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A JUDICIARY FOR THE 21ST CENTURY

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My background is in unions and gender equality. I joined the Transport and General Workers Union as a full-time official back in the eighties, when it was a male-dominated environment and hostile to the women's agenda.

At that time, most senior officials saw the gender pay gap as a minor issue compared to the serious business of industrial rights. As a sign of change, every union now sees it as a core concern - certainly, when I was Deputy Secretary General of the Transport & General Workers Union and President of the TUC. And when I chaired the Women's National Commission, where my brief was to make recommendations for the eradication of gender pay discrepancies, our most incisive supporters and constructive critics were the unions.

The root cause of unequal pay is often job segregation that parks women in the lower-valued, lower-paid jobs. The Equal Pay Act is not fit for purpose - I hope the Commission will take this on. That very occupational segregation can be seen too within the legal profession, not just on the basis of gender, but on other counts of equality too.

The 2006 Equality Act created in the Commission a public body without precedent. We opened our doors for business in 2008 and became Great Britain's first full spectrum equalities and human rights organisation of our kind and size in the world – we cover all the mandated strands of equality under one roof. We became the first British body with statutory responsibilities for equality on the basis of age, religion or belief and sexual orientation. And we became the first national body ever to be tasked with promoting the values of Human Rights.

We grew out of a tremendous tradition inherited from the existing equality bodies – the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission. But we are more than just an administrative or even a legal development. We are more than an incremental shift in the equalities agenda, or an organisational tidying up exercise. We are part of a vision of a step change in the battle against inequality and for human rights.

That paradigm shift is to be found in our integrated mandate. It liberates us to go beyond an approach to equality that places people in silos, according to their gender, or their age, or their race. And that means we can do justice to the complexity of human identity and the realities of discrimination in a way that no public body has previously been able.

We live in a nation where, according to latest official figures, one in nine people who live in the UK were born abroad. Nearly 200 million people live and work outside the country of their birth, and unlike previous waves of post-War migrants to this country, who came almost exclusively from the Old Empire, today's come from every corner of the globe, speak many languages and have many different faiths. The most striking spike in recent years has been from the former Soviet bloc. Britain was one of only three EU countries to give full working rights to new accession countries in 2004. Poles now make up the second largest immigrant group in the country.

Our ethnic diversity is increasing, and this is particularly striking in the young. A report we published in January shows that nearly 10% of children live in a family which has multiple white, black or Asian heritage. Mixed race Britons are amongst the fastest-growing minority groups and are by far the youngest, minority group in the country.

Meanwhile, family structures are changing. There are more lone parents; 8% of households were headed by a lone parent in 1972. In 2005 the figure had risen to 24%, and the head of these families is usually a woman – often a young mum, struggling on a low income, but it's a trend that's felt across all classes.

More of us will define ourselves as disabled over the coming years. There are currently thought to be around 10 million disabled adults and 700,000 disabled children in the UK. The latter figure will rise to over a million and a quarter within twenty years.

We are living longer. We now have more people of pensionable age than children under the age of 16.

It is predicted that by 2012, only a third of the British workforce will be white, male and aged under 45.

Our diversity is a fact. It's who we are. But our public institutions need to keep pace with that change – both in the people they employ, and the way they go about their business.

And the judiciary, as the pinnacle of justice and fairness, has a long way to travel down that road.

At the Commission last year we calculated that at the current rate of progress, it would take 55 years before we have as many senior female judges as we have male.

Every one of highest office holders is white. Latest figures indicate there are only 3 senior ethnic minority judges – a minute percentage.

Many of us welcomed the Judicial Appointments Act of 2005 that created the Judicial Appointments Commission. The system of appointments lacked transparency; the issue of merit and competency was constantly questioned with many believing that selection was blighted by the rule of the 'old boys' network'.

Promoting diversity seemed like a distant dream with talented women and ethnic minority candidates left out in the cold. The JAC removes any lingering doubts that the old network still holds sway and helps to keep the subject of judicial diversity high on the agenda.

