensions Advisor didn't want to give pension advice to people in civil partnerships because of her religious belief. She made a request to her line manager not to have to do this. However this would have left same sex couples at a significant disadvantage in terms of access to advice. The line manager consulted the Equalities Advisor, who collected relevant information and reported back to the line manager.

What was done?

The organisation discussed the issue with other HR and equality and diversity colleagues, checked the Pensions Advisor job description to ascertain the degree to which offering this advice was an essential part of the job, discussed the issue with an LGB staff network and asked Stonewall for advice.

Based on these preliminary discussions the organisation decided that providing pensions advice to all staff was an essential part of the Pensions Advisor's role and that staff could not be allowed to discriminate against particular groups. It was explained to the Advisor that the company saw no reason why giving advice on legal rights should conflict with a person's beliefs, since advice-giving involves no moral judgement (or support) but merely states a current legal position. It was also pointed out how problematical the Advisor's request would be to apply in practice. The employee accepted the decision and there was no adverse feedback.

Learning – being prepared and effective management practices

- While the employer chose to discuss the issue with relevant stakeholders, its decision was based firmly on whether the job in question could be carried out effectively if exceptions were made.

- Focusing on tasks 'essential' to the role helped 'take the heat' out of the situation.

- It was significant that the Advisor felt able to raise concerns about this issue with a line manager, but important too that the line manager felt they could ask for support, and knew who to ask.

- Effective, swift and timely communication also helped.

(ii) Mediation and conflict resolution

ACAS defines mediation as 'a process where a neutral person – the mediator – works with people who have a disagreement to help them to find their own solution and reach an agreement that will sort out their problem or improve the situation.'[27] The mediator doesn't take sides or judge who is right or wrong and can recommend a way forward if both sides want this and are unable to find their own solution.

Implemented well, mediation has significant benefits. It can be quick, effective (especially in the early stages of disputes), less costly than legal action, and beneficial in maintaining employer and employee relations. It can also help build the skills and confidence of organisations and make them better able to resolve conflicts before they escalate.[28]

Clearly the requirement for parties to enter into mediation voluntarily and for them to have at least a degree of negotiable interests could mean that mediation is not appropriate for some of the rights-based conflicts discussed in this report. As one contributor put it 'in my experience mediation has a high failure rate as people feel threatened that what they regard as fundamental values are being questioned'. Similarly, some women's organisations quite rightly contest the legitimacy of mediation techniques in situations such as forced marriages. Yet these justifiable caveats do not rule out mediation completely. At the very least, mediation techniques such as 're-framing' can be helpful in understanding the issues, interests and positions involved, and bringing those in dispute closer to understanding why they disagree (if not closer to understanding how they could agree!).

Mediation can also help establish conditions in which disputes can be resolved while maintaining dignity and respect for all parties to the dispute – especially important in instances of competing equality claims, where matters of conscience or personal identity may create extremely heated situations.

(iii) Education and awareness

It is also possible that some parties in a dispute will regard their personal intransigence as a 'badge of honour', an indication of their commitment and resolve, even perhaps a further marker of their identity. In such cases, mediation alone may be ineffective or premature and may need to be augmented with other kinds of support, including training, education and awareness – for example, to help staff understand race, disability or sexual orientation issues. This may help reduce or remove prejudice and discrimination.[29]

A further part of that training and education may also involve ensuring that staff are aware that their behaviour or actions breach the terms and conditions of their employment and the potential consequences of this.[30] For example, it may be necessary to explain that while employees have the freedom to *believe*, their rights in the workplace to *act* on these beliefs may be legitimately restricted ('qualified') – they will not include, for instance, the right to discriminate against others on the grounds of those beliefs.

(iv)   Good management

In most circumstances, approaches to managing and resolving conflict can and should be considered simply as a part of good management. Emphasising that this is also true in the case of competing equality claims may help employers overcome their fears that such cases are 'special' and fall somehow outside traditional management expertise. For example, in order to be better able to address conflicts in the workplace, ACAS recommends:

- Training managers to handle difficult conversations with employees.

- Having clear discipline, grievance and dispute procedures for dealing with conflict.

- Considering outside help where necessary.

- Encouraging the open expression of opinions.

- Recognising the importance of feelings.

- Listening to what people have to say, and

- Focusing on interests not positions and personalities.[31]

None of these practices could be said to fall outside traditional management expertise – and all have a role to play in handling competing equality claims.

(v)   Organisational ethics

There may be lessons too from a broad range of disciplines including organisational ethics, stakeholder models, values-based business (such as social enterprises, co-operatives and employee-owned businesses), corporate social responsibility, and workplace psychology.

For example, virtually all stakeholder models share a similar objective: they seek to foster greater collective participation and a sense of shared ownership and responsibility amongst employees, members or owners.

The power of more participative 'mutual' structures to transform business is well documented. We need think only of the prominence that the 'John Lewis effect' has recently had in the media, and politicians' interest in investigating whether that company's employee-ownership 'magic' can be applied in public services.[32]

Might organisations in which there is a strong, collective stakeholder culture be better able to resolve – perhaps even avoid – the kind of competing equality disputes this paper considers? There is evidence that suggests this may be the case. Some social psychologists, for example, believe that workplace rules are more likely to be adhered to when there is a 'moral congruence' between the values of the organisation and the values of its employees or members[33] – and this 'moral congruence' of shared values and reciprocity is in essence what stakeholder models are all about.

(vi) Public service delivery

The development of 'human rights based approaches' to public service delivery are discussed in more detail at 6.2 and these perhaps offer the greatest potential in terms of transferable good practice. Their development is still relatively embryonic, but such approaches, involving service-based quality standards (informed by human rights principles) designed to protect the rights of a range of excluded groups simultaneously, can reduce conflicts between excluded groups who historically have been forced to compete with each other in order to have their needs met.

Other examples of good practice were suggested by interviewees as part of this research. One saw the development of their organisation's single equality scheme as offering more comprehensive and consistent protections for a range of excluded groups and felt that this would help to ensure that one protected group didn't receive more favourable treatment than another.

Advances in social policy, particularly increased questioning and challenging of 'identity-based' approaches to equality (see 6.2) have had an effect on the nature of public service provision. For example, one local authority interviewed for this paper had previously invested in a whole range of separate initiatives to improve educational attainment for African Caribbean boys, poorer White British boys, Bangladeshi girls and boys etc. However, in recent years they have consolidated this work to identify a range of mainstream interventions that help to improve the attainment of a wide range of those groups at the same time. They felt that not only would this be more likely to have an impact on educational attainment, it would also reduce the risk of competition and conflict between excluded groups who were seeking to improve the educational attainment of 'their community'.

