
Viewpoint

Education and equalities in Britain, 2010–2022: due regard and disregard in a time of pandemic

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Abstract

This article recalls the key concept of due regard in the Equality Act 2010 and outlines how it was increasingly ignored by the Department for Education (DfE) in England in the following decade. Further, it speculates that if the concept of due regard had been observed more rigorously across all government departments, the COVID-19 pandemic would have been less tragic and traumatising in its effects, and less responsible for deepening inequalities throughout British society. It concludes that the Act should be revisited, revised and re-emphasised.

Keywords Equality Act 2010; public sector equality duty; Ofsted; equality objectives

Due regard

'Without scheming to do wrong', observed the central character in Jane Austen's (2004: 105) novel *Pride and Prejudice*, 'or to make others unhappy, there may be error, and there may be misery.'

Thoughtlessness, want of attention to others' feelings, and want of resolution, will do the business.' A hundred or so years later, the poet W.B. Yeats (1919: 13) imagined someone contemplating their personal engagement in the First World War: 'I balanced all, brought all to mind'. The legal term for the opposite of thoughtlessness and lack of resolution, and for the corresponding presence of balancing all and bringing all to mind, is 'due regard'. It appeared at, for example, section 76A of the Sex Discrimination Act 1975, section 71 of the Race Relations Act 1976 and section 49A of the Disability Discrimination Act 1995, and then, in due course, section 149 in the Equality Act 2010. But as the parliamentary bill that would become the Equality Act 2010 was being finalised, there was still fundamental debate and disagreement in Parliament about whether the concept of due regard would be sufficient to – quoting Jane Austen's phrase again – 'do the business'.

In a speech in the House of Lords in March 2010, Lord Ouseley passionately argued that the concept of due regard would fail to diminish inequalities of outcome throughout British society. Speaking on behalf of a wide range of equality organisations, which between them had access to substantial legal expertise, and in the light of his own distinguished career in local government and as chair of the Commission for Racial Equality, Lord Ouseley (2010: n.p.) maintained that the due-regard approach in existing race, gender and disability duties 'has got us to where we are now, but the proposed duty ... takes us no further'. He continued:

What we have now are volumes of equality strategies, schemes and policies, but not a great many desired and required outcomes that add up to recorded equality results. Yes, there are statements of intent, declarations, aspirations, commitments, warm words, policy reviews and mountains of reports, all in order to satisfy the requirement to have 'due regard' ... but that standard of due regard is, in my view, woefully inadequate. (Ouseley, 2010: n.p.)

Replying to Lord Ouseley's worry that the concept of due regard was woefully inadequate, the government spokesperson, Baroness Thornton, promised that his concerns would be met by forthcoming proposals for specific duties. The general duty of due regard, she said, would be underpinned, clarified and focused by duties designed to assist better performance of it:

We ... want public bodies to take steps such as developing and publishing equality objectives and reporting progress ... We believe that this package will lead to better policy, better public services and less bureaucracy and that it will be an asset for all. It will increase focus on the equality outcomes which we all wish to see. (Thornton, 2010: n.p.)

In the light of this reassurance, Lord Ouseley withdrew his proposal to amend the bill under consideration. His concerns would be met, he agreed, if the proposed specific duties were to be as Baroness Thornton outlined, namely to develop and publish equality objectives, to report progress and to focus on equality outcomes. A few weeks later, the bill received royal assent as the Equality Act 2010. A few days after that (6 May 2010) there was a general election, followed by a new administration, the coalition of Conservatives and Liberal Democrats led by David Cameron. Barely five weeks later (9 June 2010) the new Home Secretary and Minister for Women and Equalities, Theresa May, wrote formally to cabinet colleagues to remind them of their legal duty to have due regard for equality in relation to disability, ethnicity and gender (Dodd, 2010). She also reminded them of forthcoming duties in relation to age, religion or belief, sexual orientation and transgender. Her immediate concern was the likely impact on inequality of imminent budgetary cuts. Her letter was also relevant, however, for the full range of government policies, actions and decisions. She warned that 'there are real risks that women, ethnic minorities, disabled people and older people will be disproportionately affected' by the cuts (Dodd, 2010: n.p.). All four of these groups, she pointed out, use public services more than the population as a whole, and the majority of people in receipt of tax credits and welfare payments belong to these groups. Also, very significantly in the light of what subsequently happened, these were the four groups which ten years later would be the principal victims, directly or indirectly or both, of the COVID-19 pandemic. The indirect effects would probably include the violence and traumas of cascading grief and anger for many decades to come, generation after generation.

