

<p><b>Institution: University of Oxford</b></p>
<p><b>Unit of Assessment: 20 – Law</b></p>
<p><b>Title of case study:</b></p> <p><b>Defining the duty to promote equality in UK equality and discrimination law</b></p>
<p><b>1. Summary of the impact</b></p> <p>Professor Sandra Fredman’s ‘four dimensional model’ of equality was incorporated into the Equality Act 2010. Fredman’s research focuses on developing an understanding of equality that is sound in principle, and that is capable of articulating the purposes of equality legislation, particularly for newly developing equality duties which require bodies to take the initiative to promote equality. She has developed a conception of ‘substantive equality’, involving four dimensions: redressing disadvantage; addressing different needs arising from different identities; promoting participation; and preventing stigma, prejudice, harassment and violence. Fredman’s recommendations were adopted in the Equality Act 2010 to specify the goals of the equality duty. This is now incorporated into guidance produced for, and by, public bodies regarding the fulfilment of their statutory equality duties.</p>
<p><b>2. Underpinning research</b></p> <p>The meaning of equality for the purposes of anti-discrimination law is contested. It is accepted that the maxim of formal equality that ‘likes should be treated alike’ is not sufficient. Complete equality of outcome is unrealisable. Equality of opportunity, though popular, is vague. In a longstanding programme of research at Oxford, Sandra Fredman FBA (Rhodes Professor of the Laws of the British Commonwealth and the USA) developed a four dimensional model of substantive equality based on doctrinal, theoretical, and comparative work.</p> <p>The first formulation of the model was in Fredman’s 2002 research paper on ‘The Future of Equality in Britain’ (commissioned by the Equal Opportunities Commission (EOC)) <b>[R1]</b>. Drawing on the law and experience of comparable jurisdictions, and on interviews with key policy-makers and stakeholders, the research canvassed various understandings of equality, including ‘equal treatment’, ‘equal opportunity’, ‘equality of results’ and ‘dignity’. It concluded that none of these conceptions alone was able to capture the full complexity of substantive equality. Instead, the research suggested that the aims of equality should be specified in a four dimensional way:</p> <ol style="list-style-type: none"> <li>1. To break the cycle of disadvantage associated with groups sharing a protected characteristic.</li> <li>2. To recognise, affirm, and accommodate different identities: here the aim is not to abstract the individual from her/his identities, but to change the public space to reflect and to respect them.</li> <li>3. To facilitate full participation in society.</li> <li>4. To promote respect for the equal dignity and worth of all, redressing stigma, stereotyping, humiliation and violence because of membership of such a group.</li> </ol> <p>In further research Fredman continued to refine the model, both as a theoretical contribution and as an evaluative framework for assessing the equality impact of social programmes, <b>[R2, R3, R6]</b>. A particularly important application of the four dimensional approach has been in the context of ‘fourth generation’ or proactive equality duties <b>[R4, R5, R6]</b>. These duties are innovative in that they require public bodies to take the initiative to promote equality rather than merely provide remedies to individuals in cases where their right not to be discriminated against has been breached. Such duties are particularly challenging in that they require a vision of the ideal of equality to be achieved. The equality duty introduced in 2000 by the Race Relations Amendment Act 2000 referred simply to the duty to have due regard to the need to promote ‘equality of opportunity’ and ‘good relations’, without further defining these terms. This made it difficult to</p>

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monitor and gave little guidance to public bodies. Professor Fredman argued that the four dimensional approach should be used to articulate more clearly what public bodies should be aspiring towards in order to fulfil their duty [R4]. This was particularly necessary once the duties were broadened to include all protected characteristics. In addition, she showed that this conception of equality makes it possible to facilitate respect for multiple identities and address intersectional discrimination [R5, R7]. Equally importantly, she argued that conflicts between different strands can be resolved by considering whether disadvantage is perpetuated, dignity infringed, or diverse identity ignored. Underlying this was the key value of participation of affected groups in decision-making [R5, R6].

### 3. References to the research

[R1] S. Fredman, *The Future of Equality in Britain* (Equal Opportunities Commission, (2002).

[R2] S. Fredman, *Changing the Norm: Positive Duties in Equal Treatment Legislation*, (2005), 12 (4), *Maastricht Journal of European and Comparative Law*, 369.

[R3] S Fredman, *Discrimination Law* (2nd ed.) (2011), chap 1, (Oxford University Press, Clarendon Law Series).

[R4] S. Fredman and S. Spencer, 'Beyond Discrimination', *Beyond Discrimination: enforceable duties on public bodies to promote equality outcomes*, (2006) 6, *European Human Rights Law Review*, 598. **Note:** Dr Sarah Spencer is a Senior Fellow at the Centre on Migration, Policy and Society in Oxford, and her work is being submitted in the REF under Anthropology (UOA24A).

