



SUPPORTING AND
EMPOWERING
REFUGEES



Introductory Briefing on Refugee Equality, February 2014

This paper has been prepared with materials from several organizations (See 'Where to get More Information' p8). It has been produced as part of the Refugee Council's Refugee Community Organisations (RCOs) Project funded by London Councils. The authors Refugee Council and REAP do not assume any responsibility for the accuracy of this information. Specialist advice should always be sought for individual cases, and this information is written with the intention and in a style to raise awareness of some of the issues. It is not intended, nor should it be taken, as legal advice.

This briefing is for organisations and professionals who provide 'mainstream' services to everyone. 'Everyone' of course includes refugees, asylum-seekers and other migrants. The services may be in health, education, housing, employment, general advice, and might be statutory or voluntary sector. The paper introduces key information about equality and refugees for 'mainstream' professionals who want a fuller understanding of relevant issues, legislation and actions they could take. It is connected with other relevant sources written for practitioners, which readers may find useful in policy and practice.

1.0 Why does 'refugee equality' matter?

Refugees and Asylum-Seekers are fully protected by the Equality Act 2010. Migrants are protected by the Equality Act 2010. In fact, everyone in the UK is protected by the Equality Act and all that it contains.

Refugees, asylum seekers and migrants are not named specifically in the Act, but they are directly protected under the characteristic of 'race' as it is illegal to discriminate against people because of their colour, their nationality (including citizenship), and their ethnic origins and national origins. Thus not only people currently waiting for a decision on their request for asylum and people with 'Refugee Convention' status, but also any person who has come through the asylum process and been given any form of 'Leave to Remain' by the Home Office (from now on all included as 'refugee') plus 'failed' asylum-seekers and 'undocumented' migrants are protected. Under 'race - nationality' the Act is not just banning discrimination against someone because she or he is Afghan, or French, but makes it illegal to discriminate against any person on the basis that s/he is not a British national, as long as they are in the UK. In other words, non-British people in the UK must be treated as well as people with British nationality. There are exceptions (mostly to benefits and services from Public Authorities) where some of a person's entitlements and rights are linked to her or his exact immigration status, but discrimination is only allowed where the law explicitly says so. In addition, other areas of law – such as Human Rights, Children's, Health and Community Care, Mental Health Law and certain points around Domestic Violence for example, may over-rule immigration-based exceptions.

It is also essential to recognise that the Equality Act 2010 protects everyone in the UK from discrimination on the grounds of all the 'protected characteristics' defined in the Act (Box A). Any refugee therefore has the same equal rights as any woman or man; child, young or older person; believer or non-believer, or any person with whom they share any protected characteristic or characteristics.



SUPPORTING AND
EMPOWERING
REFUGEES



Box A: The 9 Protected Characteristics

Sex: Disability: Sexual Orientation: Age: Gender Reassignment: Race and Ethnicity (includes colour, nationality, ethnic and national origins): Religion or Belief: Pregnancy & Maternity: Marriage & Civil Partnership.

This is very important with refugees for two main reasons:

Firstly, compared to the whole UK population, refugees are disproportionately affected by inequality relating to all the protected characteristics. Many who are fleeing their home countries do so to escape state-sponsored or state-tolerated abuse of power, discrimination, and potentially murderous persecution. The persecution of these people is often because of discrimination that is precisely that outlawed in the UK by the Equality Act 2010. Examples of countries where discrimination and persecution occur towards people with characteristics that would be protected in the UK include Iran, Nigeria, Uganda - sexual orientation; genital mutilation practiced in Yemen and Somalia - sex; marriage-related murder occurring in Pakistan - sex; China, 1940s Germany and the Holocaust - religion and belief; Rwandan genocide - race; 15 year old Eritreans fleeing indefinite conscription - age; Afghan boys fleeing forced enlistment in armed groups, arriving in the UK alone and in need of care - age. In addition a disproportionately high number of refugees are disabled, and there are extremely high levels of mental ill health in refugee populations. Refugees' mental health can be seriously affected by physical or psychological trauma rooted in experiences before arriving in the UK, by the prolonged stress of transit and whilst in the asylum process, which may include periods of detention, and by untreated or undertreated long term health conditions combined with chronic poverty and loss.

