ATTACHMENT [**JEM 3**]

This is the attachment marked "[**JEM 3**]" referred to in the witness statement of Joumanah El Matrah dated 10 August 2015.

CO/3880/2008

Neutral Citation Number: [2008] EWHC 2062 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 29 July 2008

B e f o r e:

LORD JUSTICE MOSES

- - - - - - - - - - - - -

Between:
THE QUEEN ON THE APPLICATION OF KAUR and SHAH

Claimants

v

LONDON BOROUGH OF EALING

Defendant

THE EQUALITY & HUMAN RIGHTS COMMISSION

Intervenor

- - - - - - - - - - - - -

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Miss Helen Mountfield and **Professor Aileen McColgan** appeared on behalf of the Claimants (No appearance for judgment on 29 July)
Mr Declan O'Dempsey appeared on behalf of the Defendant (No appearance for judgment on 29 July)
Miss Monoghan appeared on behalf of the Intervenor (No appearance for judgment on 29 July)

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J U D G M E N T

1. LORD JUSTICE MOSES:

Introduction

2. Southall Black Sisters was founded in 1979. For nearly 30 years it has provided specialist services to Asian and Afro-Caribbean women particularly in relation to issues arising from domestic violence. Since the mid-1980s it has been funded by the London Borough of Ealing ("Ealing"), in part, but has also received voluntary contributions.

3. The Southall Black Sisters received £102,000 from Ealing for the years 2007 to 2008 under a three-year rolling sponsorship agreement. In June 2007 Ealing decided that rather than funding individual organisations under sponsorship agreements it would commission borough-wide services from community and voluntary organisations by open competition according to published criteria. Notice was given to the Southall Black Sisters on 16 July 2007 to bring the funding arrangements with Ealing to an end in March 2008.

4. The original specification drafted by Ealing suggested an award of up to £100,000 for three years to the successful bidder. The important aim, expressed from the outset, was that the service provider would have to provide the service to "all individuals irrespective of gender, sexual orientation, race, faith, age, disability, resident within the Borough of Ealing experiencing domestic violence". On 18 September 2007 after consultation that was the basis upon which awards were proposed.

5. In response to concerns expressed by the Southall Black Sisters during the consultation process that the criteria would have a disproportional impact on black and minority ethnic women and that there had been no racial equality impact assessment ("REIA"), Ealing agreed to withdraw its decision of 18 September 2007 in order to prepare what it described as a draft equality impact assessment. It consulted voluntary organisations, including the Southall Black Sisters, as to that assessment.

6. Further concerns were expressed as to the impact on specialist services provided to black minority ethnic women likely to be caused by proposals to award funds to a provider who provided services throughout the borough to all in need, whatever their ethnic origin. On 26 February 2008 Ealing maintained in its proposal only to fund an organisation which provided such services to all throughout the borough. It proposed, in addition, to set aside £50,000 should it emerge, through a process of monitoring, that funds were needed in relation to the provision of specialist services to those of a minority background.

7. It is that decision of 26 February 2008 which now is challenged. The decision is said to have been reached by a process which offends Section 71 of the Race Relations Act 1976 (as amended) ("the 1976 Act"). Further it failed to follow Ealing's own policy for assessing the impact of its proposed policy on ethnic minorities. Moreover, as a matter of substance, it is said that the proposed criteria were based on a misconstruction of Section 35 of the 1976 Act and the principles relative to the pursuit of cohesion which Ealing purported to adopt.

8. I should make it clear at the outset, as the Southall Black Sisters made it clear, that this is not a case in which it is attempted to impose a requirement to give a grant to the Southall Black Sisters. But it must be said, at the outset, that Southall Black Sisters' success triggered Ealing's desire to make such services more widely accessible.

9. The Equality and Human Rights Commission has intervened with helpful and important submissions as to the law and relating to the statutory and non-statutory codes relevant to the material provisions. Whilst it has intervened to assist, and not to confront, from a neutral stance, in order to demonstrate the force of its interpretation of the relevant statutory provisions and the guidance in relation to those provisions, it took the view, by way of submissions, that the history of Ealing's approach to the criteria for funding was inconsistent with both the relevant statutory scheme and the guidance designed to achieve the statutory objectives.

10. On the second day of the hearing Ealing conceded that it could not maintain its decision of 26 February 2008 and sought to resist the application no longer. It agreed to continue to fund Southall Black Sisters pending a further fresh decision as to the criteria it would adopt for the commission of services to assist the victims of domestic violence.