[R5] S. Fredman, 'The Public Sector Equality Duty' (2011) 40 *Industrial Law Journal* 405

[R6] S Fredman, 'Breaking the Mould: Equality as a Proactive Duty', (2012) 60, *American Journal of Comparative Law*, 263.

[R7] S. Fredman, 'Positive Rights and Duties: Addressing Intersectionality' in D. Schiek and V Chege (eds), *European Union Non-Discrimination Law: Comparative Perspectives on Multidimensional Equality Law* (Routledge-Cavendish 2008).

The journals are peer-reviewed publications of international standing.

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### 4. Details of the impact

Fredman's early formulation of the four dimensional model, 'The Future of Equality in Great Britain' proved convincing to the Equal Opportunities Commission (EOC), which widely disseminated it after 2002, as a basis for the general duties of the Equality and Human Rights Commission (EHRC) [C7]. Even at this stage it had entered the public realm, not only as a theoretical model, but as a source of practical guidance [C4, C5].

This was reinforced in 2005 with the establishment of the Discrimination Law Review by the Department of Communities and Local Government, which was tasked with making recommendations for new equality legislation which would cover all protected grounds. This was particularly challenging for proactive equality duties, which would now need to apply to a wider range of grounds. Drawing on the fruits of Fredman's research [R3], Fredman and Dr Sarah Spencer submitted proposals for a unified equality duty, which included a proposal that the goals of the duty be more clearly specified by using the four dimensional approach.

The Green Paper, *A Framework for Fairness*, published in 2007, accepted these proposals [C6]. It recommended as follows:

'If public authorities do not understand what promoting equality of opportunity actually means in practice, this reduces the effectiveness of the equality duties in achieving meaningful outcomes for disadvantaged groups. We therefore want a clearer articulation of the purpose of a single public sector equality duty . . . In developing our proposals, we have had particular regard to the work by Sarah Spencer and Sandra Fredman on this subject and the general duty of the

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Commission for Equality and Human Rights.

We have adapted the four “dimensions of equality” as identified by Spencer and Fredman.

- Addressing disadvantage—taking steps to counter the effects of disadvantage experienced by groups protected by discrimination law, so as to place people on an equal footing with others.
- Promoting respect for the equal worth of different groups, and fostering good relations within and between groups—taking steps to treat people with dignity and respect and to promote understanding of diversity and mutual respect between groups, which is a pre-requisite for strong, cohesive communities.
- Meeting different needs while promoting shared values—taking steps to meet the particular needs of different groups, while at the same time delivering functions in ways which emphasise shared values rather than difference and which provide opportunities for sustained interactions within and between groups.
- Promoting equal participation—taking steps to involve excluded or under-represented groups’

After a complex public and parliamentary debate, the Equality Act was eventually enacted in 2010 [C1]. This incorporated the Review’s recommendations and the Fredman model, in the following form, thus giving Fredman’s model statutory force:

Section 149(3) Equality Act 2010, states:

‘Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.’

As is clear on the face of the legislation, Paragraphs 149(3)(a), (b), and (c) incorporate Fredman’s first three dimensions of equality of opportunity into the general equality duty.

The Act further spells out that:

‘Having due regard to the need to foster good relations ...involves having due regard, in particular, to the need to—

- (a) tackle prejudice, and
- (b) promote understanding. (s.149(5))

This reflects Fredman’s fourth dimension of equality.

Subsequently, guidelines were developed for public bodies to assist them in complying with the duty, including the four dimensional understandings of substantive equality in ss149(3) and (5). The EHRC has produced technical guidance [C2], which explains each of the three components of equal opportunity (redressing disadvantage, meeting different needs, and promoting participation) by using clear language and concrete examples. It does the same in relation to good relations, which include measures to reduce bullying, harassment, hate crime and violence against those who share a particular protected characteristic. Public bodies have also developed their own internal guidelines, and the four dimensional model of equality is now part of the standard template as issued, for example, by the Thames Valley Police [C3]. The four dimensional model of equality is now law throughout the UK.

## 5. Sources to corroborate the impact

[C1] Equality Act 2010 s.149(3) (5).

[C2] Equality and Human Rights Commission Equality Act 2010 Technical Guidance on the Public

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Sector Equality Duty in England paras 3.18 – 3.32; 3.34 – 9.

**[C3]** The Thames Valley Police Equality Impact Assessment Guidance Note (February 2013).

**[C4]** A.McColgan Discrimination Law: Text, Cases and Materials 2nd ed (Hart Publishing 2005) pp 27-29.

**[C5]** B Goldblatt, 'Principles For A Substantively Equal, Gendered Social Security Right' (Paper presented on 11 September 2012 at the workshop 'Elusive Equalities: Sex, Gender and Women', Oxford University).

**[C6]** Communities and Local Government: A Framework for Fairness: Report of the Discrimination Law Review (2007) para 5.28 – 5.29 [The Green Paper].

**[C7]** Equality Act 2006, s.1.