The following case study describes one way in which language and principles traditionally associated with human rights have been used to inform public service approaches to equality and resolve competing equality claims in the process.

CASE STUDY – AN ADOPTION PANEL (2007)

What was the issue?

A member of a panel offering advice to help find suitable parents for adopted children felt that some of the policies adhered to by the panel were inappropriate. There were particularly long delays in placing children from BME backgrounds with families. This was explained partly by the fact that in these cases social workers on the panel insisted that at least one of the adoptive parents should be from a BME background. The children's 'cultural rights' associated with their 'race' were seen as particularly important by these social workers, whereas the panel member in question disagreed profoundly with this position and felt the overwhelming priority should be to find successful adoptive families for the children, irrespective of the cultural background of the families. In this case different judgments were being made about what the right to private and family life looks like for BME children.

What was done?

Although the panel member's role was only an advisory one, she felt able in these cases to influence the views of social workers to some extent by employing human rights arguments. For example, by discussing these cases in the context of human rights principles (e.g. the principle of proportionality), she emphasised that children may value the right to be placed with a family quickly more than being placed with parents whose ethnic background they share. This helped move the debate away from simply being about race equality, to considering all of the parties that have a stake in the decisions being made by the panel.

Learning – using human rights principles in a simple, practical way

- The language of human rights can bring into play the rights of others not traditionally considered to be covered under equality law (e.g. the rights of children and parents).

- Principles such as proportionality can be used to identify and balance the effects of decisions on a wider range of stakeholders in any given situation.

- In the end this member left the panel, but believes that more rounded decisions are now being made and that many adoption panels have moved away from the policy of matching BME children with BME parents at all costs.

5.0 Practical suggestions for improving decision-making in competing equality claims

5.1 Overview

Much of the transferable good practice described above focuses on trying to find informal routes to dealing with competing claims. Yet what happens when opportunities for negotiation and discussion have been exhausted or don't seem possible? Disputants do not always act predictably or 'rationally'; they can be influenced by emotions like shame or a desire for recognition and this may prevent rational attempts to prevent or manage conflict.[34] What happens when a decision simply has to be made about the relative validity of the respective claims – whose claim is most valid, or holds the most weight in any given situation?

In her previous paper for EDF, Malik discussed the use of legal processes to make decisions of this type. However, there are also extra-legal strategies that could be used to make decisions like this. These are the types of decisions that managers, public service providers, commissioners and policy-makers may be required to make in their day-to-day work. For example, how should scarce public resources be invested when there are many excluded groups lobbying and competing for that investment? Should policy-makers respond to the views of a particular community group if, say, the cultural practices exercised by that group have a negative impact on some of the group – on women or disabled people, for instance?

In other words, sometimes 'decision-making tactics' are required. Particularly when efforts to resolve conflict through informal routes and through compromise have failed. The case study below offers an example of where decision-makers are facing a dilemma in terms of how to respond to a complex and sensitive example of competing rights.

CASE STUDY – CONSANGUINITY: DISCUSSING AND CHALLENGING CULTURAL PRACTICES (2010)

What was the issue?

A relatively high percentage of children in special schools across the city in question are from a particular cultural group. It is believed that one of the reasons for the prevalence of learning disabilities amongst these children is the practice of consanguineous marriage (marrying somebody within the family – e.g. a cousin). A number of local voluntary sector groups have requested that the health service does more to share information and advice for families about these issues. Yet health professionals are not willing to discuss these issues with parents because they fear the repercussions. They are also unsure whether it is their job as health professionals to question particular cultural practices. The health service was left with the dilemma of how to respond to the interests of these different sections of the local community.

What was done?

The health service in this city offers genetic counseling for parents and is currently considering how that can be best 'marketed' to users likely to benefit from the service. So far, they have chosen not to target the service at particular cultural or ethnic groups.

Learning – discussing and challenging cultural practices requires confidence and appropriate training and support

- This example demonstrates the importance of equipping staff with the knowledge and confidence to discuss, question and at times challenge cultural practices if they are felt to impact on the rights of their services users. In this case, this might include ensuring that parents are presented with the facts in terms of the risk associated with consanguinity.

- This type of discussion requires a high level of diplomacy and sensitivity and an ability to share information in a non-judgmental way. While these are skills that are important for health professionals in other areas of their work their application to discussing challenging equality and human rights issues remains under-explored in training for health professionals.

Such cases require fair and transparent decision-making in order to prevent and manage conflict in the future. Our interviews with practitioners in the field revealed that decisions like this are particularly hard to make when people are afraid of 'getting equality wrong' and can result in decision-makers trying to please everybody in order to avoid short-term conflict. Such decisions may maintain equilibrium, but do not necessarily represent good or effective investment decisions.

Outlined below are a number of approaches that decision-makers – employers, policy-makers, unions, service providers – could use to respond to rights-based conflicts.

5.2   Responding to competing equality claims: making better decisions

Proportionality and reasonableness

A well-trodden route to balancing competing rights has been to assess their 'proportionality' and 'reasonableness'. Simply put, this involves understanding whether the action is proportionate to the aim. It may also involve limiting rights where it is proportionate to do so for the protection of public order or the rights of others.

Proportionality has a close relationship with issues of discrimination and equality too. Firstly, the application of equality law is submitted to tests of reasonableness and proportionality. But also, as Klug and Wildbore put it: 'Discrimination, equality and proportionality are closely linked. If a measure is disproportionate in that it does not achieve its stated aim because others in an 'analogous situation' (similar to

'comparators' under discrimination law) are treated differently, it will be discriminatory. Similarly if a measure is discriminatory this may help to show why it is disproportionate.[35]

However our interviews as part of this research suggest that when practitioners make decisions on the ground involving equality, 'political correctness' or a fear of 'getting equality wrong' can mean that those decisions are not made in a proportionate or reasonable way. Sometimes, for example, public officials will respond only to the concerns of representatives from protected equality groups (particularly when those concerns are argued forcefully), without considering the views and indeed rights of others that will be affected by public decisions.

Although these principles are inherently legal in nature, there is great potential to use them in extra-legal situations that involve competing equality claims. Use of principles like proportionality has the potential to elevate the level of debate beyond, 'I invoke my claims as a right and this trumps consideration of all other issues'. It can help to develop a better understanding of all of the rights and all of the people affected by a conflict, something that those developing social policy, particular policy related to equality, often strive for. But consultation with excluded groups on equality issues can also sometimes raise expectations amongst those groups that their concerns will automatically be responded to. The case study below of the 'Behzti' controversy demonstrates how consultation on equality issues raises a number of challenges for decision-makers. Would the conflict have been handled better if there had been a clearer and more transparent process for making public decisions? Particularly those that require a balance to be struck between the rights of a wide range of stakeholders?

