

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 19 March 2002
(Morning)

Session 1

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EQUAL OPPORTUNITIES COMMITTEE

6th Meeting 2002, Session 1

CONVENER

Kate Maclean (Dundee West) (Lab)

DEPUTY CONVENER

*Kay Ullrich (West of Scotland) (SNP)

COMMITTEE MEMBERS

*Mrs Lyndsay McIntosh (Central Scotland) (Con)

*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)

*Mr Gil Paterson (Central Scotland) (SNP)

*Cathy Peattie (Falkirk East) (Lab)

Tommy Sheridan (Glasgow) (SSP)

Elaine Smith (Coatbridge and Chryston) (Lab)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

WITNESS

Vijay Patel (Black and Ethnic Minority Infrastructure in Scotland)

CLERK TO THE COMMITTEE

Jim Johnston

SENIOR ASSISTANT CLERK

Richard Walsh

ASSISTANT CLERK

Roy McMahon

LOCATION

Committee Room 1

Scottish Parliament

Equal Opportunities Committee

Tuesday 19 March 2002

(Morning)

[THE DEPUTY CONVENER *opened the meeting at 10:16*]

The Deputy Convener (Kay Ullrich): Good morning. I welcome everyone to the sixth meeting in 2002 of the Equal Opportunities Committee. We have received apologies from Kate Maclean, Tommy Sheridan, Jamie Stone and Elaine Smith. On behalf of the committee, I welcome Fran Loots, who is the adviser in our gender equality and best value inquiry.

Item in Private

The Deputy Convener: Item 1 is to seek members' agreement to take in private item 4, on mainstreaming equality. It is suggested that we do so as item 4 involves a draft paper on an approach to discussions with the Scottish Executive that the committee has not yet signed off. Are members agreed?

Members *indicated agreement.*

Subordinate Legislation

Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002 (SSI 2002/62)

The Deputy Convener: Before we proceed to our evidence-taking session, members might find it useful if I put our work on the order in context. The order derives from the Race Relations (Amendment) Act 2000, which places a statutory general duty on listed public bodies to promote race equality in carrying out their functions. We must remember that the duty does not apply to bodies that are not listed in schedule 1A to the 2000 act.

Although the Race Relations (Amendment) Act 2000 is UK legislation, an order-making power enables Scottish ministers to impose specific duties on Scottish public authorities through an order such as the one under discussion, if a particular body is listed in schedule 1A to the act. Therefore, although we are able to comment on the UK act—as we are on any other reserved matter—we must remain focused on the options that face us concerning the order. The committee can recommend either that the order go forward, or that it be annulled, but we cannot amend it. We can discuss the order in greater detail with Scottish Executive officials and the Commission for Racial Equality on 26 March.

We have received apologies from Robina Qureshi and Najimee Parveen of Positive Action in Housing, who are unable to attend because of today's rail strike. However, we have Vijay Patel from the Black and Ethnic Minority Infrastructure in Scotland, which is commonly known as BEMIS. I understand that Rami Ousta is also meant to be winging his way up here. Is he going to make it to the meeting?

Vijay Patel (Black and Ethnic Minority Infrastructure in Scotland): He could still be at Heathrow.

The Deputy Convener: I also welcome Cathy Peattie to the meeting. I take it that the rail strike has had a similar effect on her.

I welcome Vijay Patel, who has managed to make it to the meeting in spite of rail strikes and one thing and another. Would you like to make a brief introduction before we move to questions from members?

Vijay Patel: Certainly. First, I thank the committee for giving BEMIS this opportunity. I am on BEMIS's board of directors. BEMIS is quite young—we have been going for about four years—and this is the first year in which we will have paid staff.

Our remit is to develop the black and minority ethnic voluntary sector in Scotland. Although the sector provides many services to minority ethnic communities in Scotland, it has been underfunded and under-resourced and has lacked a political voice. We also seek to ensure that the sector's voice and our communities' concerns are brought to the attention of the Scottish Parliament, local authorities and any other relevant public body.