The home secretary's warning to cabinet colleagues was unequivocal:

If there are no processes in place to show that equality issues have been taken into account in relation to particular decisions, there is a real risk of successful legal challenge by, for instance, recipients of public services, trades unions or other groups affected by these decisions.

The Equality and Human Rights Commission also has the power to bring judicial review proceedings or issue compliance notices if they think a public body has not complied with an equality duty. (Dodd, 2010: n.p.)

The warning was a succinct and forceful reminder of the legal concept of due regard. In addition to alerting her colleagues to their legal duties, the home secretary offered support and assistance, and mentioned in this connection that a package of help was available from the Government Equalities Office to assist officials, advisers and ministers to understand their legal obligations, and to understand what due regard in practice should look like. Further, she gave the name and email address of a senior official at the Government Equalities Office who would be ready to answer enquiries and give focused advice. Her cabinet colleagues in the leadership of the coalition government, together with their closest advisers and most senior civil servants, had no excuse for not knowing what the law required them to do, and not do.

The responses to the home secretary's letter by the Department for Education (DfE), where the new secretary of state was Michael Gove, assisted by his specialist adviser Dominic Cummings, were marked by shallow lip service, or else by disregard for the new legislation altogether, and for the exemplary practice developed in recent years by the DfE itself. Further, seriously misleading guidance was issued to schools. For example, schools were formally instructed that those 'that were already complying with previous equality legislation should not find major differences in what they need to do' (DfE, 2013: 5). In reality, as reflected in the letter quoted above (Dodd, 2010), the concept of due regard was now much clearer than previously. The new specific duties were in preparation, and for several years there had been a growing body of case law (TUC, 2011; see also the later summary of legal implications for employers by Simpson, 2021).

The most fully documented example of disregard in the education system in 2010 concerned the cancellation of the Building Schools for the Future (BSF) programme. Some of the local authorities affected by the cancellation brought judicial review proceedings. Their complaints included, but were by no means limited to, the DfE's disregard for equalities legislation. The judge who presided over the review, Mr Justice Holman, declared that the decision-making process in relation to cancellation of the BSF programme had been unlawful, in view of its 'failure to discharge the relevant statutory equality duties' (England and Wales High Court, 2011: para. 116).

The judge noted also that Michael Gove had declared in Parliament on 5 July 2010 that 'the coalition government are determined to make opportunity more equal', but commented that this, although laudable, 'is entirely generalised and not at all disability, race or gender specific'. He added: 'There is absolutely no mention whatsoever in the statement of any disability, race or gender equality issues or needs having been considered by the secretary of state at all' (England and Wales High Court, 2011: para. 111). Further, he said that he had studied option papers about BSF prepared for ministers in the period May–July 2010, but had 'been unable to find a single reference to disability, race or gender within them'. He concluded:

Whilst the absence of such references or records is not determinative, I regret to say that in this case I regard the absence as glaring and very telling. I am simply not satisfied that any regard was had to the relevant duties at all, let alone rigorous regard. (England and Wales High Court, 2011: para. 113)

'Having due regard', explained the DfE in a workbook for its civil servants compiled during the previous administration but reissued in 2011, and publicly shared on its website, 'means that we need to think in advance about the potential implications of our decisions, seeking not just to eliminate negative outcomes but also thinking about potentially positive ones' (cited by the Children's Commissioner for England, 2013: 34). Further, the DfE emphasised that conducting rigorous and open-minded analysis of policies and decisions accordingly involves asking two questions, each accompanied by a follow-up question:

Could this policy, or does this policy, have a negative impact on one or more of the dimensions of equality, or could it increase inequalities that already exist? – If so, how can we change or modify it, or minimise its impact, or justify it?

Could this policy, or does this policy, have a positive impact on equality, by reducing and removing inequalities and barriers that already exist? – If so, how can we maximise this potential? (Cited by the Children's Commissioner for England, 2013: 34)

The concept of due regard was also clarified and summarised in, as they were known, the Brown principles (Adam et al., 2021). In the period 2010–13, the government made several policy changes which were likely to adversely affect people with characteristics protected by the Act. It did not, however, make its decisions with rigour and with an open mind, as stipulated by the Brown principles. Such decisions included the ending of the education maintenance allowance, the decision to cease ring-fencing the ethnic minority achievement grant, the ending of the Every Child Matters programme, the phasing out of children's centres and Sure Start projects, decreasing concern and support for children with disabilities and special needs, and decreasing concern about prejudice-related bullying. It was alas not at all surprising that the DfE issued unhelpful and ill-informed guidance on the specific duties: (1) to collect and publish relevant evidence; and (2) to formulate measurable objectives. Its failures in these two matters are summarised below.