CASE STUDY – 'BEHZTI' (2004)[36]

What was the issue?

Behzti ('Dishonour'), a play written by a young, female, Sikh playwright, Gurpreet Kaur Bhatti, was staged for the first time by the Birmingham Rep studio theatre, The Door, in December 2004. The play, set in a Sikh community and featuring a rape and a murder in a Gurdwara – a Sikh place of worship – resulted in protests by some Sikhs who believed that the play was blasphemous and maligned their faith. The cancellation of the play, and the necessity for Bhatti to go into hiding following death threats, created a storm of international media coverage, as did the resulting debate about the rights of women to raise awareness of sexual violence versus protecting the religious sensibilites of Sikhs.

What was done?

Behzti originally came to the attention of the Birmingham Sikh community in August 2004 and they approached West Midlands Police to discuss their concerns. A series of meetings was organised between Birmingham Rep and some representatives of the Sikh community to discuss the situation. Following these meetings, the play was

performed before invited members of the Sikh community and some small textual changes made, but regarding the Sikhs' key request – that the setting of the play be changed from a Gurdwara to a Punjabi community centre – the theatre felt unable to concede this without compromising the integrity of the play.

Learning – win-lose scenarios and the false expectations of consultation

Whether there were any mediation, consultation or risk assessment procedures that could have prevented the Behzti situation remains doubtful. Some have queried whether the whole tactic of pre-performance consultation with Sikhs backfired because community representatives gained the impression that they were being given a veto on the play. 'It may be a mistake to consult,' one of the actors has said, 'because it makes people think that they have a voice in the creative process. It may be that they become confused about that. People are finding their feet about how to be sensitive without bowing to everyone's point of view.' [37]

- The presence of representatives from the Home Office Safer Communities Initiative at meetings was said to have helped create an environment for open and honest environment for debate and was welcomed by all parties. West Midlands Police also claim that subsequent improvements were made to its processes for gathering information and carrying out 'community impact assessments' – risk assessments which help police plan for the potential effects of a situation on local people.

- This conflict raised a number of questions about how women's rights – and indeed those of other traditionally excluded groups – might be best protected if they are to criticise injustice, particularly when doing so risks perpetuating negative stereotypes in wider society. [38]

- The conflict also demonstrated the role the media can play in shaping and exacerbating tensions. Positions of different stakeholders in the dispute were portrayed as unchangeable. Similarly the conflict was framed as being indicative of a much broader and long term conflict between freedom of religion and freedom of expression. Other issues were discussed in much less detail.

As part of the research for this project, we discussed the possibility of explicitly including a consideration of 'proportionality' and 'reasonableness' in equality impact assessment procedures. This could potentially help when balancing the needs and demands of a wide range of protected equality groups. Should the rights of protected equality groups outweigh the rights of other groups or individuals if a decision in the former's favour is disproportionate and unreasonable? Probably not.

If public officials and decision-makers were better equipped to demonstrate that they are not providing a *carte blanche* to all groups that make equality claims, and able to demonstrate that the allocation of resources (or other policy decisions) were

proportionate and reasonable and directly related to achieving fair public service outcomes, then they would be better placed to respond to objections from those who disagree with equality-related policies – such as far-right political groups or indeed other equality groups that feel they have lost out as a result of a particular decision.

This would perhaps require a greater degree of confidence on the part of public officials to understand not only 'proportionality' and 'reasonableness', but also the relationship between improved equality practice and improved public service delivery. It would also require improved communication skills on the part of decision-makers (e.g. local councillors or public officials) who would need to explain why decisions like this had been made. The latter has proven particularly hard when the decision runs counter to popular opinion, or counter to the views of a particularly vocal equality group.

Rights as relationships

Yet the kind of community fallout described above is perhaps inevitable when a decision has to be made about how to respond to competing equality claims, particularly when the situation is deemed to be a 'win-lose' situation. Another tactic that can be used by public officials to de-fuse tensions of this type is to emphasise the effect that our actions have on others in society. If a decision is made to respond to one equality group's issues, sometimes that may mean that other groups' rights are not protected, particularly when resources are scarce. Decision-makers and public officials can help to create the kind of environment in which communities recognise the interconnected nature of decisions regarding equality, especially perhaps those involving the allocation of public resources. When combined with good quality evidence regarding the levels of inequality experienced by vulnerable groups, this could help to facilitate discussions where equality groups 'let go' of particular equality claims, recognising that a successful claim for them might mean another more disadvantaged or more discriminated against group loses out.

The 'individualistic nature' of rights-based conflicts often creates an impasse in fostering this kind of environment. Individual claimants will take a case to court or will highlight infringement of their rights, yet the way people operate in society is rarely that individualistic. In fact, some commentators have argued that society and people's role within it cannot be understood without considering the relationships that shape individuals' thoughts and actions.[39] This view already has some currency in UK social policy: concepts such as social capital, for example, have become a commonplace and this derives directly from communitarian theorists like Robert Putnam,[40] who emphasise society as networks and relationships rather than simply atomistic individuals.

Emphasising the interdependence of people and groups involved in competing equality claims may go some way towards clarifying which groups or individuals are most at risk or have most to lose when decisions are made, and may also help the parties to a dispute to see the effect their claims could have on others. Books such as 'The Spirit Level'[41] are also having a positive effect in emphasising the interconnected nature of society and the effect inequality for a few can have on the quality of life for all. These are principles and debates that should be encouraged in developing future equality priorities for the UK.

There is of course a level of sophistication to this debate which may take some time to translate into the practice of employers and public service providers. Yet at the heart of much of these ideas is the need to find better ways to recognise that 'my equality claims' are not the only issues at stake in a conflict. They refer to the need to find better ways to accommodate the needs of others and to find compromise. The case study below shows that sometimes compromise can be achieved in practical, common-sense approaches.

CASE STUDY – EMERGENCY SERVICES ORGANISATION PROMOTING SEXUAL HEALTH (2009)

What was the issue?

An emergencies service organisation was doing work to promote safety and sexual health messages (in partnership with a local healthcare organisation). This included providing advice packs targeted at young people that were moving into their first house or flat. The pack contained information about fire safety along with advice on safe sex and included free condoms. Some staff objected to handing out the packs on religious grounds.

What was done?