I have a couple of points about the Race Relations (Amendment) Act 2000. First, if it is to work, it must be publicised. If community members do not know about the act and the duties that it imposes on public services, they will not know about their rights.

Secondly, there is the question of consultation. I welcome the race relations event that the Equal Opportunities Committee held in the chamber last year, which allowed people to be heard who do not usually have a voice. Such a step was really important, and some people to whom I spoke afterwards told me that they had valued the experience. Ideally, such events should happen again, because the issue affects all people living in Scotland. Consultation should be carried out not just with people like me, who have plenty of time and get easy access, and with people who live in Glasgow and Edinburgh, but with people who live in Dundee, Inverness and so on. We need to move beyond the central belt.

I also want to mention monitoring and feedback, which are vital to ensure that the Race Relations (Amendment) Act 2000 works. For example, although acts such as the National Health Service and Community Care Act 1990 and the Children (Scotland) Act 1995 make very clear statements about race equality, those statements have never been implemented to any great effect, which means that there have been no improvements in services in that respect. We need to examine how public services monitor these matters and how that information is being fed back to community groups.

My final point concerns the ways in which the Race Relations (Amendment) Act 2000 ties up with other Scottish legislation. There is a big gap in that respect. Last year, the Parliament passed the Regulation of Care (Scotland) Act 2001, which is a major piece of legislation that introduces new duties for social care services. How will the Race Relations (Amendment) Act 2000 work with that act—and with other disability legislation—to ensure that everyone, irrespective of his or her ethnicity or disability, will have equal access to services?

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): You have raised a number of points that the committee would acknowledge and indeed endorse. I want to ask some specific

questions about the order's potential impact on voluntary groups. The committee and the Parliament are very keen for the voluntary sector to develop. However, a Social Justice Committee report on the voluntary sector indicated that there were no guarantees that money allocated to local authorities to support certain voluntary initiatives reached the voluntary groups that would set them up. Will the order improve the funding situation for the voluntary sector, especially organisations that work with black and minority ethnic groups?

Vijay Patel: The order will play an important part in that respect. I do not know whether committee members have read the race equality advisory forum report that was produced last year. I sat on the committee that produced the report and was involved with the voluntary sector. If the action plans that the report recommends were implemented, that would meet the order's requirements. However, that would require the Executive and all local authorities to examine the issues. For example, there are no guarantees about core funding for the sector. The majority of service level agreements in Scotland go to organisations that have been established for a number of years and have made in-roads into political lobbies. The black voluntary sector does not have such service level agreements, which really depend on who you know in the system. The order should require local authorities to examine their processes and any funder of public services to monitor what it does. The funding situation will improve if the order requires local authorities to make distinctions and ensure that the money is being spent in the best possible way for communities that need it.

Mr McMahon: Another matter that we continually raise is the availability of information that would allow groups to deliver services effectively. Will the order improve that situation?

Vijay Patel: The order could improve the situation, but what is important is how it is implemented centrally and locally. For example, many local authorities in Scotland cannot afford to translate leaflets; REAF recommended the introduction of a centralised translating and interpreting service to ensure that, no matter where someone lives, they can access translated materials or an interpreter for face-to-face or phone conversations. The Executive needs to work with the Convention of Scottish Local Authorities and other public sector bodies to make the process more joined up.

If the Race Relations (Amendment) Act 2000 encourages a more joined-up process, it will be of use. The act is like any legislation—it depends on how people use it. For example, are we going to use a stick? There have been so few prosecutions under the Race Relations Act 1976 that people do

not see that it has any value. I cannot remember the exact phrase, but the order requires the Commission for Racial Equality to investigate and require people to meet the terms of the act. Is that going to happen or are we going to fudge the issue?

Cathy Peattie (Falkirk East) (Lab): I am interested in how the black and ethnic minority community can pick up some of the issues in the order relating to local authority services. Do you agree that the current infrastructure makes it difficult for the community to find out about services from local authorities? How can we improve that?