11. Although the order that I have been asked to make has been agreed, it was nevertheless thought necessary that I should give a judgment in order to promulgate those principles which emerge from the statutory scheme, the codes and guidance in relation to local authority funding of the services in question.

12. I should stress at the outset that in the light of Ealing's acceptance that its decision should be quashed, it is not necessary to resolve all the hotly disputed areas of fact as to precisely what it was Ealing had decided. But it will be necessary to detail some of the facts in order to illustrate important features of the process and the substance of the decision in relation to which Ealing, in the absence of continued resistance, must be regarded to have erred.

The Statutory Scheme

13. In stating the criteria for the funding of voluntary and community organisations to provide services to the victims of domestic violence, Ealing was bound by Section 19B of the 1976 Act, as amended. Section 19B applies to acts involving exercise of public functions which are not made unlawful by other provisions of the 1976 Act (Section 19B (6)). Section 19B renders it unlawful for a public authority in carrying out the functions identified within that section to do any act which constitutes discrimination. Discrimination is, for the purposes of the instant case, any discrimination falling within Section 1 of the 1976 Act (see Section 78 and Section 3 (3)). By Section 1A -

> "A person also discriminates against another if, in any circumstances relevant for the purposes of any provision referred to in sub-section (1B), he applies to that other a provision, criteria or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but

(a) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons,

(b) which puts that other at that disadvantage, and

(c) which he cannot show to be a proportionate means of achieving a legitimate aim."

14. The policy relating to the criteria for funding clearly falls within Section 1A of the 1976 Act. Section 71 of the 1976 Act imposed a duty on Ealing in carrying out its functions in setting criteria for funding organisations which assist victims of domestic violence, to have -

"due regard for the need -

(a) to eliminate unlawful racial discrimination, and

(b) to promote equality of opportunity and good relations between persons of different racial groups."

15. The two-fold obligation to eliminate discrimination and positively to advance equality was imposed by the Race Relations (Amendment) Act 2000. It followed the Stephen Lawrence Inquiry Report (Cm 4262-1) of February 1999. It was intended to enact a major change from the previous statutory provisions contained in the old Section 71. Those old provisions were perceived as lacking content as to steps organisations such as local authorities were required to take to comply. In addition, they were difficult to enforce. The new duty to have regard to the twin needs of elimination of discrimination and to promote equal opportunity and good relations for all is described within Schedule 1A to the 1976 Act (as amended) as a general duty imposed on the bodies specified in that Schedule.

16. The obligations imposed on authorities such as Ealing are fed with recognisable content by the statutory Code of Practice (Code of Practice on the duty to promote Race Equality 2002 CRE). The Equality Commission is empowered by Section 14 of the Equality Act 2006 to issue a code of practice in connection with, amongst other provisions, Section 71. The code must be taken into account by the court or tribunal if it is relevant (see Section 15 (4)).

17. The code identifies the four principles which should govern public authorities' efforts to meet their duty to promote race equally -

(a) to promote race equality is obligatory for all public authorities listed in Schedule 1A of the Act;

(b) public authorities must meet the duty to promote race equality in all relevant functions;

(c) the weight to be given to race quality should be proportionate to its

relevance;

(d) the elements of the duty are complementary which means they are all necessary to meet the whole duty."

18. As to the weight to be given, that must be proportionate to its relevance to a local authority's particular function and thus greater consideration and resources should be given to those functions or policies which have the most effect on the public (see paragraph 3.5). Further, the code identifies important questions that a local authority should ask itself, particularly:

"Could the policy or the way the function is carried out have an adverse impact on equality and opportunity to some racial groups; in other words, does it put some racial groups at a disadvantage?" (See paragraph 3.16).

19. Section 71 imposes a continuing duty (see paragraph 3.7). Pursuant to Section 71 (2), the 1976 Act empowers the Secretary of State to make orders as to the publication of schemes showing how the local authority intends to fulfil its duties under Section 71 (1) (see the Race Relations Act 1976 (Statutory Duties Order) 2001, SI 2001 No 3458).

20. Of particular relevance to the instant case is the duty to assess the likely impact of those policies on the promotion of race equality (see Article 2 (b) (ii) of the Order). These provisions express the vital principle that the impact of any proposed policy should be assessed and steps to obviate any adverse impact considered *before* the adoption and implementation of the proposed policy.