Having heard a range of views, the organisation considered whether handing out the packs was an essential part of their job. In this instance it felt that it wasn't. Additionally, there was no discriminatory act involved: the action was not related to any particular group, but rather the product (contraceptives). It was decided that the campaign would continue but that staff who did not want to hand out the packs were not compelled to. It was also decided that staff needed more information about the campaign and its aims as discussions with concerned staff had demonstrated a lack of knowledge about this.

Staff were sent a memo which explained in more detail what the campaign was about. The memo invited any staff with additional problems or concerns to raise them directly with a named contact. Individual staff members who had raised the issue centrally were also contacted directly. Following this action no further concerns were raised.

Learning – the inter-dependence of 'rights' and compromise

- The organisational culture which enabled staff to raise concerns was seen as very important as was the prompt provision of full and frank information.

- A focus on the essential requirements of the job also helped clarify the situation.

- A compromise was possible and did not require lengthy discussions about the legitimacy of people's positions based on particular beliefs that they held.

Use of a popular metric to judge competing rights claims?

Some critics argue that 'equality' is a blunt tool in that it can produce outcomes which while ostensibly right remain unfair.[42] For example, in some instances other 'rules' for making decisions may seem more appropriate or may feel fairer (e.g. first come first served, women and children first).[43] Also the term equality has a history in the UK and there are a whole range of values attached to it, perpetuated in part by the media, which may not be useful when used as a benchmark against which to resolve competing equality claims. For example, equality may be seen as an 'exclusive' term (e.g. not about White British people) and this can lead to people feeling that decisions made in the name of equality are unfair.

An alternative principle – a popular metric of sorts – that could be used to resolve conflicts arising from competing equality claims is proposed by Moon and Allen. They suggest that 'dignity' has some advantages over the concept of 'equality' in that human dignity is a more popularly understood term, with many, irrespective of culture or background, instinctively regarding human dignity as demanding respect.[44] The term could be potentially used to describe common needs and challenges experienced by vulnerable groups. The notion of equality on the other hand is more relative and to some extent socially determined.[45]

Although Moon and Allen discuss dignity in the context of UK jurisprudence there are a number of potential extra-legal applications of this. Particular advances have been made in the area of health and social care over the last few years in demonstrating the application of terms like dignity in both standards of public service provision and the equitable distribution of those services. For example, in developing a national human rights quality standard for cancer care on behalf of Macmillan, brap used dignity and other principles of human rights like 'universality' and 'inherence' as yardsticks against which to judge the development of behavioural quality standards for cancer care staff. Cancer Networks involved in the programme swiftly recognised the value of human rights principles like dignity in balancing and prioritising competing demands for services and in particular standards of staff behavior.[46]

'Dignity', while perhaps not a true proxy for 'equality', may nonetheless be useful in promoting and assessing fair and equitable behaviour (whether of a system or of individual workers) and in some contexts (especially public service provision) this has particular relevance.[47]

The following case study describes the potential for using 'dignity' as a benchmark against which to judge the quality of health services. This benchmark could have been used to assess how to resolve a potentially complex and sensitive dispute based on competing equality claims.

CASE STUDY – SERVICES FOR A TRANSGENDER PATIENT IN HOSPITAL (2010)

What was the issue?

A man who was described as a 'vulnerable adult' due to his long term illness was due to enter hospital for an operation. The man preferred to wear women's clothing and wanted to wear women's clothes while staying in a male ward at the hospital. His care-worker was unsure that this would be appropriate, fearing that his client would be harassed or that other men on the ward might feel that their privacy and dignity were not being respected. There was a potential conflict between the rights of the men in the ward to their privacy and dignity, and the rights of the transgender patient to the same.

What was done?

The care-worker discussed this issue with the hospital and was left feeling even more confused. The hospital explained that the dignity of all patients was protected by providing separate wards for separate sexes – however, because the transgender patient had not (and did not intend to) reassign his gender, he would be required to stay in a male ward. The care-worker advised his client of this, but felt dissatisfied with the advice he had been provided.

Learning – dignity and flexibility of service can help balance sensitive situations

- The hospital demonstrated that they had already considered what was required to deliver a 'dignified service' to customers, however the case study also demonstrates the importance of developing balanced definitions of dignity that are flexible enough to respond to individual need.

- Taking advice from appropriate transgender groups might have enabled the hospital to adopt more flexible policies which would still have protected the dignity of all the parties concerned. This might have included additional measures, such as use of a private room if required, or reviewing staffing numbers to ensure enough people are around on the ward to support patients.

Identity-based conflicts: seeing beyond identity

Advocacy and campaigning on equality issues have contributed to a political culture in the UK in which vulnerable groups are almost expected to describe the uniqueness of their own experiences of discrimination of inequality. Certainly, without this type of advocacy the kind of progress we have seen in progressing equality in the UK would not have happened. Yet it does have its drawbacks – for example, the tendency for equality groups to feel that their experience is unique and cannot be fully understood by anyone outside the group. This can prevent different equality groups from

recognising the common experiences or causes of discrimination. Sometimes this more global view may be required if compromise is to be found in situations involving competing equality claims. However, the close relationship between identity and lived experience of discrimination can make this particularly hard to achieve.

Initiatives to change the way people view identity can also help to reduce the intractability of such conflicts. Such work can take a variety of forms and might include exploring the role 'community leaders' play in constructing and strengthening 'group identity', challenging definitions of 'the other', and educational campaigns to help people better understand the social and political construction of identity. Interventions like this could help to question and change the role identity plays in interpersonal and social conflict.[48]

The practical application of such approaches for policy-makers and those designing public services might be activities to promote a better understanding of 'diversity within diversity', and a recognition of the limitations of representation as a means of understanding community need. It may require public officials to ask themselves 'who is not in the room' when consultations are being conducted. In responding to a particular point of view from an equality group representative, public officials should also be asking themselves 'Which other rights are at stake?' Are other groups (or indeed vulnerable groups within that group like women and children) facing more significant or damaging levels of inequality? Public officials have a duty to respond to protect the rights of the 'voiceless' as well as those that have managed to access public consultation opportunities.

The following two case studies illustrate the importance of creating an environment in which issues of identity and belief can be discussed openly. In both instances this helped to develop more balanced and locally popular decisions in resolving to conflict.

CASE STUDY – LOCAL AUTHORITY CHILDREN'S CENTRES (2010)

What was the issue?

Children's centres have been required to recruit staff locally as this demonstrates good practice and is thought to enhance the quality of the service being offered. In some centres this means that the majority of staff may come from one religious group. In some localities difficulties have arisen when it comes to managing holidays and leave during religious festival periods – especially Eid. A denial of holiday requests during Eid proved especially divisive as some staff felt that holiday requests during Christian religious festivals, such as Christmas, were always granted.