Secondly, refugees have several protected characteristics in the same way anyone might: a young refugee will be facing issues around race (colour, nationality and ethnicity), gender (female/male), age and maybe several others. The 'intersection' of several characteristics in any individual's life can create a combination of stresses and disadvantages that increase their vulnerability to discrimination and abuse and contribute to exclusion, deprivation and suffering. On top of what any person might face, migrants often lack skills in English language and/or lack knowledge about rights, services, social and economic structures. Refugees are also coping with their previous experiences, current and future uncertainty which consolidates isolation and vulnerability to discrimination and abuse, at the same time as reducing their ability to manage the impact of discrimination and to access support that does exist. "They are particularly vulnerable to discrimination as [unlike other migrants] they do not have the choice to leave the UK and go back to their countries of origin."¹ Although many refugees successfully rebuild their lives over time, in the early years after arrival and even beyond, a large proportion can be counted among the most deprived and excluded members of British society.

Refugee equality must surely also be a priority issue for 'mainstream' services because discrimination really does happen in the daily activities and life of many organisations. Staff may feel secure that colleagues or volunteers would not express direct hostility towards refugees, but there is surely always concern about the potential to misuse discretion. Perceptions and generalisations can easily

¹ Equality and Diversity Forum (EDF) and Refugees in Effective and Active Partnership (REAP) June 2011 : Refugees, Migrants and the Equality Act 2010 – a briefing for refugee and migrant community organisations EDF Refugees and Migrants Equality Project p2.



SUPPORTING AND
EMPOWERING
REFUGEES



result in an organisation responding inappropriately to an individual refugee. When REAP asked a charity that supports local families with disabled children in a West London borough, to support a family with a disabled child living in their area, their reply was: “We don’t do refugees”.² Immigration law and documentation have been changing constantly for the past decade, resulting in widespread confusion and misinformation about status, rights and entitlements. With pressure from Government not to employ, treat, serve or house people who are not entitled, there is a risk that ‘frontline’ workers will err to the cautious and refuse to serve a refugee, or refer them away, rather than risk making a mistake. But in this way mistakes are made: refugees who are entitled and in need are wrongly turned away. “We do not encourage refugees to access our services as our funders would not be happy about us providing services to people who are not supposed to be here...”.³

There are also times, especially under pressure to cut costs, that structures designed to improve efficiency disproportionately disadvantage refugees and other migrants. For example cuts to child care provision at colleges have particularly affected migrant women who can no longer access English classes, preventing them from even starting on the ladder to employment and integration. Even attempts to be more equal might unintentionally discriminate, for example a recruitment panel that defines minimum qualifications for candidates could accidentally exclude migrants and refugees from applying, because their non-UK qualifications are not on the panel’s list.

There are also simply pragmatic reasons to justify serious attention to equality, which can be presented as both ‘carrot’ and ‘stick’. Starting with ‘stick’: The Equality Act 2010 is law. Failure to comply with Equality law leaves you and your organisation open to challenge. Even if your employer is not a public authority, if you work with public authorities like schools, local Councils, the Police, you will be required to comply with the additional ‘Equality Duty’ (see below p6.) that they are subject to before being considered for commissions or other partnerships. If you apply for grants, the grant-maker will usually want evidence that your organisation’s policies and practices comply with the law and that you adequately understand equality issues. On the ‘carrot’ side, if you are compliant and can show your partners that you can help them meet their Duties, it makes you a valuable partner.

Pragmatically too, inequality is costly and disruptive. Inequitable access structures mean larger proportions of already disadvantaged people like refugees are likely to end up needing more expensive services later on. Thus asylum-seekers who can only access temporary accommodation are less likely to access GPs and more likely to end up in Accident and Emergency departments of hospitals.

Finally, ‘refugee equality’ matters because there is a long history to the underlying principle of equality in British society, as law and practice have developed over centuries, going back to the Magna Carta in AD1215⁴. The Equality Act 2010 is our strongest lever to date to move the structures and processes of the institutions and organisations within which we work and live.

² Quote from ‘Refugees into Equality’ Survey REAP 2009

³ Quote from ‘Refugees into Equality’ Survey REAP 2009

⁴ www.BIHR.org.uk



SUPPORTING AND
EMPOWERING
REFUGEES



John Bradford (1510–1555) was an English Reformer and martyr. The phrase "There, but for the grace of God, goes John Bradford", spoken by Bradford while imprisoned in the Tower of London when he saw criminals being led toward their execution, entered the English language as "There, but for the grace of God, go I." Bradford was in the Tower of London for alleged crimes against Mary Tudor (Queen of England) for his Protestant faith. Bradford was burned at the stake on 1 July 1555.

