

**Impact case study (REF3b)**

<p><b>Institution:</b> University of Leicester</p>
<p><b>Unit of Assessment:</b> UoA20 Law</p>
<p><b>Title of case study:</b> Informing the development of EU anti-discrimination law</p>
<p><b>1. Summary of the impact</b></p> <p>Discrimination remains a common social problem within and beyond the EU; e.g. the Fundamental Rights Agency found that in some EU states more than one-third of ethnic minorities reported experiencing discrimination when looking for work in the previous 12 months. Research by Professor Mark Bell has helped to influence EU law and policy on combating discrimination, as well as contributing to the agendas of European non-governmental organisations in this field. Specifically, his research was used in formulating proposals for a new anti-discrimination Directive. He advised several NGOs on their strategy for seeking amendments to enhance the draft Directive. This influence has contributed to the strengthening of anti-discrimination law and policy, with potential benefits for individuals in the EU facing discrimination.</p>
<p><b>2. Underpinning research</b></p> <p>A substantial body of social research has established that discrimination is a widespread phenomenon that impacts on individuals' experiences in key areas of social life, such as the labour market, education, or housing. For example, in 2012, 17% of respondents to an EU public opinion survey reported that they had personally experienced discrimination or harassment. Increasingly, law has been used as a method of combating discrimination. Within the EU, anti-discrimination law initially focused on gender equality.</p> <p>Bell's (Leicester 1999-present, initially lecturer, now professor) research has explored the transformation of EU anti-discrimination law during the period since 1999. The law has shifted from its traditional focus on gender and expanded to address other forms of discrimination, such as those based on ethnic origin, religion, sexual orientation, age and disability. This was crystallised by the adoption in 2000 of two EU Directives dealing with these 'new' forms of discrimination.</p> <p>Bell's research in the period since 2000 has concentrated on analysing the content of these Directives (3.4; 3.5), the reasons for this shift in the direction of EU law (3.6), and comparative analysis of the process of implementing the Directives in the Member States (3.1; 3.2). This has been with a view to understanding better what might make anti-discrimination law effective in practice. Bell's research concluded that the Directives relied too heavily on a strategy of enforcement via individual litigation (3.3). Given that individuals face a range of barriers that deter litigation, such as lack of information or the financial and emotional costs of legal proceedings, it was unlikely that this would be an adequate means of promoting equality. In particular, his later research contended that tackling institutionalised forms of discrimination required public institutions to be placed under legal duties to promote equality. This culminated in his 2008 monograph (3.3), which provides a critical evaluation of the EU's efforts to 'mainstream' the promotion of ethnic equality throughout law and policy. He found that improved institutional structures were needed if these initiatives were to be effective.</p> <p>His research has also explored the need to complement the existing anti-discrimination Directives with further EU legislation in order to fill some of the gaps in the current legal framework (3.4; 3.6).</p>
<p><b>3. References to the research</b></p> <ol style="list-style-type: none"> <li>1. M Bell (with co-editors D Schiek and L Waddington), <i>Cases, Materials and Text on National, Supranational and International Non-Discrimination Law</i> (Hart Publishing 2007) pp. 998 + cxix.</li> <li>2. M Bell, 'The implementation of European anti-discrimination Directives: converging towards a</li> </ol>

## Impact case study (REF3b)

common model?' (2008) 79 *The Political Quarterly* 36-44.

3. M Bell, *Racism and Equality in the European Union*, Oxford: Oxford University Press, 2008. Pp. 227 + xxii.
4. M Bell and L Waddington, 'Reflecting on inequalities in European equality law' (2003) 28 *European Law Review* 349-369.
5. M Bell, 'Beyond European Labour Law? Reflections on the EU Racial Equality Directive' (2002) 8 *European Law Journal* 384-399.
6. M Bell, *Anti-discrimination law and the European Union*, Oxford: Oxford University Press, 2002. pp. 269 + xxiii.

The quality of the research is confirmed by several indicators. First, the articles are published in the leading peer-reviewed journals in the field of EU law. The two monographs were subject to anonymous peer-review by Oxford University Press before the contract was awarded and both have subsequently received excellent book reviews. For example, reviewing the 2008 monograph, Ellis commented that the book 'will be of considerable interest to all those, scholars and practitioners alike, who are committed to the promotion of racial and ethnic equality' ((2009) *Common Market Law Review* 1764).

Research Grant: awarded to Bell, 'European Network of Legal Experts in the Non-Discrimination Field', EU Commission via Human European Consultancy, 2004-2010, EUR 21,500.

### 4. Details of the impact

Bell's research has influenced anti-discrimination law and policy in the EU and contributed to the agendas of European NGOs working on anti-discrimination. Changes in this area of law and policy have the potential to reach individuals and businesses throughout the EU, but also beyond. EU anti-discrimination law is a point of reference for European countries that aspire to join the EU in the future and it is also influential within the Council of Europe (e.g. in judgments of the European Court of Human Rights).

