

The Equalities Story, 2024 onwards

Revisiting, revising, renewing

Clarify the concept of due regard; re-emphasise specific duties; activate, revise and clarify the socio-economic duty.



In late 2020 there was a significant speech entitled 'The fight for fairness' by Liz Truss, the new Minister for Women and Equalities after the general election in 2019. In a version intended to be heard only by insiders behind closed doors, the minister recalled her secondary schooldays in Leeds, some thirty years earlier.

'While we were taught about racism and sexism,' she said, 'there was too little time spent making sure everyone could read and write'. She then proceeded to tell her audience that 'these ideas have their roots in post-modernist philosophy, pioneered by Foucault, that puts societal power structures and labels ahead of individuals and their endeavours.' She added that 'in this school of thought there is no space for evidence, as there is no objective view – truth and morality are all relative'. These introductory words were not, however, included in the official text of her speech published on her governmental website.

In both versions of the speech, the minister was critical of what she called 'the equality debate':

Too often, the equality debate has been dominated by a small number of unrepresentative voices, and by those who believe people are defined by their protected characteristic, and not by their individual character. This school of thought says that if you are not from an 'oppressed group' then you are not entitled to an opinion, and that this debate is not for you. I wholeheartedly reject this approach.

Caricatures and abusive misrepresentations such as this belong, if they belong anywhere, to the passion and poetry of political campaigning and point-scoring, not to the patience and prose of deliberative democracy, for they are clearly more geared to gaining and maintaining electoral support than to conceptual exploration. That said, the minister did make a handful of points and proposals

that were worth taking seriously, even if serious debate was not apparently her principal concern.

For example, there was her preference for the concept of fairness rather than equality: debate is required about whether these two words pick out real and essential distinctions, but are complementary, not in conflict with each other. There was her dissatisfaction with the term 'protected characteristics', for it is reasonable to speculate that the alternative legal term used in certain other jurisdictions, including the United States and South Africa, would have been preferable: 'prohibited grounds for discrimination'. If the latter or similar terminology had been adopted in the UK, much confusion and misunderstanding might well have been avoided, and the story about equalities from 2010 onwards might well have been less toxic and frustrating.

By the same token, there needs to be greater clarity about the distinctions implied by the terms 'outcome' and 'opportunity', and between 'product' and 'process', 'equality' and 'equity', and 'objective' and 'aim'. Other topics requiring legal clarification in the current context include the legal concepts of 'religion', 'belief' and (in certain other jurisdictions) 'ethno-religious'. For conceptual clarification of such matters, it is not party-political point scoring that is required, nor even submissions by legal advocates and the conclusions and opinions of judges and courts, but round-table deliberation and exchange.

Further, the minister's emphasis on geographical inequality, rooted in and reinforced by disparities of social class and socio-economic circumstances, is a major factor requiring serious consideration and deliberation.

Section 1 of the Equality Act 2010 did contain a brief reference to socio-economic issues. It was not explained or clarified, however, and there had been next to no scrutiny of it in parliament, and it was not immediately activated or commenced. It has still not been activated nationally in England, but nevertheless has been activated in the devolved administrations of Scotland and Wales, and has been incorporated into the policies of certain English cities and regions.

The Fairer Scotland Duty, Part 1 of the Equality Act 2010, came into force in Scotland from April 2018. It places a legal responsibility on certain public bodies in Scotland to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions. The Scottish Government sees the new duty as 'an opportunity to do things differently and to put tackling inequality genuinely at the heart of key decision-making'. People in Scotland still experience, it notes, significant socio-economic disadvantage resulting in inequalities of outcome. Over a million Scots are living in poverty, for example, including one in four children, leading to health inequalities and to uneven educational attainment.

In Wales since April 2021 public authorities are similarly required to 'have due regard for the need to develop scrutiny frameworks and conduct impact assessments on socio-economic issues'. Also, as mentioned above, there are similar requirements in various English cities or regions. For example, following a review of the local effects of COVID-19, Bristol City Council made the following declaration:

As well as looking at our statutory duties, as set out under the Public Sector Equality Duty, our strategy will also consider wider aspirations, such as reducing inequalities of outcome which result from socio-economic disadvantage. As part of our annual reporting of equalities and inclusion we will identify socio-economic trends and where we can focus our future efforts to reduce socio-economic inequalities.