Muslim members of staff felt their requests for holiday during Eid were being dealt with less fairly than other non-Muslim staff. It was also apparent that Muslim staff members' requests were likely to be treated more flexibly if their line manager was also a Muslim, and were less open to negotiation if the line manager was not a Muslim. Some of this was attributable to staff being more open to compromise if their

manager was a Muslim. It was also influenced by greater confidence on the part of Muslim managers to discuss and/or challenge requests from staff. Other managers were worried that if they did not comply with the requests this might be considered discriminatory, but they also felt that staff were not considering all aspects of the situation, including the needs of the organisation and its service-users.

What was done?

One centre made decisions based on an examination of business needs and health and safety (e.g. staffing ratios) and put those considerations first. A request to close the nursery completely was refused as it was felt that this would adversely affect parents who needed to access the childcare service in order to be able to work.

In another location, one with a high number of Muslim employees, staff were given half a day each staggered throughout Eid. This meant everyone got some holiday during Eid but enabled service provision at the centre to continue unimpeded. This was felt to be a fair and unambiguous solution.

Learning – the need for guidance, support and adequate signposting to expertise

- The situation could have been better handled. Managers – local authority employees but working at arm's length from the authority – were inadequately supported; they received insufficient guidance and were not signposted to sources of mediation or negotiation support.

- They were uncertain about individuals' entitlements in law and felt exposed and vulnerable.

- The issue of holiday during religious festivals could have been anticipated and should have been discussed much earlier with all staff.

- It was also felt that the organisation should have been much clearer in setting out the service delivery expectations and the duty of care the organisation was under to provide uninterrupted service throughout the year.

CASE STUDY – A PRIMARY CARE TRUST SEEKING TO SITE A MEDIUM-SECURE MENTAL HEALTH UNIT IN A PREDOMINANTLY SOUTH ASIAN NEIGHBOURHOOD (2010)

What was the issue?

The building of a medium secure forensic facility in a community setting. About 75% of the local community come from a South Asian background, mainly of

Pakistani origin. Local community fears regarding the dangers posed by users of such a facility were in high and were made more so by community leaders and overwhelmingly negative media coverage. Some also felt that the unit should not be sited near them because 'mental health problems don't affect our community'. There were others in the community, however, who wanted a facility closer to them so that they could visit relatives who have mental health problems.

What was done?

Media involvement inhibited real conversations with the community and prevented clear communication between the Primary Care Trust and representatives. It was decided that the best strategy was to talk to community representatives on a one-to-one basis rather than as a group. This helped Trust staff to build relationships and also helped identify some residents who were likely to have family members in the facility and would wish to be able to visit them more easily.

It also helped to identify 'moderate' voices within the community and to identify the diversity of voices. The Trust used this consultation process to educate the community about mental illness and the types of clients housed in a facility of this nature and organised trips to similar forensic facilities. It took over two years of community outreach before local residents were persuaded that the facility and its siting was necessary.

Learning – challenging more extreme 'community views' and establishing relationships

- There remains a widespread social stigma regarding mental health issues and a pervasive 'not in my back yard' culture by no means restricted to BME communities.

- Listening was the key to unlocking and responding to community concerns. The Trust needed to be very patient and in the majority of instances avoid direct responses that might have led to more confrontation.

- Many staff on the front line used the 'broken record' technique to get views across which worked very effectively. This involved different staff members repeating and emphasising the same key messages so that community members recognised the Trust's policy and those issues that were (and weren't) negotiable.

- It was also important to use staff in the process who could remain objective and stay non-judgemental.

6.0 Competing equality claims: implications for UK public policy

If the ideas described in the preceding section are to be exercised, and if the good practice described in section 4 is to be developed and extended, then the policy environment in the UK needs to become more supportive of such ideas and practices. This section discusses the opportunities which exist for addressing these issues through social policy – specifically through cohesion and equality polic.

6.1 Cohesion policy

The Institute of Community Cohesion (ICOCO) defines community cohesion as 'a development of the concept of multiculturalism, in which the emphasis on separateness and differences is counterbalanced by the creation of interaction and commonalities'.[49] And yet even here, an emphasis on ethnic or faith identity (which is central to and widely viewed as synonymous with multiculturalism) remains evident. 'Good Relations: A Conceptual Analysis', a report by ICOCO, acknowledges that community cohesion – and related concepts, such as social capital – have hitherto had too narrow a focus on race and faith and explicitly sets out to move the community cohesion agenda onto a wider terrain, including intergenerational and gender cohesion.[50]

A key issue which is not tackled by ICOCO's work, however, is the fact that community cohesion offers no framework for addressing competition between groups (in resource allocation, for example), or for challenging behaviour or attitudes which may infringe or threaten the rights of others. In this regard, community cohesion as a concept is only a partial journey from multiculturalism and is not especially helpful in situations where it may be necessary to mediate competition between groups. The persisting emphasis in cohesion on ethnicity and faith also means that an expectation persists amongst minority groups that it's business as usual: to each according to their identity.

The new Government's vision for Community Cohesion has yet to be outlined in detail. The previous Government's vision of an integrated and cohesive community was based on three foundations:

- That people from different backgrounds have similar life opportunities;

- That people know their rights and responsibilities;

- That people trust one another and trust local institutions to act fairly.[51]

Yet at times, there has been an evident disjuncture between high-level aspirations for cohesion policy and the types of interventions that are recommended to achieve them. In the previous Government's cohesion delivery framework the issue of rights or how to balance them is not discussed.[52] Other commentators have also noted this. 'Human Rights in Britain since the Human Rights Act 1998: a critical review',[53] for example, observed that '…we have not found a significant body of thinking in the literature about the relationship between human rights and community or social cohesion', and one

contributor to the EHRC's Human Rights Inquiry concluded, 'More work needs to be carried out to join up human rights, equality and community cohesion in policy and practice... What would help us are practical tools and guidance...'[54]

Cohesion seems all too frequently regarded as an end in itself (i.e. ensuring that different groups get on well with each other), rather than a means to a more ambitious aim – a fairer, more just society – and this is a missed opportunity.

Areas for future development

Used more inventively, cohesion initiatives could help negotiate and define a clearer set of values by which we wish to live, while also helping us to understand how rights must sometimes be balanced across groups when needs and interests compete with one another.

But in order to do this, our view of cohesion would need to be re-cast. Rather than focusing on how people from different backgrounds interact, community cohesion would instead need to focus on how people from all backgrounds exercise and negotiate their freedoms. In other words community cohesion strategies should be used to enable people to come together as equal citizens to think through, discuss and negotiate the freedoms they need. But this would be a demanding and long-term aim, and significant additional support would be required in order to:

- Help local communities gain the skills and abilities to navigate through, and come to terms with, the most challenging discussions.