21. In addition, the Commission has issued a non-statutory guide "Duty to provide and to promote Race Equality, a Guide to Public Authorities 2002". This guide sets out the stages which a local authority should follow in issuing a race quality impact assessment. Those stages emphasise the need for consultation with particular groups who might be affected and also emphasises, before deciding whether to adopt the proposed policy, the need to have that decision based upon the "results of your race equality impact assessment" (see page 49 of the guide).

22. An authority is only entitled to depart from the statutory code for reasons which are clear and cogent (see R (Munjaz) v Mersey Plan NHS Trust [2006] 2 AC 148. I suggest that that is sufficient authority also for the proposition that any authority would have to justify its departure from the non-statutory guide.

23. The jurisprudence relative to the issues reinforces the importance of considering the impact of any proposed policy before it is adopted as part of the significant role of Section 71 in fulfilling the aims of anti-discriminatory legislation (see R (Elias) v Secretary of State for Defence [2006] WLR 321, [2006] EWCA Civ 1293, per Lady Justice Arden, paragraph 38). In considering the impact, the authority must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated (see Mr Justice Elias at first instance in the same case at paragraph 39).

24. The need for advanced consideration must be distinguished from the use of such impact assessments for what Lord Justice Sedley described as a rearguard action following a

concluded decision (see R (BAPI and Another) v Secretary of State for the Home Department and the Secretary of State for Health [2007] EWCA Civ 1139 at paragraphs 2 and 3). What is important is that a racial equality impact assessment should be an integral part of the formation of a proposed policy, not justification for its adoption.

25. The process of assessments should be recorded (see Stanley Burnton J at first instance in BAPIO [2007] EWHC 199, QB). Records contribute to transparency. They serve to demonstrate that a genuine assessment has been carried out at a formative stage. They further tend to have the beneficial effect of disciplining the policy maker to undertake the conscientious assessment of the future impact of his proposed policy, which Section 71 requires. But a record will not aid those authorities guilty of treating advance assessment as a mere exercise in the formulaic machinery. The process of assessment is not satisfied by ticking boxes. The impact assessment must be undertaken as a matter of substance and with rigor (see R (Baker and Others) v Secretary of State and the London Borough of Bromley [2008] EWCA 141, paragraphs 37 and 87).

26. Ealing has published its own policy for conducting racial equality impact assessments. The policy makes it clear that Ealing would carry out impact assessments in three stages, an initial equality impact assessment, an intermediate impact assessment and a full equality impact assessment. All of those must be undertaken before a policy is adopted, and any decision as to whether to adopt the policy must be based upon those assessments. If an initial equality impact assessment establishes that there is a potential for a policy to have an adverse impact on one of the three Section 71 considerations, then an intermediate impact assessment must be carried out. The intermediate impact assessment should clearly state the risks associated with the policy in relation to differential impact and weigh those against the benefits. The full equality impact assessment involves eight key stages which include an assessment of impact, consideration of the measures to obviate that impact and monitoring for adverse impact in the future.

27. Good administration and fairness demands that a local authority like Ealing is only entitled to depart from its own policy where to do so represents a proportionate response to the circumstances which led the authority to consider such a departure. The essential procedural failures - of which the claimants who are both recipients of services from the Southall Black Sisters complained - turned on the failure of Ealing to carry out the necessary racial equality impact assessment at a stage when it was formulating the criteria according to which it would offer grants to those providing services to victims of domestic violence. Throughout the process leading to its decision it failed to assess the impact on black minority ethnic women of its requirement that the provider of services for victims of domestic violence should be a single-service provider or a single consortium providing services to all individuals resident in the borough.

Facts

28. Prior to the first decision of Ealing on 18 September 2007, its proposal of 26 June 2007 recorded that 85 per cent of the users of general grant funded services were from black

minority, ethnic and refugee communities. It recorded that an initial equalities impact assessment would be undertaken. In that proposal it developed draft specifications which required any applicant for funding to address equality, diversity, social inclusion, community cohesion and sustained ability. It proposed to provide a grant of £100,000 per annum for three years. I should observe at this stage that that was a grant hitherto made when sponsoring Southall Black Sisters. It required that the services should be provided throughout the borough for all individuals irrespective of race. The initial proposal met the response that it should not be providing a single service for both women and men affected by domestic violence (see the response dated 30 July 2007 from Ealing Community Network). That proposal was subsequently abandoned.