Vijay Patel: We need motivation and commitment at the highest level—within local authorities and the Scottish Executive. In local authorities, from the chief executive downwards, people must ensure that the authority's services are being provided fairly and that all members of the community know about them. We must set a precedent at a higher level, but people at lower levels must also understand why they are promoting race equality and improving their practice. For example, Glasgow City Council is currently carrying out training for its leisure and recreation staff to explain why there is a need for anti-racist practices. As people do the training, they realise that they are not treating people the same and come to understand that they must do things differently if they want people to come through the doors. Training at all levels is important.

As well as the need for a political commitment, there is a need for all chief executives to say that race equality has to happen and that the current situation is not good enough. That ties up with monitoring. Traditionally, people have used the excuse that nobody from the black and ethnic minority community has come through the door.

We need to know what the situation is. I am using a lot of Scottish Executive reports here, which makes the Executive look good—it has not done too badly. Last year, the Executive published the "Audit of Research on Minority Ethnic Issues in Scotland from a 'Race' Perspective". When I first attended a meeting of REAF, we knew what was not happening, but we did not have the evidence to prove it. The audit of research provides a baseline. Some departments and projects have done very well and we should learn from those examples, but many authorities struggle because they do not know where to start or whom to talk to.

The Race Relations (Amendment) Act 2000 on its own does nothing but, if it is supported by documents such as the REAF report and the audit of research, it can provide a baseline from which to start. The action plans are clear and tie up with the act. If authorities operate the action plans, they

will meet the requirements of the act.

Cathy Peattie: I accept that. That work has been very positive. I come from a background of working at grass-roots level in the voluntary sector and my experience has been that members of the local black and ethnic minority community—particularly the women—have felt that they were not represented and that no one was listening to them. I want to ensure that we do not have a situation in which the Executive or the local authorities write really good papers and we have an enabling act, but all that stays in the filing cabinet. We must ensure that black and ethnic minority women, such as those with whom I have worked, have a say. We must put in place a monitoring system to ask them whether the practices help to make people listen, and how they monitor what is in the filing cabinet. We must ask whether the act is simply a piece of work or something that is actually happening. All the paperwork is enabling, but I want to know how it will work in practice. What are your views on that?

Vijay Patel: I am not sure how it will work. BEMIS has a function, because our role is to enable our community groups to know what is happening and how to start influencing things, locally or nationally. We are a young organisation.

Information systems are important. The Executive has improved, but much depends on departments or individuals to get race equality or disability equality practices moving. That is not good enough. Until recently, that was the situation in the Executive—some people in the Executive took the initiative by acknowledging that work needed to be done and making a commitment to do it. I do not know what the situation is currently. Organisations must accept that race equality is one of their key principles and values and that that demands work.

10:30

Cathy Peattie: I want to know how people at local level will benefit from that. How do we ensure that what the Executive is saying—and the Executive's comments have been very positive—is implemented at local level? When I was working in the voluntary sector, people accepted that everyone should have an equal opportunities policy. My experience was that the policy was kept in a filing cabinet somewhere—it meant nothing and they did not use it. I want to ensure that the provisions do not get stuck in a filing cabinet somewhere.

Vijay Patel: It is very hard to implement at local level, because, as yet, there is no infrastructure. There are mechanisms for consultation with certain groups of people, but not with ethnic minorities. Much depends on who knows whom. The chief executive of the local authority must ask

questions of their staff, and ensure that the right questions—in relation to community care planning, children's services, locality planning and so on—are asked by councillors, the inspectorate and everyone involved. People have not regulated training and so it has not happened.

One of the weaknesses of the Race Relations (Amendment) Act 2000 is that it does not tie up with other legislation. When I went through the list of public bodies that come under the order, I noticed that the Scottish Commission for the Regulation of Care and the Scottish Social Services Council, which were set up by the Regulation of Care (Scotland) Act 2001, are not included. That is a major concern. The Scottish Commission for the Regulation of Care will inspect care standards in services that we will all use at some point in our lives. Those care standards have race equality, yet the commission's chief executive is not required to ensure the implementation of the Race Relations (Amendment) Act 2000. It is a question of the chief executive wanting to meet the duties under the act, rather than being required to—I know Jacqui Roberts and I am sure that she will want to do that, but it is important that we do not rely on good will.