- Create social and civic processes and spaces that enable open, tolerant and diverse discussion and informed choices made in a spirit of mutuality and common interest.

- Equip public service providers and decision-makers with high levels of facilitation and mediation skills.

Such an agenda for community cohesion policy would not be easy. It would also require changes in the way other areas of equality-related social policy is developed in the future.

6.2   Equality Policy

This paper was prepared for publication in the early weeks of the new Conservative-Liberal Democrat Coalition Government elected on the 6th May 2010 and the future shape of UK public policy as it relates specifically to equality cannot yet be fully predicted.

For this reason, this section focuses on advances since the Equalities Review and Discrimination Law Review (2007)[55], which made significant headway in re-examining legal and policy approaches to equality. Four of the major developments are covered below, with a brief assessment of their potential for addressing the issues discussed in this paper.

(i) The Equality Act 2010 – addressing the fragmented nature of equality law

The Equality Act 2010 harmonises the level of protection against discrimination for a range of groups, making it much clearer which rights individuals have, and reducing the hierarchy of protections between groups. This has the potential to reduce inconsistencies where 'newly' protected groups feel their rights are not protected in favour of 'more established' protected groups.

That being said, at the time of writing the measures in the Act had not been implemented and there is still widespread confusion regarding how to implement some aspects of equality legislation.[56] One particular aspect of equality law worth highlighting is Occupational Requirements. While these are by no means used all the time by employers, they do relate squarely to competing equality claims. When they are used there is often confusion regarding how to assess their proportionality.[57] The range of possible judgments and the subjectivity involved in decisions of this type make it harder for employment tribunals and employers to apply consistent approaches to testing the proportionality of Occupational Requirements.[58]

Areas for future development

In those areas of law where restrictions and exemptions still exist that could result in conflict between equality groups (e.g. Occupational Requirements), there is a need for much clearer guidance and support for employers.

More broadly, the Government has the opportunity to develop a clearer and shared vision for what equality means in terms of policy and practice across government departments in the run up to the first stage of implementation of the Equality Act in October 2010. A more coherent explanation of what equality means, and a wider public discourse to inform this, could help reduce the role of self-interest in complex disputes. Much work has already been undertaken by the Government Equalities Office, Equality and Human Rights Commission (EHRC) and partners in this regard in the development of an 'equalities scorecard' which could offer a foundation for discussion (discussed further below).

(ii) New thinking about the role and value of 'identity based' approaches to equality

In recent years critiques of identity-based equality policies, especially multiculturalism – one of the most dominant policies of this type – have become more pronounced. This has questioned of the role of 'identity' in shaping equality initiatives and responding to different equality claims. The ramifications of this are larger than just race equality. By recognising that identity is not the only lens through which interests, needs and rights are judged there is more potential to identify common needs across excluded groups, or to identify more 'mainstreamed' improvements that could be made for all groups. The recognition of duel discrimination in the Equality Act and through the work of the EHRC may also go some way towards encouraging this type of discussion.

Areas for future development

However, there are still many examples of where identity-based approaches to equality interventions continue.

The couching of our present laws in terms of 'protected groups' reinforces the notion that in order to demonstrate discrimination one must have an 'identity' which coincides with one of these categories. Given our inherent human complexity, this is clearly unsatisfactory. Moreover, this works only to define the grounds on which discrimination or disadvantage may have taken place, not the consequences, extent or outcomes of that discrimination – nor solutions to it.

There are still challenges, too, in addressing multiple, duel or intersectional discrimination through the Courts (where a person is multiply disadvantaged, for instance, an elderly, disabled Asian woman), despite the recognition of duel discrimination in the Equality Act.[59] And there is still much argument regarding what exactly a 'pan-equality' approach looks like and how it should be practiced.

There is, however, also a need to recognise that questioning the role of identity in determining individual need does not preclude interventions to address inequality experienced by particular equality groups. The latter is obviously something that will need to continue given the level of inequality experienced by particular groups. This is a message that has not been widely received – and if received, little understood.

To achieve more robust debate and to identify more strategic responses to pan-equality needs, a much higher quality and depth of evidence will be required. Many protected equality groups, particularly those that are less well-established under discrimination law (e.g. LGBT, religion or belief groups, age groups) find it harder to access detailed, high-quality data regarding the inequality they experience. Better – and more accessible – evidence is a prerequisite not only in addressing complex inequalities, but also for working in a society characterised by increasingly complex diversity.

(iii)   The capabilities approach to equality and piloting of the Equality Measurement Framework

Earlier parts of this paper discuss the limitations that attach to using the principle of equality as the sole determinant of fairness, especially in instances of competing equality claims. Sen utilises the idea of 'necessary inequalities'[60] – those inequalities that will always be with us as long as resources are finite and limited – and this has some potential in a social policy context to help explain and resolve the nature of competing equality claims, particularly where these might revolve around the allocation of finite (or increasingly scarce) resources.

Sen suggests that the best approach to agreeing what those necessary inequalities should be in society is through good quality consultation and democratic involvement. Freedom *and* social choice are central to what Sen and others have called the 'capabilities approach' – a broad framework used across a range of disciplines for assessing individual wellbeing – but so too is the notion that how we exercise our personal freedom is contingent on the effect this has on the freedoms of others.

The capabilities approach recognises that the wider social, economic and political circumstances of people's lives affect their ability to exercise particular freedoms. It recognises that different people may require different things in order to achieve their freedoms, and it recognises too the need to create a space where people feel they can have a say in identifying what they need in order to do or be what they most value. This space, this room for dialogue, is exactly where competing equality claims could be discussed and negotiated on a more strategic level in the UK.

And it is this kind of space for dialogue that researchers began to create in developing an 'equalities scorecard' as part of the Equalities Review.[61] The equalities scorecard recommends a core list of universal 'freedoms' – the things that make us capable of living fulfilling lives – basing these on human rights principles and wider public consultation, especially with groups that are at a high risk of disadvantage. This framework has to a large extent been taken forward in the form of the Equality Measurement Framework[62] developed by the EHRC, with Human Rights and Good Relations Measurement Frameworks due to follow.

Areas for future development

Although a capabilities approach to equality has received some attention, under the previous Government it was by no means universally accepted or used across all government departments. However, as the Measurement Frameworks are populated with data and put to use, there may be opportunities to think about how they might be replicated at a local level. How could local authorities initiate discussion about an 'equalities scorecard' for their local area, for example?