As emphasised by the Bristol documentation, pressure to reduce socio-economic inequalities has been substantially strengthened by the consequences of the Covid-19 pandemic, for there has been heightened awareness that in countries throughout the world, and at all times in history, the incidence of health and illness follows a social gradient: the lower a person's socio-economic situation, the worse their health and the lower their expectation of a healthy old age.

In addition, decades of research show that adverse childhood experiences (ACEs) – for example abuse, neglect, trauma, domestic conflict and violence, low income, racism and hostile environments – can have detrimental impacts on a person's long-term physical and mental health, leading in due course to accelerated ageing, chronic disease, disability and premature death. Although separate for the sake of making a list, social determinants of health frequently interact with each other and are mutually reinforcing – often, it is said, they may be 'causes of causes'.

It would be relevant and valuable, particularly in the light of the disparities and inequities highlighted by the COVID-19 pandemic, to reopen debate and deliberation about the role of socio-economic circumstances in relation to unfair discrimination and unequal opportunities that may occur. They are appropriately measured with reference to the index of multiple deprivation (IMD), not to a single factor such as low household income or (in the education system) eligibility for free school meals.

Similar to the concept of IMD is LBN (left-behind neighbourhood). The concept of LBNs also has the practical advantage of being acceptable across a wide political spectrum, as attested by the existence of a vigorous all-party parliamentary group (APPG) at Westminster. A woman born in an LBN can expect to have 57.3 healthy years of life on average, compared with 64.8 healthy years nationally; a man born in an LBN can expect to have 55.9 healthy years of life on average, compared with 63.5 years nationally. It has been estimated that if the health outcomes in local authorities that contain LBNs were brought up to the same level as in the rest of the country, an extra £29.8bn could be put into the country's economy.

Concluding notes

The Equality Act 2010 in Great Britain marked the culmination of 45 years of deliberation, campaigning and legislating, and had the clear potential to protect members of certain groups, backgrounds and communities from unfair discrimination in employment and the provision of services.

In the years following 2010, however, the COVID-19 pandemic had a disproportionately negative impact on people with protected characteristics, as defined by the Act. It follows that the Act needs to be revisited, revised and re-emphasised.

Amongst other measures, but crucially, this will involve a) activating the Act's socio-economic duty, b) attending to needs and priorities in left-behind neighbourhoods (LBNs), and c) addressing forms of inequality which are systemic and structural.

Further, it is essential that equality organisations and lobbies should work more cooperatively with each other than hitherto, and that mutual support and learning amongst them should be encouraged and resourced by public bodies. The essential task is not only to 'build back better', as is often said, but also to build back fairer. If the new normal is not significantly fairer in its outcomes than the old, it will not be better. Arundhati Roy declares:

Historically, pandemics have forced humans to break with the past and imagine their world anew. This one is no different. It is a portal, a gateway between one world and the next. We can choose to walk through it, dragging the carcasses of our prejudice and hatred, our avarice, our data banks and dead ideas. Or we can walk through lightly, with little luggage, ready to imagine another world. And ready to fight for it. ('The pandemic is a portal', *Financial Times*, 3 April 2020).

SOURCES

This is one of three brief summaries of equalities legislation in Britain between 1965 and 2024 which are published in March 2023 at www.insted.co.uk. All three draw on material in two lengthy academic articles, as follows:

Richardson, R. (2022) '[Education and equalities in Britain, 2010–2022: due regard and disregard in a time of pandemic](#)'. *London Review of Education*, 20 (1), 21.

Richardson, R. (2023) 'Racial Justice and Equalities Law: progress, pandemic, and potential' in [COVID-19 and Racism: counter-stories of colliding pandemics](#), edited by Vini Lander, Kavyta Kay and Tiffany R. Holloman, Bristol University Press, May 2023.

Both of these contain extensive bibliographies and academic references.