ALLIANCE FOR RACIAL JUSTICE

A better way to tackle institutional racism

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Produced by:

ACTION FOR RACE EQUALITY

Contents

Introduction

The Alliance for Racial Justice is a collaborative network of organisations working across systems to eliminate racial inequality in England. We seek to provide a strong, strategic voice and hold the government and public bodies to account on their legal duty to tackle racism and encourage these bodies to become anti-racist.

The Alliance for Racial Justice recognises that race equality will not be achieved unless institutional racism* is eradicated. Solving institutional racism is certainly not the only barrier in achieving race equality: systemic inequalities and acts of discrimination against individuals continue to persist and must end. However, the Alliance focusses on institutional racism in this paper because despite legislative attempts to end disparities, progress in delivering race equality has been uneven, overly slow, and sometimes transitory. The need for action is as urgent as ever.

In April 2024, the Alliance for Racial Justice held a two-part roundtable series with members of the Alliance and experts in the field to determine why progress has slowed, whether stronger legislation is needed to tackle institutional racism, and how we as voluntary and community organisations can provide an effective voice, evidence, and action to achieve our vision.

This paper draws on the knowledge exchanged at these roundtable events to form recommendations on strengthening the ability to challenge and end institutional racism. The Alliance for Racial Justice calls on the new Government to urgently consider and implement the recommendations set out in this paper.

Background

In 2010 the Equality Act came into force, pulling together over 116 separate pieces of legislation into one law intended to create a more equal Britain. Although the Equality Act was a landmark piece of legislation, issues with discrimination and inequality continue to persist in Britain today. This is in part due to a critical gap between the vision of the Equality Act and the ability for powers within the act to be implemented in practice.

In 2012, former Prime Minister David Cameron decided to 'call time' on the use of Equality Impact Assessments (EIAs), with official guidance determining EIAs as having 'never been a legal requirement' and were too 'resource intensive'.

This began a trend towards a 'risk averse' approach by public bodies that has resulted in these bodies frequently doing the bare minimum to meet the Public Sector Equality Duty (PSED) rather than strive towards becoming institutions which are actively anti-racist. There is often little consequence for the public bodies failing to meet even the bare minimum requirements. This is mainly due to the lack of meaningful and specific duties under the PSED, making it difficult to bring challenges. The political interference and consistent cuts in funding of the Equality and Human Rights Commission (EHRC), the regulator responsible for monitoring adherence to the Equality Act 2010, has also contributed to weaken accountability.

The Alliance for Racial Justice wants to see the powers of the Equality Act 2010 strengthened to put an end to racial inequality. Far too frequently, we witness public bodies dismiss institutional racism, opting instead to pin the blame on a select few individuals. As Baroness Casey found in her review of the Metropolitan Police Service (MPS): "We have identified institutional homophobia, misogyny and racism, and other forms of discrimination in the Met. But the Met has only reluctantly accepted discrimination and has preferred to put this down to a minority of 'bad apples.'" We need a stronger way to hold public bodies like the MPS to account and put an end to institutional racism. This should include stronger, mandatory duties such as carrying out Equality Impact Assessments, which could provide more transparency on areas of inequality, and the introduction of alternative review processes that are less onerous than litigation but more effective.

Note

This report is informed by the roundtable events held by the Alliance for Racial Justice in April 2024. The purpose of the roundtable events and this subsequent report is not to question the need for the Equality Act 2010 or the EHRC, nor to suggest these tools should be removed. Rather, it is to explore whether the legislation needs to be strengthened to effectively address institutional and structural racism, or if other approaches are needed.

*The Alliance for Racial Justice uses the widely recognised Macpherson definition of institutional racism: "The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance,

thoughtlessness, and racist stereotyping which disadvantage minority ethnic people."

**Ethnic minorities includes Black African and Caribbean, Asian, Jewish, Romani (Gypsy), Roma, Traveller, and mixed heritage communities.

The Equality Act 2010

The Equality Act 2010 has been instrumental in achieving better equality across the United Kingdom. However, fourteen years on from the Equality Act coming into force there is a concern about why significant race inequalities continue to persist in our key public services and workforces. This is in part due to the long-standing systemic bias entrenched in historic, colonial-era racism that manifests in contemporary policies and practices across various sectors which perpetuates inequality and hinders progress towards true equality. Wider systems change is required to address this embedded change, but progress has been too slow. There are several issues which could be resolved or strengthened with amendments to the Equality Act 2010 or the introduction of new legislation that would help to end institutional racism.

The current language in the Equality Act 2010 is too weak and fails to recognise institutional racism.

The PSED rests on public bodies having 'due regard' to key responsibilities such as eliminating discrimination and advancing equality. This terminology is weak because it does not require public bodies to take action beyond consideration. Updated language which recognises institutional racism and places a firmer duty on the state and public bodies to create equal outcomes could help to speed up the process of ending inequity.

The Equality Act 2010 is not particularly well-equipped to handle intersectionality and could be updated to reflect more advanced understandings of intersectional identities and allow for litigation which sits across multiple protected characteristics rather than individual ones. This could be achieved by updating Section 14 to refer to multiple characteristics and commencing this section.