(iv)   Introduction of human rights-based approaches to equality

Human rights-based approaches (HRBAs) to equality are still relatively new in the UK, yet key human rights principles, such as proportionality and reasonableness, can make a significant contribution in negotiating and balancing competing equality claims. Of all of the advances in equality practice described above, HRBAs perhaps have the greatest potential – especially in a public service context, where service-user rights, staff responsibilities, behavioural norms and expectations and budgetary pressures must all be balanced.

One of the biggest advantages of human rights-based approaches and the application of human rights principles would seem to be their potential for helping to navigate and adjudicate competing equality claims where some rights (or the rights of some groups) may be judged as holding more weight than others. HRBAs have the merit of offering a clearer and more transparent rationale for making such decisions. And again, in a service delivery setting, when coupled with effective consultation and agreement regarding behavioural and quality standards, HRBAs offer a positive affirmation of what needs to be done to treat people equally well, rather than a 'negative' prohibition ('you will not discriminate against this person/group or treat them badly').

When taken alongside other developments, such as the shift to promoting equality through statutory public duties on public authorities rather than only providing

individual redress in cases of personal discrimination, and the 'Equality Framework for Local Government' (2009),[63] these are positive changes in direction and offer additional levers for improvement at the local level.

Areas for future development

Yet there is still uncertainty and at times scepticism about what HRBAs to equality can deliver. The EHRC's human rights inquiry identified a great deal of uncertainty amongst people about human rights and their role in UK society. The pervasive and systemic nature of inequality faced by particular groups in society can mean that they will still want to see specific targets for specific groups. There is a feeling that HRBAs cannot deliver equality in its entirety – and given the embryonic nature of HRBAs to addressing equality in the UK this is understandable.

Amongst public service staff, there is still confusion regarding the relationship between equality and human rights. In particular, some public service staff are unsure as to the exact relationship between what they are already doing to promote equality – equality monitoring, equality schemes, equality impact assessments, targeted interventions for specific excluded groups etc – and human rights. They may fear that a focus on human rights would 'take the wind out of the sails' of previous work done on equality.

The work that brap undertook for Macmillan[64] identified that a clearer way of describing human rights is required – one that emphasises their true potential for re-energising and improving approaches to equality. This is one of the greatest strengths of human rights principles. It also needs to be made clearly understandable that human rights approaches are not a 'replacement' for existing equality measures but a reinforcement, an aid to making equality work well *for everyone*.

*

A common theme throughout the social policy areas touched on above is the need for a more coherent and ambitious vision for equality. Our approach to dealing with inequality is largely reactive, responding to the needs and concerns of inequality that are visible to us and measurable, or which sustained lobbying and campaigning brings to government's attention. We do not have a blueprint for the kind of equal society we'd all like to enjoy, and it is perhaps this that is most urgently required.

7.0   Conclusions and recommendations

The conclusions and recommendations are split into five areas:

- Understanding competing equality claims.

- Rights-awareness and public education.

- Utilising transferable practice.

- Guidance to assist public authorities and others in their decision-making.

- Social policy.

Each of these areas will have some relevance to all those with whom EDF engages – policy-makers, employment advisory bodies, and NGOs/third sector organisations – and to the wider audience for this paper, such as individual employers. Each conclusion is followed by practical recommendations.

1   Understanding competing equality claims

There are different types of competing equality claims. Some involve 'competing rights' and protected groups but others do not. There is no single template for what 'competing equality claims' look like. Consequently, at present there is an almost complete lack of practical guidance regarding the identification and handling of such situations and many at the frontline of such conflicts (employers, service providers, even the police in public order situations) are concerned that in attempting to resolve one dispute they may inadvertently be breaching other equalities legislation.

Recommendations

a) Key equalities agencies, government and other stakeholders have a central role to play in ensuring that adequate *practical* guidance is available. EDF should work with advisory bodies, such as ACAS, CIPD, Stonewall, and the EHRC to develop guidance that specifically explains and discusses the concept of competing equality claims – and does this with a broader emphasis than just sexual orientation and religion or belief, which is the principle focus of much of the currently available literature.

b) Especially in the case of workplace guidance, it is important that this is regularly updated to include new case law and other materials on identifying and responding to competing equality claims.

2   Rights-awareness and public education

In establishing a rights-based environment for equalities, there may be an assumption that permission has been given not just for rights to be invoked but also for individuals and groups to act in manifesting those rights. This leads some to

assume that their rights extend to having their beliefs, values or cultural practices accepted by others. Where competing equality claims arise as a consequence they can result in intractable conflicts.

Recommendations

a) A major 'rights-awareness' campaign is needed that helps us all understand not just the invoking and protection of rights, but also our interconnectedness and the kind of freedoms and values we all wish to enjoy.

b) Key equality bodies, government and employer/business advisory groups have a major role to play in helping citizens at all levels better understand what is involved in the exercising of rights.

c) The Ministry of Justice's 'Response to the EHRC Human Rights Inquiry' [65] is a useful starting point from which to assess progress on this issue in the future. The response outlines a number of educative programmes already in motion (e.g. the Ministry of Justice/Business in the Community Private Sector and Human Rights Project) and a number of planned initiatives which will be led by the EHRC. The implementation and impact of these initiatives should be reviewed. There are also clear opportunities for rights-awareness work in the third sector as well as a need to review the effectiveness of any initiatives already undertaken (e.g. under EHRC's Strategic Funding Programme). Clearly this will need to be reviewed in light of the new Government's plans on human rights and equality when these become available.

d) Educational and awareness campaigns could help de-fuse identity-based conflicts – for example, by working with voluntary and community organisations and local authorities to examine the benefits of and limits to 'community representation'. Such work may be especially relevant given the new Coalition Government's emphasis on 'the big society' and its plans to recruit a 'neighbourhood army' of community organisers.

e) The Coalition Government's plans to radically devolve power and provide greater financial autonomy to local government and community groups runs the risk of assuming that involving the public will result in 'fairer' decisions being made about equality at a local level. This ignores the influential – and potentially damaging – role that might be played by the media, pressure groups and political movements. The need for a far greater public understanding of equality issues will be even more important as citizens' decision-making role is enhanced. There is a need to develop a set of practical suggestions and guidelines for public officials and community groups that can be used to raise awareness of how to balance competing equality claims. This might include for example, use of case studies and scenarios to build the confidence and knowledge of local decision-making bodies in responding to situations of this type.

3 Utilising transferable practice

While there is an undeniable paucity of practical guidance regarding competing equality claims, it is also the case that transferable practice and basic good management practice *does* exist which is not being adequately deployed.