We're seeing some progress - just not enough. Yet, Recent figures show that almost 60% of Deputy DJ appointments were women; with just over 42% of selections for District Chairman of the Appeal Tribunal for disabled people. And this year, 5 out of the 22 judges recommended to the High Court were women. We will wait to see whether this trend is sustained and increased.

And there are other causes for hope. Less than thirty years ago, the belief that gay judges would be at a greater risk of blackmail led to the then Lord Chancellor practicing a covert policy of their deliberate non-appointment. That practice would be unthinkable now and, of course, quite impossible given the JAC.

But I share the frustration that I'm sure many of you feel at the lack of headway. Looking back on my days as a trade union official, frustration was my constant companion, along with anger of course as some of the more unfair practices were uncovered.

Monitoring is patchy. We have no diversity figures for the number of Judges and Employment Tribunal chairs in Wales for example, but suspect that little has changed over the years since research was last carried out. We have no figures at all for the number of gay or lesbian judges.

There is also the unfortunate reluctance of some senior judges to respond to monitoring requests, suggesting that they don't quite appreciate its importance.

There is also the thorny issue of merit.

Discussion of merit is often highly charged. Some believe that the very pursuit of diversity will itself undermine the principle. Others go further, claiming the bar will invariably be lowered to allow for a greater number of women and black and ethnic minority judges. The enlightened, however, recognise that merit and diversity go hand-in-hand: the wider and more diverse the pool, the greater the talent that can be accessed. In a speech in 2007, Baroness Prashar put it thus: "diversity in the field; merit in the selection". No one, and certainly not the JAC, is proposing that anything other than merit should be the qualification for the job.

But many talented women and ethnic minorities in the profession no longer see themselves as being serious contenders with judicial worth. They struggle to match the expectations they have of themselves with those of the very systems and structures that have obstructed their efforts to progress. They will all need convincing if they are to ever be persuaded to dust off their long abandoned ambitions and re-engage with a process that many will have lost faith in.

Many employers would claim that their recruitment and promotion policies are based on merit; but often their own statistics tell a different story. Glass ceilings are real. And for some they're solidifying into reinforced concrete. In many fields still, the talented are being left behind.

But there are no drawbacks to diversity.

A joint report published last year by the Confederation of British Industry and the Trade Unions Congress gave page after page of inspiring story describing the rewards for businesses large and small of developing diversity. Its title, Talent not Tokenism, delivered the uncomplicated message that the drive towards diversity entails nothing other than valuing, recognising and rewarding talent.

The credibility of the judiciary would be strengthened were it a better reflection of wider society.

The need for change is not just for the sake of those languishing in the non-traditional eligibility pool. It must be for the sake of restoring respect for a system that does not always attract the respect it deserves.

At the Equality and Human Rights Commission, we are confronted daily with new and unfamiliar questions that our increasingly diverse society throws up. Our experts are constantly exploring how to use our statutory powers to attack structural and systemic problems that stand in the way of our aim, to deliver fairness, dignity and respect.

The cases that will come before the judiciary will increasingly reflect the new experiences of inequalities that are emerging and joining forces with the old and the stubborn, exposing areas of inequality that we had not encountered before. And at the Commission we want these complex cases that cover the range of inequality, to be understood. I have no doubt that the more varied and diverse your ranks, the deeper that comprehension will be.

For our part at the Equality and Human Rights Commission, we will be constantly looking for ways to make a contribution. We hope to explore the scope and possibility of inputting into the trilateral meetings on judicial diversity between the Lord Chancellor, the Lord Chief Justice and Chair of the JAC.

We welcome and support the proposal by the Ministry of Justice to establish a web based legal and judicial diversity network to encourage and widen debate.

And knowing that it is never enough for only those at the top to be leading the charge, we will work through our Equally Professional Project to encourage everyone in the legal profession to work towards dismantling the significant barriers that aid and abet the progress of a single group.

Real progress on judicial diversity will follow only in the wake of recognising the structural problems, the occupational segregation and the deep-seated perceptions that beset the profession.

We know that the advance towards diversity will never happen at the pace we would all like it to. And my years in the equalities world have taught me the simple formula: for every step you want to take, take two. Push twice as hard, be twice as ambitious and twice as radical. That way, progress might just start to increase at an acceptable pace.

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