There is an apparent lack of accountability within the Equality Act 2010, demonstrated by multiple instances of successful litigation that have seen only short-term success. The recent overhaul of the Metropolitan Police Service's (MPS) Gangs Violence Matrix (GVM) is a clear example of this – MPS agreed to a 'wholesale change' to its GVM after admitting that the operation of the database was unlawful.

However, the Violence Harm Assessment which has replaced the GVM has gone unscrutinised and there is a concern that the racial discrimination embedded in the GVM will continue in the new tool. Concerns about what happens after successful litigation could be calmed by EHRC monitoring on adherence to the litigation outcome, as well as requiring the public body to produce an EHRC approved mandatory action plan, and a review of any changes introduced one year after the action plan.

Recommendations

Update the Equality Act 2010 to:

01

Have clear and direct language that raises no ambiguity for public authorities to hide behind. This must explicitly define institutional racism and provide stronger mechanisms to hold authorities to account under the legislation. We would recommend opening a public consultation to gain views on improved accountability mechanisms, but this could include mandatory reporting on compliance with strengthened duties and creating performance-based funding that rewards bodies excelling in this area.

02

Make Equality Impact Assessments for new policies, programmes, and projects a compulsory responsibility. This can increase transparency and accountability, aid quicker cultural change, and will send a clear message to public bodies about their responsibilities when it comes to ending institutional racism.

03

Have better accountability mechanisms that enforce harsher outcomes for public bodies not meeting statutory responsibilities and require public bodies to make tangible changes when they have been found to breach their duties.

04

Allow for better protection of intersectional identities. This could be achieved by updating Section 14 of the Equality Act 2010 to refer to multiple characteristics and commencing this section.

Strengthening Enforcement

There has been a systematic undermining of enforcement of equality legislation. The EHRC budget has not only not risen in line with inflation but has seen sharp cuts in funding and staffing. The limited resources that the EHRC is working on means that enforcement is not strong enough, and as a result small organisations are stepping in to carry out strategic litigation. However, these organisations also face a bleak funding landscape and their ability to provide a voice to their communities is limited. This means that only a fraction of cases are being brought, which is slowing progress to ending racial inequity.

For the organisations who do work to bring strategic litigation cases, there is a concern about the emotional harm which this process can do to an individual. Victims of racism are already coping with trauma, and legal cases can and do exacerbate this. There is also an acute awareness from organisations about the fact that they can only bring strategic cases because of limited resource, so they must find the 'perfect' individual or case which can seem tokenistic and harmful to other individuals affected by the same institutional policies.

For the individual that fronts the case, there can be a significant amount of pressure and disappointment over the case, and they may opt to settle out of court. Moreover, these organisations are at financial risk if these cases are not successful, which further limits the number of potential cases being brought.

There are very few lawyers who are specialising in equalities and discrimination law. This causes a lack of information about legal advice for individuals who may wish to bring legal action who are unable to find support from an organisation working on strategic litigation, and even lower chances of an individual being able to find a lawyer who could bring forward their claim effectively. Individuals may also be prevented from bringing cases forward if they are unable to access legal aid, or free legal support.

Case Study

Friends, Families & Travellers have supported six legal challenges in just three years to challenge the racism and discrimination against Gypsy and Traveller people. Several of these cases focussed on challenging 'wide injunctions,' which are often used against Gypsies and Travellers living on roadside camps.

At the end of 2023, following the series of legal challenges in the High Court and Court of Appeal, Friends, Families, and Travellers were granted permission to bring their case to the Supreme Court. The Supreme Court ruled that these injunctions could be used but offered sensible guidance for local authorities pursuing these injunctions, reducing their likelihood of use. Importantly, Friends, Families and Travellers were granted a Protective Costs Order (PCO), which allowed the organisation to pursue a public interest case without the risk of unaffordable costs. This was considered a novel feature of the case and highlights how hard it is for organisations to fund cases without PCOs or Cost Capping Orders (CCO), which are more routinely used.

Recommendations

05

There is a provision which allows EHRC to bring legal proceedings (judicial review or other claims) without any actual or potential victim(s) having to be a party in the case. The Equality Act 2010 should be amended to extend this provision to civil society organisations. This would allow such organisations to bring different types of cases on behalf of individuals and communities, shifting the burden away from individuals.

06

The Equality and Human Rights Commission should undergo a comprehensive budget review with a view to increasing its funding to allow for effective regulation.

07

Funding should be made available for organisations working on strategic litigation to bring forward cases which seek to challenge institutional racism.

08

Legal aid is chronically underfunded, greatly reducing the opportunity for cases to be brought. The new government should review legal aid funding with the sight to increasing it.

The Public Sector Equality Duty

The Public Sector Equality Duty (PSED) requires public authorities to have 'due regard' to the equality objectives – a set of three aims which centre around eliminating discrimination, advancing equality, and fostering good relationships.