Recommendations

a) Where useful transferable practice exists, key equality bodies, unions, government and employer/business advisory groups can play a useful role in ensuring that this is adequately signposted as part of website resources. Some of the relevant and most useful literature is signposted throughout this report and a list of relevant organisations is provided at the end.

b) Some aspects of mediation and conflict resolution can be of direct use in competing equality claims. However, direct examples of mediation/conciliation in the context of competing equality claims are not well documented and this is an area that could be significantly improved.

c) Guidance on conflict resolution in the workplace is a rich source of transferable practice but needs updating in order to cover the more complex equality landscape which now exists.

d) Amongst employers in all sectors greater awareness of human rights concepts, such as proportionality is required. Making decisions about when to use Occupational Requirement provisions is a good example of this. More practical guidance is required regarding the implementation of these provisions.

e) There may also be lessons from a wide range of business and organisational stakeholder models that could be used to reinforce a culture of shared endeavour and reciprocity.

4 Guidance to assist public authorities and others in their decision-making

Public authorities and others are frequently required to judge what the fairest outcome would be in resolving competing equality claims and yet the guidance available to them has not kept pace with the increasing complexity of the situations they face. Also public officials do not always possess the requisite skills needed to finesse and explain decisions of this type to local communities and those involved in conflicts.

Recommendations

a) Principles of proportionality and reasonableness can be used in such cases, but guidance regarding the use of these principles in public policy and public investment decisions is thin on the ground. An analytical framework of some type which encourages decision-makers to consider proportionality and reasonableness in equality-based decisions would be extremely helpful for

public officials on the ground. Public officials are already used to using other decision-making frameworks (e.g. best value in purchasing decisions). There is potential to incorporate a consideration of these issues within equality impact assessments for example, which many public authorities are already familiar with. The socio-economic duty included in the Equality Act 2010, although not yet implemented at the time of writing, also offers public authorities an opportunity to test exercising judgments of this type.

b) The skills of public officials to make decisions like this will also need to be enhanced. We would recommend the development of training programmes which compliment the analytical framework described above. This might include, for example, exercises to identify which human rights are at stake in challenging social situations that require public sector intervention. Or training to understand the practical application of principles like proportionality and reasonableness.

c) A better understanding of the relationship between 'rights' and 'responsibilities' is required, as is an acknowledgment of the relational nature of rights. There are clear opportunities for the Government Equalities Office, EHRC and equality-focused third sector organisations to encourage debate on these issues. At a local level this might include support for public officials to explain the consequences of particular decisions made about equality to local communities.

5   Social policy

There are a number of opportunities and levers in current social policy that could help in creating an environment in which conflicts based on competing equality claims are better prevented, managed and resolved.

Recommendations

a) Community cohesion initiatives could be used in a more proactive way – to negotiate and define a clearer set of values by which we wish to live. Developing cohesion policy and initiatives of this type will be a long-term endeavor and will require a greater consideration of the relationship between community cohesion and human rights. This is something to be encouraged as the EHRC's Good Relations Measurement Framework is rolled out.

b) As organisations prepare to respond to the provisions of the Equality Act 2010, there will be opportunities for government and a range of advisory organisations to offer guidance and display leadership. There are two particular areas where this would help:

- Where legal restrictions and exemptions still exist that could result in conflict between equality groups (for example over Occupational Requirements) there is a need for much clearer guidance and support in implementing these.

- There is a need for a shared vision across government departments and amongst wider stakeholders regarding the aims and priorities of the equality agenda.

c) The EHRC's Equality, Human Rights and Good Relations Measurement Frameworks might give specific consideration of the potential for competing equality claims.

d) The role of regulators and self-regulation by public authorities in assessing human rights implementation is also still relatively embryonic. Yet these issues have been explored, particularly in a health and social care context.[66] The EHRC and others such as the Care Quality Commission (CQC) have an opportunity to consider how measurements of human rights progress might lend themselves to assessing how well organisations are balancing the needs and demands of range of equality groups.

e) Amongst public service staff there is a need for more training to explain the relationship between equality and human rights. The EHRC can play a leading role in promoting training of this type and in emphasising the inter-relation between equality and human rights.

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- UNISON

- European Commission

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Resources

Below is a list of some of the organisations providing guidance and information on the subjects covered in this paper.

ACAS
www.acas.org.uk

brap
www.brap.org.uk

British Humanist Association
www.humanism.org.uk

British Institute of Human Rights
www.bihr.org.uk

Business in the Community
www.bitc.org.uk

CIPD
www.cipd.co.uk

Citizens Advice
www.citizensadvice.org.uk

Department for Communities and Local Government
www.communities.gov.uk

Employers Forum on Age
www.efa.org.uk

Employers Forum on Belief
www.efbelief.org.uk

Employers Forum on Disability
www.efd.org.uk

Equality and Diversity Forum
www.edf.org.uk

Equality and Human Rights Commission
www.equalityhumanrights.com

Equality South West
www.equalitysouthwest.org.uk

**European Commission 'For Diversity. Against Discrimination'
information campaign**
http://ec.europa.eu/employment_social/fdad/cms/stopdiscrimination?langid=en

Government Equalities Office
www.equalities.gov.uk

Improvement and Development Agency for local government
www.idea.gov.uk

Institute of Community Cohesion
www.cohesioninstitute.org.uk

Interfaith Network UK
www.interfaith.org.uk

Law Centres Federation
www.lawcentres.org.uk

MENTER
www.menter.org.uk

Opportunity Now
www.opportunitynow.org.uk

Scottish Human Rights Commission
www.scottishhumanrights.com

Scope
www.scope.org.uk

Stonewall
www.stonewall.org.uk

TUC
www.tuc.org.uk

UNISON
www.unison.org.uk

Women's Resource Centre
www.wrc.org.uk

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27 *Mediation explained*, ACAS (2005). http://www.acas.org.uk/CHttpHandler.ashx?id=907&p=0.

28 See also *Using mediation at Incommunities Housing Trust*, ACAS case study on establishing an in-house mediation team in a large housing association: http://www.acas.org.uk/CHttpHandler.ashx?id=1030&p=0.

29 The importance of education is discussed in Dinham, A., Shaw, M., *Faiths, Equalities & Sexual Orientation: an exploratory study*, East of England VCS Equality Group (2009).

30 See Dickens, S., et al., *Management handling of sexual orientation, religion and belief in the workplace:* a research report for ACAS/CIPD (FEB 2009), which has useful case studies covering a range of scenarios including awareness training to help address prejudicial behaviour (p.15).

31 *Managing conflict at work*, ACAS (2009). http://www.acas.org.uk/CHttpHandler.ashx?id=960&p=0.

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