#### Influencing EU law and policy

Bell's membership of the European Commission's Network of Legal Experts in the Non-Discrimination Field (2004-2010) involved commenting on the implementation of Directives 2000/43 (ethnic equality) and 2000/78 (employment equality) within the Member States. The Network was created by the Commission to be an independent source of research and data on how national governments transpose EU anti-discrimination law. The work of the Network is used by the Commission to inform its decisions on when to initiate infringement proceedings against a state for non-compliance. In practical terms, the Network produced a detailed annual report on each Member State of the EU, as well as those countries recognised as candidates for EU accession. Bell contributed specialist analysis of the implementation of the prohibition of sexual orientation discrimination in these countries, through making detailed comments on each annual national report as well as co-authoring three editions of a comparative analysis report, which provided an overview of the situation in the EU. During this period, the Commission pursued a range of Member States from across the EU for shortcomings in national anti-discrimination legislation. This led to a steady enhancement in the quality of national legislation as states took steps to comply with the EU Directives. The significance of this lies in improved legal protection for individuals who are at risk of experiencing discrimination.

In 2008, he led a half-day policy review meeting with the 'Action against Discrimination, Civil Society' Policy Unit within DG Employment, Social Affairs and Equal Opportunities. This fed into preparation of a new set of policy proposals published in July 2008. The Head of Unit in the European Commission wrote to Bell on 10 July 2008 stating: '*our initial discussion with you was very inspiring and we continued to come back to that in our internal discussions on the successive*

**Impact case study (REF3b)**

*drafts of the text* (5.1). On 2 July 2008, the Commission also published a proposal for a new anti-discrimination Directive; the explanatory document (5.2) cited a report co-authored by Bell (Developing Anti-Discrimination Law in Europe). This report was also cited in a European Parliament resolution in 2008 (5.3).

In addition, Bell was regularly invited to speak at conferences of EU policy-makers and legal practitioners on the implementation of EU anti-discrimination law. For example, this included the 2008 'Equality Summit' (part of the French Presidency of the EU) and a 2009 European Commission-funded conference in Brussels on comparative analysis of national law and policy on positive action.

*Influencing NGO strategy on the Proposed Directive*

In anticipation of this proposed Directive, in 2008 Bell was invited to chair an expert group on anti-discrimination law for the European Network Against Racism (ENAR). ENAR is an EU-wide network of NGOs from EU Member States. It combats racism, racial discrimination, xenophobia and related intolerance. ENAR's expert group was composed of 24 members, mainly from European and national level NGOs dealing with discrimination on a range of grounds and representing 9 different countries, but also including some academics. Bell (the only academic participating from the UK) wrote the report of the expert group (5.4), which recommended that any forthcoming Directive should cover a range of discrimination grounds (religion, disability, age, sexual orientation) within one instrument rather than separate Directives for each form of discrimination. Although the European Commission had initially intended to propose a Directive limited to disability discrimination, it changed its approach and the final proposal covered several grounds of discrimination (in line with the recommendations of the expert group).

After the proposed Directive was issued, Bell was consulted regularly by several Brussels-based European NGOs on their strategy in seeking amendments to the draft Directive. In particular, he provided advice to ILGA-Europe. ILGA-Europe is a non-governmental organisation bringing together 408 organisations from 45 European countries. It advocates for equality for lesbian, gay, bisexual, trans and intersex people. Even before the Commission had published its proposed Directive, Bell had already drafted an alternative text for ILGA-Europe. He assisted ILGA-Europe in comparing its text with that of the Commission and spoke at a hearing in the European Parliament arguing for a revision of the provisions of the Directive relating to benefits for unmarried partners (10 December 2008). Some of the amendments recommended by ILGA-Europe were subsequently addressed in the European Parliament's amendments (5.5) to the proposed Directive (e.g. on the exception for marital benefits or clearer protection from multiple discrimination).

In 2009, Bell was also invited to join a virtual network of 9 European legal experts consulted by the 'Social Platform', an umbrella network of European NGOs concerned with EU social policy. The Social Platform includes organisations such as the European Anti-Poverty Network, the European Disability Forum, or the European Women's Lobby. As a member of the virtual network, Bell provided advice and information to the Social Platform regarding its approach to advocating amendments to the proposed Directive.

*Influencing Courts on Anti-Discrimination Law*

A book that Bell co-edited in 2007 (3.1), was cited in an opinion of Advocate-General Maduro of the European Court of Justice (5.6) and in a judgment of the House of Lords (5.7).

**5. Sources to corroborate the impact**

*Influencing EU law and policy*

1. Head of the 'Action against Discrimination, Civil Society' Unit, DG Employment, European Commission, 10 July 2008.

2. Commission, 'Proposal for a Council Directive on implementing the principle of equal treatment

**Impact case study (REF3b)**

between persons irrespective of religion or belief, disability, age or sexual orientation' COM (2008) 426, p. 4.

3. Para. E, European Parliament Resolution of 20 May 2008 on progress made in equal opportunities and non-discrimination in the EU.

Contact to corroborate impact: Legal Officer, DG Justice, European Commission

*Influencing NGO strategy on the Proposed Directive*

4. Report of ENAR's ad hoc group on anti-discrimination law: Extending EU anti-discrimination law (2008), available at: <http://www.enar-eu.org/Page.asp?docid=15888&langue=EN>

5. Amendments 27, 38, and 50, European Parliament legislative resolution of 2 April 2009 on the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

Contacts to corroborate impact: (a) Executive Director, ILGA-Europe and (b) Former policy officer at the European Network Against Racism.

*Influencing Courts on Anti-Discrimination Law*

6. Footnote 5, Case C-303/06 *Coleman v Attridge Law and Law*, Opinion of Advocate General Maduro of 31 January 2008.

7. Para. 4, Lord Bingham, *Mayor and Burgesses of the London Borough of Lewisham v Malcolm* [2008] 4 All ER 525 (HL).