There are several bodies that should come under the scope of the Race Relations (Amendment) Act 2000 that are not included in the order. That is where we will fall down. We will not reach grass-roots communities if such quangos—for want of a better word—are not required to meet the duties under the act. My concern is that we will need to revisit the group of bodies.

Mr McMahon: I am concerned about the difference between providing the legislation and the framework and providing the training that is necessary to enable things to happen. Does Scotland have the knowledge and expertise to allow the relevant training to take place to establish the practice that is desired under the regulations?

Vijay Patel: Traditionally, the view has been that no one in Scotland knows enough about race relations, so it is better to import someone from England, but I know from my professional experience that there are several people who are familiar with the subject, are competent trainers and have excellent knowledge. It comes back to networks. Because many skilled black professionals are not in the networks, we do not use them—they are not known to the Executive or to Parliament so they do not come forward. It is a catch-22 situation—if an organisation does not know about the issues, it will not know whom to approach. That applies to both sides. Black professionals and black agencies must come forward and ask the appropriate organisations to

talk to them about the issues, but public services must also ask questions, such as why they do not know and whom they can talk to. We need movement on both sides.

The situation has improved since the Scottish Parliament came to life. I am very positive about that. I was not so positive when the Scottish Parliament began—I was very concerned about equality in Scotland. I am quite pleased by the progress that has been made since the Parliament was established.

Mr Gil Paterson (Central Scotland) (SNP): A body that employs more than 150 full-time staff will be subject to further duties, including monitoring the number of staff who receive training and who are involved in grievance procedures. Do you have an opinion on the decision to distinguish between bodies based on the number of full-time staff who are employed?

Vijay Patel: I do not know the employment statistics for Scotland. I suspect that setting the level at 150 employees will mean that most employers will fall below the threshold.

Scotland's voluntary sector provides a third to a half of all care services. The average small agency has two or three paid staff. I am concerned that if the order does not relate to them, we will miss a significant group of people who provide public services and who are in receipt of public money.

I understand why we have gone for a threshold of 150 full-time staff; it is because of the position in England. However, the situation in Scotland is different and that has not been acknowledged.

Mr Paterson: Do you acknowledge the need for a threshold? Do you think that it is too high or should there be no threshold at all?

Vijay Patel: The threshold is too high. It must be realistic and pragmatic. We cannot expect all services to start implementing the provisions, because the voluntary sector, in particular, faces a lot of pressure and has a lot to do. However, the threshold is unrealistic and unfair and should be reduced over time.

We have other weapons—that is probably a bad choice of word. On community care planning, we have inspectorates that are required to inspect. If Her Majesty's Inspectorate of Education were to inspect and ask questions about race equality, that would change pre-school education provision and would ensure that services are provided to young children. We know that ethnic minority families in Scotland have a greater predominance of younger children than is the norm. I have not put that clearly, but I hope that you know what I mean.

Mr Paterson: Yes.

Vijay Patel: There are other mechanisms. If we

rely on the Race Relations (Amendment) Act 2000, we will be in trouble. We have relied on one act and on one body for 25 years. Although there have been successes, the legislation can only do so much. We must consider mainstreaming, which the committee will discuss later. Other bodies have to take that on and I hope that the act is enabling in that respect. The Scottish Parliament, as the monitoring body, must ask questions. It has to ask how other bodies are using the act—if they are using it at all and if it is not on the shelf along with the equal opportunities policy.

Mr Paterson: Do you think that bodies that do not meet the 150 full-time employee threshold will introduce similarly rigorous measures within their professions?

Vijay Patel: Yes, I think that some bodies will introduce a threshold voluntarily, because they know that they are committed to the act.

A minority of organisations in Scotland are doing work on the issue and will already meet the requirements of the act. They would have met such requirements 10 years ago, because they acknowledged the need for them.