But the Act is only effective if we understand it and use it. The next section highlights key points in the Act that relate directly to refugee equality, followed by a section on potential actions.

2.0 How the law applies

This is not a statement of the law. It is an introduction to key concepts and materials for further reading, particularly those by the Equality and Diversity Forum, on which much of this section is based.

Does it apply to us? The Act applies to 'mainstream' service providers as a) employers, b) service providers (including as 'provider of services' to volunteers) and very often c) as public authorities. Your organisation is not only responsible for the actions of any staff member, but also for the actions of any trainee, volunteer or other body who is 'carrying out your instructions' (also called 'your agent') plus the actions of employees (trainees, volunteers etc.) of 'your agent' as far as they are carrying out your instructions.

Direct Discrimination: when a person is treated less favourably than another in a similar situation. It is direct discrimination to segregate people by race (colour, nationality including citizenship, ethnic origins and national origins) (but see also 'Positive Action'). Insulting behaviour is direct discrimination, such as voiced expressions of 'asylum-hate' which might for example include if a person tells a refugee to 'go home' 'go back to where you came from' or deliberately makes unfamiliar names sound ridiculous. Misuse of professional discretion stemming from personal hostility towards refugees would be direct discrimination. (See also discrimination 'By Association', 'By Perception', 'Harassment' and 'Victimisation'.)

Indirect Discrimination: when a practice, policy, eligibility criteria etc. is set up and applied generally, but in a way that a whole body of people who share a protected characteristic (e.g. being non-British females) is disadvantaged, even if it is by accident. For example, if a hospital gets all its interpreters through agencies that use casual contracts or require interpreters to be self-employed, it makes it likely that a substantial block of migrants will be stranded in insecure employment without career prospects, pensions and only minimal maternity rights etc. If a more mixed group of people with equivalent skills and responsibilities in other professions within the hospital do have regular job contracts and employment rights, and opportunities for career development the policy of sourcing interpreters through agencies may be indirectly discriminating against migrants, or in other words, indirectly racist.

Positive action is one of the great assets created by the Act to help service providers and others bring about greater equality or 'equal outcomes'. Any employer or service provider is allowed to take 'proportionate' or reasonable actions – in other words, treat a group of people more favourably than others – if they are doing it for one of three aims: enabling people with a shared protected characteristic to:



SUPPORTING AND
EMPOWERING
REFUGEES



- 1) overcome disadvantage (e.g. translating leaflets)
- 2) participate in an activity (e.g. providing interpreters), or
- 3) meet the different needs of members of that equality group (e.g. train up bi-lingual counsellors with special knowledge in the impact of trauma and torture on mental health).

Exemptions and other areas of Law: The Act does permit direct discrimination against certain migrants in a limited range of situations that are laid out specifically in Immigration law (mostly in benefits and other entitlements). Immigration law has very few exemptions that permit direct discrimination against people who once applied for asylum but now have some kind of 'leave to remain' (refugee status, discretionary leave, humanitarian protection etc.). Mostly the Immigration law exemptions permit direct discrimination against asylum seekers, 'failed' asylum seekers and 'undocumented migrants' by restricting their entitlements to benefits, services and free movement. However, other areas of law may supersede these exceptions:

In certain areas Children's law trumps Immigration law – an asylum-seeking child (age 0-17) continues having rights to care and support at the same level as a British national where an adult asylum-seeker would not⁵. This is very significant for children who arrive in the UK for refuge without adults to support them - 'Unaccompanied Children Seeking Asylum' - who can be quite significant populations in the local authority areas where there are 'ports of entry': e.g. Dover, Heathrow (Hillingdon). A 'looked after' child has certain continuing rights into early adulthood (18-25)⁶. Asylum-seeking children who have been 'looked after' retain those rights in early adulthood (18-25) even if they are still waiting for a Home Office decision, where other asylum-seekers would have no comparable rights to support.

Disabled asylum-seekers may find they have entitlements protected by various Health and Care laws, where Immigration law would rule out other asylum-seekers from similar support. Local authorities have a duty to conduct a Community Care Assessment upon application (Section 47 of the National Health Service and Community Care Act 1990) and a duty to provide accommodation and welfare support to those who are deemed to have care needs (Section 21, National Assistance Act 1948). However, there is plenty of evidence that negotiation between disabled asylum-seekers and local authorities is not straightforward. Thus a disabled asylum-seeker might be entitled to a Freedom Pass but it can take years of challenges to incorrect decisions before s/he receives it⁷.