The PSED requires public bodies to have just one objective every four years that could relate to any of the nine protected characteristics. The PSED does not require public bodies to eliminate unlawful discrimination, harassment, or victimisation. This language and guidance is ineffective at putting a clear responsibility on public authorities. The PSED is also ineffective in the way that it is formulated because it does not allow the opportunity to prove public bodies have breached their duty.

Recommendations

Strengthen the Public Sector Equality Duty by:

09

Update the language so as public bodies must go beyond having 'due regard' and require these authorities to take all practical steps to eliminate discrimination; advance equality; and foster good relationships.

10

Introducing a requirement to consider relevant evidence that could indicate a breach of duty.

11

Placing a requirement on Ministers to set more specific race equality objectives in relation to their portfolios. Using strong evidence-bases, Ministers could set clear objectives which feed into public sector bodies, who would in turn have to set their own objectives to help meet the overall target. Where objectives are not met, these public bodies should be required to explain why they were not met and face a negative outcome if this occurs.

Race Equality Legislation

The Alliance for Racial Justice recognises that the Labour government has proposed new Race Equality legislation. We would welcome new Race Equality legislation, but legislation must be fit for purpose, have clear objectives, be underpinned by evidence, and be given proper enforcement capabilities.

As well as new legislation that provides better enforcement on tackling institutional racism, it would be beneficial if Government opted to treat institutional racism as a public health issue.

In practice, this would require an overarching governmental strategy on tackling racial inequality that feeds into all governmental departments who should have their own action plans to help achieve this strategy. These effective strategies and interventions are likely to lead to a reduction in costs to communities' and the state and have already been shown to lead to improvements in business profitability. The delivery of a strategy and department wide action plans would be supported by a strong Race Equality legislation and a strong regulatory body.

Case Study

Race and racism have become the "elephant in the room" when it comes to institutions facing major public inquiries. Lawyers Alison Munroe KC and Thalia Maragh of Garden Court chambers worked on both the Grenfell and Covid inquiries and found it incredibly hard to get the inquiries to consider the role of race. While the Covid Inquiry began to use the language of discrimination, it did not go further in examining the impact that racism had beyond one module of the inquiry. The situation was similar with the Grenfell Inquiry, where council failings were not investigated in relation to the protected characteristic of discrimination and the role of racism was not duly investigated.

The key challenge to overcome, the lawyers said, is breaking down the veil of refusal or denial of society and decision makers to challenge racism. Having race equality legislation that creates specific frameworks for challenging institutional racism will help to challenge the refusal to engage with these issues in the future.

Recommendations

The new Government should:

12

Consult on and produce a Race Equality Act that seeks to dismantle institutional racism. Communities most affected by this issue must be properly consulted on any new legislation and feedback on more than one occasion. A new race equality regulatory body with strong powers that is independent of government should be introduced to ensure the effectiveness of this legislation. This body should operate on a national and local level.

13

Take a public health approach to ending institutional and systemic racism. This will require an overarching governmental strategy that feeds into all governmental departments.

Departments should be required to have their own plans with targets which align with the central strategy. There must be a clear timeline for outcomes, and departments should be required to provide a public update on a yearly basis on the progress of the plans and delivery of these outcomes.

14

Funding should be ringfenced in national government and in local authorities to support the delivery of race action plans which have clear outcomes.

Culture V Strategy

While legislation can provide a framework for challenging specific breaches and should be seen as part of a broader effort to shift culture in the long-term, it does not currently provide a framework for the necessary cultural change required to dismantle institutional racism. The ongoing issues in the MPS demonstrate this – despite historic opportunities to change following the Stephen Lawrence Inquiry in 1999, and more recently the Casey Review in 2023, there has been only minor shifts in the culture of policing. Institutional racism is inherent to the way some institutions were founded and legislation alone may not be able to fix this. New legislation must be coupled with and part of broader efforts to instil longer-term cultural shifts.

A long-term culture shift alongside the more immediate work of enforcement is required across the board, but there is clear resistance to change, which is why we need strong and effective leadership that can create positive change in individual organisations and across sectors.

Case Study

The Care Quality Commission (CQC), the independent regulator of health and adult social care in England, provides a good example of how an organisation can commit to long term change with the Workforce Race Equality Standard (WRES). The WRES is a set of nine indicators through which the experiences of colleagues from ethnic minorities** can be compared to white colleagues.

The CQC began reporting its progress on the WRES in 2015 and has committed to reporting its progress on these indicators every year. In addition, an action plan is published every year according to performance against the WRES, an update on the previous year's action plan is also published.

This type of long-term commitment with transparent and renewed approached is a good example of how culture can be changed over time. Moreover, QCQ's position as a regulator means that they are providing leadership in this area by taking account of the WRES data in their inspections of services, keeping race equality on the agenda for the organisations which it monitors.

Recommendations

15

A new government should prioritise culture change as part of an overarching strategy on achieving racial equality. This should include promoting leadership on anti-racism in the public and private sectors.

Summary Recommendations

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BE: Black Equity Organisation
CAHN Caribbean & African Health Network
RUNNYMEDE
HDN YOUR NETWORK TO DIVERSITY