We have to consider the bodies that say, “It is not a problem, because nobody comes here. We don’t have anybody living in the area.” That is a fallacy, because no one living in Scotland can avoid ethnic minority people. That is particularly true when we consider the increasing number of refugees and asylum seekers in Scotland.

Mr Paterson: Are you convinced that the Commission for Racial Equality is suitable as the sole body to enforce the duty to promote racial equality? If not, what would you propose instead?

Vijay Patel: That is a tough question. I will try to be diplomatic. As I said earlier, the CRE has been the sole organisation that is required to raise the issue. That should not be the case, just as the Disability Rights Commission should not be required to fly the flag alone for disability rights. Everyone who lives in this country is required to consider the issue.

The CRE has a tough time and there is an issue about how it works with other bodies. My concern is that if we have only one enforcement agency, people will say, “We don’t have to do anything until they come along, because nobody else is asking questions.” I would like to have a human rights commission as an enforcement agency, because we must consider issues of gender, disability and ethnicity together. We cannot separate them, because we know that the views of black and ethnic minority women are not getting the same coverage as those of black and ethnic minority men. All too often, we talk about only ethnicity or race and we forget about gender and disability. The CRE is the only body that is required to raise

the issue at the moment, and it is doing its best, but we must consider how other bodies can be used to support it.

Was that diplomatic enough?

Mr Paterson: Yes, it was excellent. I might have another question later.

Cathy Peattie: Educational bodies have been asked to publish the results of their monitoring annually. Is that approach to monitoring adequate? If not, how can we monitor realistically and how do we ensure that monitoring reflects the views of people on the ground?

Vijay Patel: Under the legislation, monitoring is limited to employment, which is not good enough and does not tell us about equality of service provision. When we talk about monitoring we should ask people what they think of services, what their children think and whether they have been informed of what is happening. That can be done through surveys or one-to-one interviews. I would go for a polling model in which a random sample of people is asked every year about public services. Good agencies do that already; their annual reports state that they ask people what they think in annual surveys. That is the standard of monitoring that we should be talking about. My concern is that we are talking only about employment. Employment is important, but it will not tell us enough by itself.

Cathy Peattie: I agree that there should be wider monitoring in education. Her Majesty’s Inspectorate of Education inspects local authority education departments as well as schools. Should it have a role in ensuring that realistic monitoring takes place?

Vijay Patel: I have been involved in care standards and inspection methodology. We have made the point that when an inspector visits a care home, they do not ask only about fire safety and health and safety. For obvious reasons, that must be done. Traditionally, the easy, tangible indicators have been focused on. Inspectors should ask—perhaps at a house meeting—what the food is like. They should sit down to dinner with the residents and see whether the food is digestible.

Service users have to be involved in a number of ways. We have to talk to them and use a number of different methods, including questionnaires, to find out what they think. We have to move beyond the superficial. The HMIE can do that and has done so with young people. There is no reason why that should not be extended, to ensure that realistic monitoring takes place.

Cathy Peattie: Would you have a role in deciding on the indicators for monitoring? I am sure that you agree that some of the softer

indicators are the important ones.

Vijay Patel: Absolutely. The indicators already exist, particularly in care standards. The centre for education for racial equality in Scotland has been working on them with the HMIE and they are good. They include whether a person is happy with their diet and whether they have access to their faith, in order to celebrate it. Those indicators are not that hard, but all too often we focus on the tangible indicators—the numbers.

Mr McMahon: I want to clarify something, because I am not sure whether I am picking you up correctly. Are you saying that there should be a mechanism for service users to assess how someone is delivering a service, so that we would assess not whether a service provider was meeting the requirements of the regulations, but the outcomes?

Vijay Patel: People who use services should be asked what they think. If I sent my child to a nursery, I would want to know that the nursery would celebrate his culture and allow him to be part of it. If I was happy with that, the service provider would be meeting the requirements. We have the requirements because we know that public services have failed to consider cultural needs, religious needs and issues surrounding racism.