Ultimately, no exemption in British Law permits mainstream service organisations (or any other) to act in ways that contravene Human Rights Law. The Equality Act says all people in the UK should receive equal health service; Immigration Law lays down exemptions, so hospitals for example can charge some migrants for some treatments or refuse them treatment. But under the Human Rights

⁵ The Children Act 1989 Section 17 gives local authorities a duty to provide support for children in need, and Section 20 gives them a duty to provide accommodation for children who require it. Section 31 gives local authorities a duty to investigate and take action if it is believed that children are in need of protection. All these duties apply to refugee and asylum-seeking children.

⁶ Children Leaving Care Act 2000

⁷ 'Meeting the needs of Deaf and disabled Refugees, Asylum Seekers and Migrants in West London' Inclusion London, HEAR, REAP 14th Nov 2013, for further details please contact HEAR@reap.org.uk



SUPPORTING AND
EMPOWERING
REFUGEES



Act 1998, hospitals cannot refuse to provide health services if refusing would mean violating the right to life (Article 2) or would be inhumane and degrading to the person (Article 3).

The Public Sector Equality Duty / 'The Equality Duty'

Under The Equality Act, public authorities must have 'due regard' to the needs of staff and services users, to:

- Eliminate discrimination
- Advance equality of opportunity
- Foster good relations

The Equality Duty is special because it is not just about not discriminating; it is about working to get rid of discrimination and to improve equality and relationships across the whole of society. If a public authority commissions a private or voluntary organisation to deliver services – whether 'mainstream' or targeted to a specific population in need - the public authority is ultimately responsible for making sure that commissioned body is working in a way that helps eliminate discrimination, advance equality of opportunity and foster good relations. 'Due regard' in this case does not just mean considering refugee equality (as in an equality impact assessment), it means doing something about it. Thus, where a group of refugees has needs that are different to the wider population, the mainstream service has a duty to address these difficulties. For example many Afghan women have had no schooling and are illiterate and innumerate in any language. They may live in family structures where gendered roles often constrain them further. Any public authority (or commissioned provider) must run services in a way that pays due regard for this inequality, and may mean they should adapt services and access channels to ensure equality of opportunity for Afghan women.

'The Equality Duty'

1. Eliminate discrimination, harassment, victimisation and other conduct that is prohibited by or under the Act;
2. Advance equality of opportunity between people who share a protected characteristic and those who do not share that characteristic;
3. Foster good relations between people who share a relevant protected characteristic and those who do not share that characteristic.

A service provider does not have to tackle every element of inequality in their area at once: "The duty does not require public bodies to meet the demands of any or every group"⁸, but it must base its decisions on evidence. So it is alright to support a health group for newly arrived Tamil-speaking mothers, even if it means you do not have enough resources to run an exercise group for men with high cholesterol – as long as the decision on what and how to prioritise is based in sound evidence. However, The Equality Duty is an on-going duty. Although organisations can and must prioritise they cannot allow existing inequalities to continue, ignored, in the long term: the needs of the men with high cholesterol must not be forgotten. If your area has only a scattering of Afghan women, it might be reasonable to prioritise another group of disadvantaged people initially, but the inequality faced by Afghan women cannot be ignored. Until inequality ceases to exist, and as long as the Equality Act is

⁸ EDF (2010): How to use the Equality Act 2010—a guide for voluntary and community organisations EDF p.2



SUPPORTING AND
EMPOWERING
REFUGEES



in place, public authorities and their partners must strive to eliminate discrimination, advance equality of opportunity and foster good relations. (See also 'Proportionality')

3.0 What you can do

The Equality Act is therefore not only about what you **must not do**, but also about what you **can do**, and what **you must do**. No one should discriminate. Anyone can use positive action. Public authorities and their partners must fulfil the Equality Duty. There are also many ways to lever other organisations into action on equality, in which case a small team or community group, or even one individual could change far more than she or he ever imagined.

Be Informed:

There is a great deal of high quality training and writing to draw on, face to face and online⁹. Make sure you feel confident that you understand Equality law and also asylum, refugee and migration issues. Think through the lived realities of individual refugees as they cope with diverse and often overlapping inequalities and disadvantages. Put yourself in their shoes: see their interaction with staff and organisations as they experience it. Share news about good practice and ideas for positive action.