The specific duty to collect and publish evidence

In 2011, after substantial consultation, two specific duties were agreed and published, which were in accordance with what Baroness Thornton had promised. They did not, it was emphasised, extend, restrict or change the general duty of due regard in any way. Rather, their purpose was to help public bodies carry out the general duty more effectively. 'We want public bodies to focus on delivering real progress on equality', said a government spokesperson in the House of Lords in 2011, 'and to be transparent about that so that the public can hold them to account' (Verma, 2011: column 123). A fundamental shift was taking place, she added, 'from bureaucratic accountability for filling in the right forms to democratic accountability for delivering equality improvements for service users'.

In accordance with this duty, the Office for Standards in Education, Children's Services and Skills (Ofsted) published in 2012 an excellent summary of the principal kinds of evidence that schools should collect and publish. Implicitly, but not directly, the summary dissociated Ofsted from the DfE's false claim, quoted above, that 'schools that were already complying with previous equality legislation should not find major differences in what they [now] need to do' (DfE, 2013: 5). The purpose of its publication as a whole, Ofsted (2012: 1) said, was: 'to help inspectors judge the impact of schools' work in advancing equality of opportunity, fostering good relations and tackling discrimination. It aims to help inspectors understand schools' responsibilities in relation to the Equality Act 2010, which is that they should have "due regard" for equalities'. Ofsted (2012: 8–12) cited the Brown principles in an appendix, and the following verbatim extracts from the main body of the document give a sound idea of the document's concerns and priorities:

Senior staff and governors should know about the relative attainment and progress of different groups of pupils, and monitor their performance and other data relevant to improving outcomes ... It is expected that a school has data about the school population and differences of outcome, and analyses up-to-date data on the composition of its pupils broken down by year group, ethnicity and gender, and by proficiency in English. This will include detail about significant differences in attainment between girls and boys, and between pupils of different ethnic backgrounds ... Teaching and curriculum materials in all subjects have positive images of disabled people; of gay and lesbian people; of both women and men in non-stereotypical gender roles; and of people from a wide range of ethnic, religious and cultural backgrounds ... There are clear procedures for dealing with prejudice-related bullying and incidents, and appropriate staff training that equips staff to identify and deal with this effectively ... The school's programme for continuing professional development (CPD) is inclusive of all staff and includes equalities matters, both directly and incidentally.

Ofsted's publication clearly had considerable potential as an agent of change towards greater equality in the English education system. It was first published in early 2012, and it was reprinted and reissued on several occasions in the following two years, sometimes with slight additions and modifications. Its last date of publication was April 2014. Then in summer 2014 the publication was suddenly removed from the Ofsted website. A few months later, in October, Ofsted (2014) issued a document entitled *Better Inspection for All*. This did not refer to the Equality Act, nor did it contain even a single one of the details relating to equality that had featured so prominently in *Inspecting Equalities* (Ofsted, 2014). Most seriously and significantly of all, the reference to comparing and contrasting differences between different groups of pupils was eliminated. There was, though, a general and vague reference to 'diversity

and equality' (not a phrase that had appeared in the Act), and this was combined with a reference to 'fundamental British values'. An implication was that Ofsted considered British values to be different from, and more important and valuable than, equality.

Subsequent events confirmed that this interpretation was correct. From summer 2014 onwards, Ofsted appeared to lose all interest in the Equality Act, for it no longer expected schools to collect and analyse school-level data on disparities relating to the Act's protected characteristics, nor did it examine such data itself. It concentrated instead on the ill-defined notion of 'fundamental British values', and on the Prevent programme against violent terrorism, to which the values were closely related, and from which, indeed, they were directly, although tersely, derived. Fundamental in all this was the appalling miscarriage of justice known as the Trojan Horse affair in Birmingham (Holmwood and O'Toole, 2017; Miah, 2017; Holmwood, 2018; Holmwood and Osborne, 2020).