29. Southall Black Sisters stressed the importance of specialist provision, making the point, which it was to reiterate throughout this process, that targeting services did not undermine social cohesion. It suggested that the Council should consider targeting current funding on the services for black minority ethnic female victims of domestic violence which involved meeting multiple needs and dealing with complex problems.

30. The first decision was made on 18 September 2007 recording Southall Black Sisters' suggestions, particularly in relation to the proposition that targetting these services did not undermine social cohesion, but merely commented that that point would be discussed. The decision made at that stage was that "a grant of £100,000 would be made to a borough-wide support service for people experiencing domestic violence". Thus at that stage the authority was still intent on giving funds only to a borough-wide support service. It is plain that at that stage no racial impact assessment whatever had been prepared.

31. The report itself recorded that an initial equality impact assessment was being prepared on the proposals and feedback and would be included with the report that the authority's cabinet planned for February 2008. That was a serious error from which Ealing never recovered. It attempted later to prepare an assessment but there was no full assessment, as it is obvious was required, before Ealing fixed on the criteria which required a single service provider or a consortium through a lead provider. Concerns continued to be expressed as to the lack of flexibility necessary to meet the needs of a diverse community.

32. E-mails now disclosed by Ealing as to the consultation response to its decision of 18 September show that it maintained a clear preference for a single provider or a single consortium.

33. The publication of its proposals on 18 September provoked considerable protest as to the absence of any equality impact assessment. On 5 November 2007 Ealing wrote to applicants, making it clear that it would consider applications from consortia subject to all partners agreeing a lead organisation and agreements as to their role in delivery of the service. It proposed a score sheet by which it would assess which service provider would be successful. It reiterated the need for the applicant to address what it described as community cohesion. It required any applicant to give details about its equal opportunities policy and how it planned to achieve equality in relation to the service it planned to provide. I should observe at this stage that it was Ealing's obligation to

ensure that its criteria for funding did not have an impact adverse to those for whom services had hitherto been provided.

34. The chairperson of the Southall Black Sisters - Pragma Patel - wrote a cogent letter on 19 November 2007 in response, explaining the detrimental and disproportionate impact that the proposals for a borough-wide service would have. As it said:

> "The main reason for this (a disproportionate impact) is that not all women experience domestic violence in similar circumstances. Issues of racism, culture, language and immigration status, for example, make the task of accessing services much more harder (see ISC) (?) for black and minority women. There is therefore a greater need for part of its specialist resources and staff."

35. Southall Black Sisters put in an application making similar points as to the merits of the specialist service it provided. As it said:

> "Throughout our existence we have consistently provided a safe place for all black and minority women so that they can learn to respect each other and also to share their experiences and overcome their differences to reach their goals. We have been extremely successful until now. Black and minority women from various religious and ethnic backgrounds use our centre without fear or mistrust and build friendship networks that cut across their differences."

36. As a result of the protests at the absence of the equality impact assessment, on 18 December 2007 the defendant confirmed that its decision would be to withdraw its earlier decision of 18 September 2007 and would extend the consultation process to the end of January. It stated that a draft equality impact assessment would be sent to voluntary organisations on 17 December 2007. That letter, dated 14 December 2007, stated:

> "The council does not accept that the absence of an equality impact assessment renders the decision of 18 December unlawful. The decision to proceed with the proposal was clearly contingent on the EIA being underpaid (?). The intention was that it would be available before final recommendations were made in February 2008." (Quotation not checked)

That was a clear error. The authority was not entitled to formulate policy before any equality impact assessment. Thus it is unlawful to adopt a policy contingent on an assessment.

37. Time is needed to consider the impact of any assessment. The suggestion that a policy can be adopted contingent on such assessment smacks - as Miss Mountfield put it, in adopting the words of the Chief Inspector of Prisons - of policy-based evidence rather than evidence-based policy.

38. The initial equality impact assessment suggested that there were no concerns that the policy proposed of a single service provider would have any differential impact on

racial groups. It was that view that continued to inspire the authority's persistent intention only to fund a single-service provider or a consortium with a lead provider.