Know your local area:

You and your organisation need to have a full picture of the local area/its constituency so you can plan positive action and meet the Equality Duty. Find out what is known e.g. Census, Local Authority data, 'fact banks' provided by local CVSs. Build long term relationships with local refugee and migrant activists and community-based equality groups for a mutual exchange of knowledge, but do not use them as a proxy for the whole diverse population and do not forget how busy and under-resourced they are. Statistics on refugees are almost non-existent for local areas; try other indicators and sources: find out about people's first languages, ask schools about how much English as and Additional Language they provide. Where and how will you contact refugees? Leaflets and websites don't usually work for refugees – how about sitting in a GPs reception area, or stand at a bus stop and talk directly to people for a snapshot, or contact your local College of FE and arrange a focus group with interpreters during lunch break in the ESOL section.

Act in your professional role: positive action, and Equality Duty:

Are you satisfied? Discuss refugee equality with your colleagues and agree the areas that cause your team concerns; provide your team with the training they need to feel confident about equality and refugees; identify confusion and misinformation and clarify the facts. Reject direct discrimination of all kinds, which must include tackling asylum-hate. Champion refugee equality; ask 'what about refugees?' Check race, sex and other equality data for relevance to refugees, and check refugee data for other equalities: Women refugees? Child refugees? Lesbian/gay/bisexual refugees? Identify priority refugee populations from the evidence and call a meeting (or commission a community group) to discuss ideas and practicalities for positive actions.

⁹ See RoTA, Refugee Council, EDF, EHRC, Open University.



**SUPPORTING AND
EMPOWERING
REFUGEES**



4.0 Conclusion

Equality is an extremely important issue for refugees and those who aim to support them as they rebuild their lives in the UK. The Equality Act 2010 gives individual 'mainstream' professionals a strong resource for positive change. A clear understanding of how the Act relates to refugees and their relationship with 'mainstream' service providers can be a source of confidence to professionals in decision-making and actions. The Act lays out obligations under the Equality Duty but also the potential for professionals and teams to take positive action. It is a great step forward for refugee equality in the UK.

5.0 Where to get more information

www.bihhr.org.uk	Human Rights
www.EDF.org.uk	Equality network and extensive range of resources, briefing, tools.
www.equalityhumanrights.com	Equality and Human Rights Commission, introductory and in depth briefings and guidance
www.inclusionlondon	Networking body of Deaf and Disabled People's Organisations
www.legislation.gov.uk	Includes text of Government Legislation including any mentioned here, e.g. Human Rights Act 1998, Equality Act 2010, Freedom of Information Act 2000, Children Act 1989, Children (Leaving Care) Act 2000, (Section 21, National Assistance Act 1948), National Health Service and Community Care Act 1990
www.lvsc.org.uk/policy-areas/equalities/hear.aspx	HEAR London VCS Network of Equality and Human Rights organisations
www.REAP.org.uk	Refugee equality and empowerment
www.RoTA.org.uk	Race on the Agenda, Equality Training and Policy Campaigning

References

- EDF (2010 Nov): [How to use the Equality Act 2010 – a guide for voluntary and community organisations](#) EDF
- EDF (2011 May): ['Who's Still Missing?' – Refugees, migrants and the equality agenda'](#) - EDF Refugees and Migrants Equality Project
- EDF (2011 June): [Refugees, Migrants and the Equality Act 2010 – a briefing for public authorities](#)- EDF Refugees and Migrants Equality Project
- EDF, REAP (2011 June): [Refugees, migrants and the Equality Act 2010 – a briefing for refugee and migrant community organisations](#) - EDF Refugees and Migrants Equality Project

Funded by the London Councils, the Supporting RCOs project is a Refugee Council's project of free training and other activities which aims to support London's Refugee Community Organisations (RCOs) and strengthen their capacity to deliver services effectively to their clients, to help them engage with stakeholders in service delivery, as well as to promote more widely best practice in engaging with RCOs. For more information about the Supporting RCOs project and to access any of the services provided by the project, please contact Ezechias Ngendahayo: 020 7346 1163 • ezechias.ngendahayo@refugeecouncil.org.uk or follow the link • www.refugeecouncil.org.uk/supportingrcos •

Refugee Council is a registered charity. Charity number 1014576. Company number 2727514.