



Proposal for Equality Legislation October 2019

Background

In 2009 St Helena adopted a new Constitution which for the first time included a Bill of Rights. Section 2 of that Constitution protects Saints from being treated unfairly, protects various Human Rights and prevents discrimination on the grounds of sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, age, disability, birth or other status. These are the known as the protected characteristics.

The Constitution however only covers the Government's actions towards its people not individuals interactions or those of private entities. Therefore, for example, while someone cannot be denied a job by SHG because they practice a specific faith, they can be in the private sector.

St Helena has a race relations ordinance but no other legislation that covers discrimination on the grounds of the protected characteristics.

The UK Equality Act came into force on 1 October 2010. Therefore does not apply here. It provides our fellow British subjects with a discrimination law which protects individuals from unfair treatment, provides redress when things go wrong and promotes a fair and more equal society.

From the number and types of complaints we have received at the EHRC it is clear we need the equivalent here.

Evidence

The Governments own statistical bulletin 2018-11 states "real incomes from employment broken down by male and female. From 2012/13 to 2017/18, male incomes were higher than female on average. The gap between the two grew in 2013/14, remained the same until 2016/17, but it narrowed in 2016/17 as male incomes fell faster than the average while female real incomes continued to rise. This may be the effect of completion of the construction of the Airport, since workers were predominantly male and many of them left St Helena or found alternative employment during 2016/17 and 2017/18"¹.

Estimates as to the number of people with disabilities vary from agency to agency however there are a significant number of people with disabilities who can work, who want to work but cannot access the workplace. The EHRC has had complaints from people who believe they have been discriminated against in the private arena but we have been unable to assist. These include

¹ <http://www.sainthelena.gov.sh/wp-content/uploads/2019/01/Stats-Bulletin-11-2018-Wages.pdf>

- A person offered a job and then being told to go home because he was of a particular faith.
- Women being told they MUST wear a short skirt and high heels to work.
- A disabled person paid on the OT scheme (below minimum wage at that time) to do the same work as others on above minimum wage.
- Multiple allegations of bullying and sexual harassment.

These are samples of the issues raised.

What should the Legislation Cover?

Legislation should cover all the protected characteristics listed in the Constitution and cover the following areas:

It should prohibit

- Direct discrimination
- Indirect discrimination
- Combined discrimination (discrimination on dual characteristics)
- Discrimination arising from disability
- Gender reassignment discrimination, including cases of absence from work
- Pregnancy and maternity discrimination: outside of employment and in the workplace.
- Harassment
- Victimisation

It should provide for a

- Duty to make reasonable adjustments
- A remedy where there is found to be a failure to comply with the duty or legislation
- Regulations

It should apply to the following circumstances:

- Provision of goods services, etc.
- Contracts
- Lease & Leasehold arrangements
- Employees and applicants for jobs.
- Contract workers
- Partnerships
- Companies
- Barristers & Advocates
- Education/training
- Access to qualifications/training
- Trade organisations (Chamber of Commerce etc)
- Enquiries about disability and health in recruitment

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- Pensions
- Equal work
- Sex equality
- Pregnancy and maternity equality
- References by court to tribunal, etc.
- Time limits
- Remedies for breaches

There needs to be a section on the Advancement of Equality including:

- The duty of the public sector (This would make adjudication easier and cheaper than taking a Constitutional case to Supreme Court)
- Positive action in recruitment and in general to reduce discrimination (i.e. quotas, monitoring and/or reporting)
- Access to transport for the disables (buses, taxis etc.)
- Reasonable adjustment criteria
- Any exceptions