39. The final conclusion of the further bout of submissions displays that Ealing had not changed its mind when deciding, as it did on 26 February 2008, to proceed initially with the criteria only to fund a single-service provider or a consortium. It added an appendix which commented on the comments received on the equalities impact assessment. In particular it recorded that the Council did not accept that specialist services would no longer be available for black minority ethnic women in the light of the funding arrangement changes. It records that it would be necessary to look in the future by a process of monitoring to decide whether there was any diminution of service in the area of special provision to black minority ethnic women and, in particular, whether there would be a disproportionate impact on such women.

40. That approach reveals that its final decision of 26 February was not based upon any full assessment of the detrimental impact to which the Southall Black Sisters had drawn attention.

41. It is significant that in that appendix the trigger for the proposal to require a single-service provider throughout the borough was the success of Southall Black Sisters in providing on-going support and case work targeted on Asian and black women.

42. The appendix to which I have referred, on which the final decision is based, is also of importance because it shows Ealing's clear view that there was no relationship between domestic violence and ethnicity. It based that on what it culled from the British Crime Survey and its own observation that wards of its borough which did not show a large proportion of those from a black and minority ethnic community had the largest number of those reporting domestic violence. I shall have occasion, shortly, to comment upon Ealing's use of statistics. That view, namely that the analysis of the ethnicity of domestic violence victims shows 41 per cent of white Europeans (the highest of all the ethnic groups), led to its decision of 26 February to make a grant only to a single-service provider or a consortium of £100,000 for three years with £50,000 set aside in a reserve fund should a further report reveal that to be necessary.

Errors

43. There was no full racial equality impact assessment until some time after these proceedings were launched, namely on 5 June 2008. This failure establishes a clear breach of Section 71 of the 1976 Act, the statutory code and the specified duties which Ealing was required to follow under the 2001 order. In determining as criteria that the provider should be a single source of services to all throughout the borough or a consortium with a single leader before a full racial equality impact assessment had been undertaken, the Council acted unlawfully. Moreover it was wrong to fix on a solution with only the prospect of monitoring its effect on minorities in the future.

44. Once the Borough of Ealing had identified a risk of adverse impact, it was incumbent upon the borough to consider the measures to avoid that impact before fixing on a

particular solution. It erred: in having recognised the problem whilst merely hoping to assess its extent after it had settled on its criteria.

45. Moreover the appendix which led to the decision reveals an incorrect approach to the statistical data of the incidence of domestic violence. Ealing observed that the largest proportion of domestic violence in its borough was suffered by white European women. But that statistic was meaningless and irrational unless compared with the fact that 58 per cent of the female population of Ealing during the same period consisted of white European women. As the documents show, 28 per cent of domestic violence was suffered by Indian, Pakistani and other Asian women. That statistic is of vital importance when one considers that those groups made up only 8.7 per cent of the population within Ealing. In those circumstances it is plain from the statistics available to Ealing that a very large proportion of women from that background suffered from domestic violence in comparison to white European women.

46. Had Ealing appreciated that the important focus of their attention should be upon the proportion of black minority ethnic women within the borough and consideration of how high a proportion of those women suffered from domestic violence, it could never have reached the conclusion that there was no correlation between domestic violence and ethnicity. Any such conclusion was, in my judgment, perverse.

47. Furthermore the figures available to Ealing were - so Ealing ought to have appreciated - aggravated by the fact that amongst those communities would be serious under-reporting of the fact of being a victim of domestic violence.

Indirect discrimination

48. Although in the light of Ealing's concession that the decision should be quashed, there was not any full argument as to the basis of its decision, it is important to recognise that which may, in part, at least have been responsible for its admitted error. Throughout the process it is plain that Ealing believed that cohesion could only be achieved through making a grant to an organisation which would provide services equally to all within the borough. It is also clear that one of the main reasons for reaching that conclusion is that it was necessary in order to achieve community cohesion.

49. Ealing, in defending this application, set out in its grounds the basis for its criteria, stating that it was required to ensure that the criteria did not undercut cohesion objectives -

> "by avoiding funding projects for particular groups which do not meet evidenced needs particular to those groups."

50. Furthermore in the written argument advanced on behalf of Ealing it is plain that it regarded any other decision as being contrary to Section 35 of the 1976 Act. It submitted that Section 35 was an explicit derogation from the principle of non-discriminatory treatment and it did not permit an organisation that would supply services exclusively by refusing to provide to members of another racial group. Further

it did not permit the service provider to discourage users from a particular racial group from using its services by its choice of language.