In late autumn 2020, it was reported that at the launch of Ofsted's annual report, the Chief Inspector of Schools in England, Amanda Spielman, had pushed back against growing calls to make the National Curriculum more diverse. She claimed that there were increasing efforts to 'commandeer' schools and the curriculum in support of 'worthy social issues', such as, she said, tackling racism. In the wake of global protests by the Black Lives Matter movement, there had been renewed calls to diversify the curriculum to include Black British history, and to introduce more texts by Black and ethnic minority writers into the English literature curriculum. But, said the chief inspector, the curriculum was already broad, and designed to give schools flexibility to adapt to circumstances. 'The curriculum is there to serve many purposes', she commented, 'one of which is to make children feel represented, but there are so many others' (Weale, 2020: n.p.). If the press report was correct, the chief inspector's lack of understanding and sensitivity was staggering. Her remark appeared to confirm that for the DfE, and therefore alas for Ofsted, the requirements and principles in the Equality Act 2010 were no longer of central importance and urgency (Weale, 2020).

The specific duty to set measurable objectives

Guidance from the Equality and Human Rights Commission and the DfE, and also from local authorities and individual trainers and consultants, consistently stressed in 2011–13 that equality objectives must be specific and measurable, and must be outcome-focused, as distinct from process-focused. In 2014, the DfE published a document entitled *Equality Objectives* (DfE, 2014), and this was still on the departmental website, and hence was presented as currently valid and up to date, in autumn 2019. It declared that the department had five equality objectives, and it summarised these as follows:

- (1) Ensure that all children gain the knowledge they need to prepare them for adult life, through a reformed National Curriculum and more robust academic and vocational qualifications up to the age of 19.
- (2) Narrow the achievement gap for children and young people, including children in care, by ensuring increased opportunities and improved outcomes.
- (3) Learning from the international evidence, provide parents with more choice between high quality schools; give all schools more freedom; raise teaching standards and reform funding arrangements to be fairer, more transparent and to deliver value for money.
- (4) Help children to fulfil their full potential, by supporting families and focusing support on improving the lives of the most vulnerable children, including those who experience bullying or exclusion.
- (5) Improve the effectiveness and efficiency of the Department. (DfE, 2014: 1–3)

Not even one of these, as phrased, is specific and measurable, nor are any of them outcome-focused, as distinct from process-focused; nor are any clearly relevant to the requirements of the Equality Act 2010. The document that contained them included a few explanatory notes about each, but in every instance, these were extremely vague. And, in any case, most of the notes were irrelevant to what the Equality Act requires. The civil servants and special advisers who drafted the document perhaps did not know that government ministers had stipulated in the House of Commons and House of Lords that equality objectives must be specific, measurable and outcome-focused. And perhaps no one bothered to tell them, not even the Equality and Human Rights Commission.

Equality objectives are required not only to be specific and measurable, but also to be based on robust evidence, as, for example, illustrated earlier by extracts from a paper by Ofsted (2014), and such evidence must be published in an accessible form, so that public bodies can be called to account.

Further, as mentioned, equality objectives must be outcome-focused, not focused only on process and procedure. ‘Improve the effectiveness and efficiency of the Department’ is a worthy aim, no doubt, but it is not in itself an equality objective, and it is neither measurable nor outcome-focused. Equally seriously, and even more outrageously, the DfE did not publish the evidence underlying the equality objectives it had chosen. Nor, it follows, did it indicate how it would assess whether its objectives had ever been achieved, or even whether progress towards them had ever been made. It is relevant to cite a talk given in March 2021 by the senior civil servant who had been permanent secretary at the DfE in the period 2015–20. He said that, by 2015, efforts to narrow the attainment gap between disadvantaged pupils and their better-off peers had ceased to be a main focus for the department (Whittaker, 2021). Prior to 2015, he said, under the influence of Liberal Democrats in the coalition government, and of the introduction of the Pupil Premium Grant, the gap had appeared to narrow slightly. When the coalition fell apart after the general election in 2015, however, and even more so after the Brexit referendum in 2016, the socio-economic attainment gap had begun to grow again, as documented with a wealth of detail by Hutchinson et al. (2020).

Hutchinson and her colleagues (2020) showed that gaps in attainment had narrowed slightly in the five years of the coalition government, but that this came to an end in the second half of the decade. Even more worryingly, there were strong indications that the gap between disadvantaged pupils and their peers had begun to widen, and that this was particularly evident among pupils whose health and well-being were most negatively affected by COVID-19.

The decade drew towards its end with the government and supportive media waging an increasingly bitter and determined culture war (Malik, 2021) against the whole range of the equalities agenda, and also against other so-called ‘woke’ or ‘wokery’ agendas, including, for example, the Black Lives Matter and de-colonisation movements in their various facets, and equalities relating to gender, marriage and LGBT, and against the rule of law and customs of due process and civility (May, 2019). It was in the atmosphere of this culture war against equality, fairness and due process of law that the COVID-19 pandemic began to take its toll in early 2020. In early 2021 the culture war against equalities was reinforced by the onslaught launched by the Commission on Race and Ethnic Disparities (CRED).