I understand what you are saying. The monitoring has to bring the outcomes and the requirements closer together. I do not have enough knowledge to do that, but the starting point is asking people what they think.

The Deputy Convener: The order requires compliance with the specific duties by 30 November this year. In effect, that gives the listed bodies about seven months to prepare their schemes and policies. Is the time scale within which the listed bodies are being asked to comply reasonable or overly generous?

Vijay Patel: If I were being nice to public service providers, I would say that seven months is reasonable. Given the amount of work that the Scottish Executive has given them over the past three years, they must be overwhelmed. Seven months is realistic, but more than that would be too long.

The Deputy Convener: The time scale could drift.

Vijay Patel: The time scale could drift. We have been talking about racial equality for 25 years. People talked about it before I was born, yet we are still talking about the same basic issues of monitoring and consultation. Those have not changed in 25 years. There is no excuse for public service providers not to comply. There has been consultation. I do not think that much more is

required. We have to think more laterally. That might be hard for some, but it is what is required. The Race Relations (Amendment) Act 2000 does not ask for much more in the public domain than is already asked for.

The Deputy Convener: So you think that seven months is about spot on.

Vijay Patel: Yes. To give the listed bodies seven months to comply is to be nice to them.

10:45

The Deputy Convener: Under the heading “Race Equality Schemes”, article 2(4) of the order requires each relevant public body to review every three years the assessment of the relevance of its functions and policies to the duty that section 71(1) of the Race Relations Act 1976 imposes. Is that an adequate review procedure?

Vijay Patel: That depends on the systems that an organisation uses. Three-yearly reviews can drift. For the first five years, the reviews should be annual and an internal review should take place every six months. Once that system has been established, we can move to a longer period between reviews. The problem with starting with three-yearly reviews is that people forget, councillors change and other initiatives come along, which leads to the review drifting. Three years is too long in the first instance.

Mr Paterson: At the Scottish Executive race equality launch event on Tuesday 12 March, it was suggested that the order should give the racial minority communities in Scotland confidence that they have rights and that they have recourse if those rights are not respected. Are you confident about that statement?

Vijay Patel: A number of black professionals are confident about using the act. I, for example, make no bones about using it. Like the majority of people in Scotland, people in the racial minority communities do not know that the act has come into force and what it means for them.

The order can give confidence. A number of us are saying to organisations that, if they do not comply, somebody will come along and ask them why they have not done so. BEMIS has a clear role in ensuring that community groups know about the legislation and advocate its use among those who feel that they are being discriminated against. There has not been enough publicity about the act. People do not know their rights and responsibilities.

Mr Paterson: Will the order square the circle and shine some light on the act? Would that have the effect that you want?

Vijay Patel: It is a starting point. Each

generation has to learn again, so we have to keep coming back to the act, which is probably why I have begun to emphasise human rights more. We need to ensure that every generation has learnt about inequalities.

The Deputy Convener: Would you like to say anything further?

Vijay Patel: I thank the committee very much for the opportunity to give evidence. It has been fairly easy—much easier than I expected. I am relieved about that.

The Deputy Convener: Oh dear.

Vijay Patel: I withdraw that last statement then.

Mr Paterson: The thumbscrews are outside the room.

Vijay Patel: I expected that.

I will prepare a written statement. I did not have much time with my colleagues to prepare. We will send the statement to you as soon as possible.

The Deputy Convener: Thank you very much for coming. I remind you that the committee will hear from the CRE and the Scottish Executive next week, on 26 March. I am sorry that you were so lonely down in what I might call the witness dock.

Taking Stock (Disability Issues)

The Deputy Convener: The Deputy Minister for Social Justice has written a follow-up letter in relation to taking stock on disability issues, which has been circulated to committee members. Does the committee have any comments on it? Is everybody satisfied?

Mr Paterson: We should welcome the letter.

The Deputy Convener: We welcome the letter.

We now move into private to discuss a paper that outlines an approach to discussions with the Scottish Executive, which the committee has not yet signed off. I ask the public and press to leave.

10:49

Meeting continued in private until 10:54.

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