51. This proposition demonstrates to the mind of the Equality and Human Rights Commission and to this court a serious error as to the place of Section 35 within the 1976 Act. Section 35 provides under the rubrick "Special Needs of Racial Groups in regard to Education, Training or Welfare":

> "Nothing in Parts II to IV will render unlawful any act done in according to a person of a particular racial group access to facilities or services to meet the special needs of persons of that group in regard to their education, training or welfare or any ancillary benefits."

52. The importance of Section 35 is that it recognises that the elimination of discrimination and the promotion of equality requires indirect discrimination to be eliminated and equality for those who are the victims of indirect discrimination may require their special needs to be met. That those twin objectives may require positive action is acknowledged in Section 37 and Section 38 of the 1976 Act. Section 35 is not an exception to the 1976 Act. It does not derogate from it in any way. It is a manifestation of the important principle of anti-discrimination and equality measures that not only must like cases be treated alike but that unlike cases but must be treated differently.

53. The White Paper preceding the 1976 Act - Racial Discrimination (Cm 623-4) - made it clear that the Bill should allow the provision of facilities and services to meet the special needs of particular ethnic or national groups (see paragraph 57). More recently, the Compact on Relations between Governments and the Voluntary and Community Sector in England 2008, which is an agreement between the Government and the voluntary and community sector in England, emphasises the importance of independent, non-profit organisations run by, for and located within black minority ethnic communities.

54. That sector, it says, brings distinctive value to society. Cohesion is achieved by overcoming barriers. That may require the needs of ethnic minorities to be met in a particular and focussed way. The Southall Black Sisters illustrate that principle. In the second statement from the chairperson she identifies the experience of the Southall Black Sisters in demonstrating how social services may be provided to those where a single-service provider may be reluctant to intervene in the cultural and religious affairs of a minority for fear of causing offence. Specialist services such as those provided by the Southall Black Sisters avoid those traps and help women to leave a violent relationship by using what she describes as -

> "these very concepts of their culture such as honour and shame to support them in escaping violence and re-building their lives."

She continued:

> "Specialist services are more effective in empowering minority women so

that they can take their place in the wider society."

55. Ealing now acknowledges that the Equality and Human Rights Commission's views of Section 35 are correct. There is no dichotomy between the promotion of equality and cohesion and the provision of specialist services to an ethnic minority. Barriers cannot be broken down unless the victims themselves recognise that the source of help is coming from the same community and background as they do.

56. Ealing's mistake was to believe that cohesion and equality precluded the provision of services from such a source. It seemed to believe that such services could only lawfully be provided by a single provider or consortium to victims of domestic violence throughout the borough. It appreciates that it was in error and that in certain circumstances the purposes of Section 71 and the relevant statutory code may only be met by specialist services from a specialist source. That is the importance of the name of the Southall Black Sisters. Its very name evokes home and family.

57. At one stage Ealing seemed to suggest that it was not even entitled to a name which announces the specialist source of the service. It cited Centrum voor Gelijkheid van Kansen en voor Racismebestrijding v Firma Feryn NV C-54/07, both in the judgment of the court and the opinion of the Advocate General, as support for that proposition. The case concerned a public announcement by an employer that it would not employ Moroccans on the grounds that members of the community would not be happy with services supplied by such employees. It is not authority for the proposition that specialist services cannot be provided by a specialist organisation whose name announces its purpose.

58. As I have endeavoured to explain, specialist services for a racial minority from a specialist source is anti-discriminatory and furthers the objectives of equality and cohesion. I can do no better than to conclude this judgment - before giving the agreed order - by quoting the chairman of the Equalities Review in the final report Fairness and Freedom, published in 2007:

> "An equal society protects and promotes equality real freedom and substantive opportunity to live in the ways people value and would choose so that everyone can flourish. An equal society rcognises people's different needs, situations and goals and removes the barriers that limit what people can do and can be."

59. There is an agreed order. I will hand the agreed order to the associate later. It includes quashing the order and costs to be paid.

(Short Adjournment)

60. LORD JUSTICE MOSES: The order is the decision is quashed. The order of Mr Justice Forbes dated 24 April 2008 is set aside. The defendant agrees to pay the claimants' costs to be assessed if not agreed, and £5,000 towards costs of the Equality and Human Rights Commission. There be detailed LSC assessment of the claimants' costs. The draft order did not have "quash" in it.