

# RACE EQUALITY

## The risks of Brexit

### Introduction

The UK adopted race relations legislation decades before the EU. But EU law has strengthened protection from race discrimination in the UK and guarantees rights for the future. Importantly, it has also meant common standards and action across the EU to tackle racism and xenophobia.

### The impact of EU law on UK rights

The resurgence of the far right in some EU countries in the late 1990s accelerated treaty amendments that made combatting race discrimination a core aim of the EU. The EU adopted a Race Directive in 2000 that required comprehensive protection from race discrimination in all EU countries. This was “to ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of race or ethnic origin”. UK trade unions, race equality organisations and the then Commission for Racial Equality campaigned for this action at EU level.

The Race Directive resulted in various improvements in race discrimination law in the UK. For example, it led to what is called ‘a shift in the burden of proof’ which recognises how hard it can be to prove discrimination. It means that once someone has presented enough evidence to suggest discrimination is a reason for their poor treatment, it is up to the employer to prove that they didn’t discriminate. The Directive also made it clear that employers must not victimise someone who has complained of race discrimination after they have left employment, for example, by giving them a poor reference. And it introduced broader definitions of discrimination and a new definition of harassment. These changes made it possible to challenge a wider range of policies, practices and behaviours that disadvantage BME people and fuel racial prejudice.

The Directive also requires penalties that are effective in discouraging discrimination and that reflect the harm that it causes – which is why there is no cap on discrimination awards in the UK – and it requires an independent body to promote race equality.

### Risks of Brexit

If the UK voted to leave the EU there would be a great deal of uncertainty about the rights it guarantees, including equality rights. Recent UK governments have been keen to reduce ‘burdens on

business' and when the coalition government launched its Red Tape Challenge website in 2010, the Equality Act was the first piece of legislation to feature on it. EU law helped defend most of the rights contained in the Act but the government found some things to repeal that weren't required by EU law like the statutory discrimination questionnaires which individuals could use to ask employers for information that might help in a discrimination case. The requirement to have an independent equality body also helped defend the Equality and Human Rights Commission.

One thing that would probably be targeted if the UK left the EU is compensation in discrimination cases. Conservative MPs and advisers have said on a number of occasions that they want to limit discrimination awards and the cap on unfair dismissal compensation, which is not protected in EU law, has recently been lowered. If this happened, those people who have suffered the worst forms of discrimination – the kind that has brought careers to an end and ruined lives – would get a relatively small sum that in no way reflected the harm caused.

Judgements of the European Court of Justice (ECJ) would also have less influence in the UK, which would mean equality rights are likely to become more narrowly interpreted and affect fewer people and fewer types of discrimination.

Many BME workers have benefited from other EU guaranteed rights that could be vulnerable if the UK left the EU. These include protections for outsourced workers or those on temporary contracts as they are often over-represented in these groups. For example, nearly one in six workers in the cleaning sector - where business transfers are common - are from a BME background and without TUPE protections, these workers would have minimal job security.

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## **ECJ TAKES STRONG STANCE ON RACE EQUALITY**

*The European Court of Justice has usually taken a robust approach to equality rights and this has been seen in recent race discrimination cases. For example, in the Firma Feryn case, a company director made public statements that he would not employ 'immigrants' because his costumers would not like it. The ECJ ruled that he was discriminating by making these statements and it didn't matter that there was no identifiable victim (the case was brought by a race equality organisation rather than someone who applied for a job and was turned down). The ECJ said such statements would strongly deter people of certain racial or ethnic origins from applying for work with the company and went against the objective of creating a socially inclusive labour market.*

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