About three months before the publication of the CRED report, there was a significant speech entitled ‘The fight for fairness’ by Liz Truss (2020), the new Minister for Women and Equalities after the general election in 2019. As is often the case with speeches by politicians, but not as blatantly obviously as in this particular instance, the text for the speech had two slightly different versions. On the one hand, there was the official version printed in the public domain on a government website; on the other, a version provided essentially for insiders and supporters, geared to and affirming the expectations, biases and prevailing shared opinions of members of an invited audience. Through an administrative mishap, the latter version of the minister’s speech was briefly published on a government website for all to see.

In the version intended to be heard only by insiders behind closed doors, the minister recalled her secondary schooldays in Leeds, some thirty years earlier. ‘While we were taught about racism and sexism,’ she said, ‘there was too little time spent making sure everyone could read and write’ (Tolhurst, 2020: n.p.). Having established thus her credentials with this familiar right-wing trope, she proceeded by telling her audience that: ‘these ideas have their roots in post-modernist philosophy – pioneered by Foucault – that put societal power structures and labels ahead of individuals and their endeavours. In this school of thought, there is no space for evidence, as there is no objective view – truth and morality are all relative’ (Tolhurst, 2020: n.p.). In both versions of the speech, the minister was critical of what she called ‘the equality debate’:

Too often, the equality debate has been dominated by a small number of unrepresentative voices, and by those who believe people are defined by their protected characteristic, and not by their individual character. This school of thought says that if you are not from an ‘oppressed group’ then you are not entitled to an opinion, and that this debate is not for you. I wholeheartedly reject this approach. (Truss, 2020: n.p.)

Caricatures and abusive misrepresentations such as this belong, if they belong anywhere, to the passion and poetry of political campaigning and point-scoring, not to the patience and prose of deliberative democracy, for they are clearly more geared to gaining and maintaining electoral support than to conceptual exploration. That said, the minister did make a handful of points and proposals that were worth taking seriously, even if serious debate was not apparently her principal interest. For example,

there was her preference for the concept of fairness rather than equality: debate is required about whether these two words pick out real and essential distinctions, but are complementary, not in conflict with each other. There was her dissatisfaction with the term ‘protected characteristics’, for it is reasonable to speculate that the alternative legal term used in certain other jurisdictions, including the United States and South Africa, would have been preferable: ‘prohibited grounds for discrimination’. If the latter or similar terminology had been adopted in the UK, much confusion and misunderstanding might well have been avoided, and the story about equalities from 2010 onwards might well have been less toxic and frustrating. By the same token, there needs to be greater clarity in Britain about the distinction implied by the terms ‘outcome’ and ‘opportunity’, and between ‘product’ and ‘process’, and ‘equality’ and ‘equity’. Other topics requiring legal clarification in the current context include ‘socio-economic’, as in, for example, the ‘socio-economic determinants of health’ and the ‘socio-economic determinants of educational achievement’, and the legal concepts of ‘religion’, ‘belief’ and ‘ethno-religious’. For conceptual clarification of such matters, it is not party-political point-scoring that is required, nor even the submissions by legal advocates and the conclusions and opinions of judges and courts, but round-table deliberation and exchange.

A few months after the ministerial speech recalled above, a major report was published by the Cabinet Office (CRED, 2021). There was potential here for the kind of discourse that is present at a round-table meeting, as distinct from an exchange of slogans and insults between political parties. Unfortunately, however, this opportunity for airing and examining key concepts and viewpoints was entirely missed. An open letter signed by more than four hundred education researchers commented that the report ‘completely overlooked the substantial base of evidence in educational research that has shown how structural, institutional and direct racism works in and through schools, universities and other sites of education’ (Sriprakash, 2021: n.p., and referred to in Hancock, 2021). It continued:

Research that is cited [in the report] is done so as to present simplistic understandings of education and divisive views of ethnic minority groups. The report misrepresents, omits and elides longstanding and nuanced academic debate and evidence about the complex relationship between racism and educational practices, cultures, policies, and systems. This brazenly political misuse of education research ignores academic expertise and undermines the future of evidence-based policy-making. In the name of academic integrity, we condemn the Commission’s distortions and call for a full and rigorous understanding of racism in education. (Sriprakash, 2021: n.p.)

There were similar criticisms from specialists in public health. An article in the *British Medical Journal*, for example, commented:

The 30 page section on health in the report claims to undo several decades of irrefutable peer-reviewed research evidence on ethnic disparities, previous governments’ reports, and independent reviews all reaching similar conclusions: ethnic minorities have the worst health outcomes on almost all health parameters. The report’s conclusions, recommendations, and cherry-picked data to support a particular narrative shows why it should have been externally peer reviewed by independent health experts and scientists ... [The report’s] attempts to undermine the well established and evidence based role of ethnicity on health outcomes will lead to a worsening of systemic inequalities, putting more ethnic minority lives at risk. (Razai et al., 2021: n.p.)

A historian wrote:

Throughout the report, the authors rail against phenomena they either misrepresent or misunderstand. They defend the nation from charges no one is making; they create and then slay straw men, and set up false binaries. Wilfully blind to the interplay between race and class, they are selective in both their sources and conclusions. The government has been quick to point to the ethnic diversity of the commission. What is lacking here is not ethnic diversity but diversity of opinion. (Olusoga, 2021: n.p.)

Both Liz Truss and the CRED report mentioned, and indeed emphasised, the relevance of socio-economic factors, and they also implied that the decision by the coalition government in 2010 to exclude them from the Equality Act needed to be reconsidered. Round-table deliberation of this matter

would entail reference to factors such as life expectation, chronic illness and morbidity, and mental health and well-being at various ages and stages throughout a person's life. Socio-economic circumstances would not be a protected characteristic in equalities law, but would be explicitly seen as the context in which unfair discrimination and unequal opportunities are particularly likely to occur and, therefore, for which there would need to be due regard (see, for example, documentation issued by Liverpool City Region, 2022.) They are appropriately identified with reference to the index of multiple deprivation (IMD), not by a single factor, such as low household income or (in the education system) eligibility for free school meals. Alternatively, and perhaps preferably, the key focusing reference would be of left-behind neighbourhood (LBN). The concept of LBN also has the practical advantage of being acceptable across a wide political spectrum, as attested by the existence of a vigorous all-party parliamentary group at Westminster (Munford et al., 2022).

Concluding remarks

In 'A defence of poetry', published in 1821, Shelley (cited in Rich, 2006: n.p.) famously claimed that 'poets are the unacknowledged legislators of the world'. He had in mind not only people who write verse, but also authors such as Voltaire (*Dictionnaire Philosophique*, 1764), Thomas Paine (*Rights of Man*, 1791), Mary Wollstonecraft (*A Vindication of the Rights of Woman*, 1792) and William Godwin (*Enquiry Concerning Political Justice*, 1793). Almost two hundred years later, the poet and equalities theorist Adrienne Rich (2006: n.p.) observed that Shelley was indeed 'out to change the legislation of his time. For him there was no contradiction between poetry, political philosophy, and active confrontation with illegitimate authority'. Referring to herself, she continued: 'I'm both a poet and ... I live with manipulated fear, ignorance, cultural confusion and social antagonism huddling together on the faultline of an empire' (Rich, 2006: n.p.).

What poets, political theorists and legislators most obviously have in common is that they are all concerned with words, and with distinctions and differences, and precise definitions. Shelley's near contemporary Jane Austen, quoted earlier, was similarly concerned with careful attention to differences and consequences. T.S. Eliot (1944: 11), among others, has emphasised that attention to verbal precision is not at all easy: 'Words strain,/crack and sometimes break, under the burden,/under the tension, slip, slide, perish,/decay with imprecision ...'

Words strain and decay with imprecision because reality itself does not always stand still. The world is continually changing, and so, therefore, are the tasks of finding the best words with which to name it, and putting them in the best order. Both poets and legislators, to quote Eliot (1944: 17) again, are engaged in 'the intolerable wrestle with words and meanings'.

But there are other torments, traumas and tears as well, even more serious, even more momentous, even more concerned with justice and unfairness. They were evoked here earlier by reminders of the Black Lives Matter movement. The question with which this article began remains, therefore, open. Has it indeed been the case, as feared by Lord Ouseley in his speech in 2010, that the concept of due regard for equality is 'woefully inadequate'? Or should the Equality Act 2010 be revisited and renewed, and perhaps revised and re-emphasised? The jury remains out.

The bubonic plague in Albert Camus's novel *La Peste* (*The Plague*), published in 1947, is symbolic not only of savage inequality and unfairness, and not only of careless public administration and bureaucracy, but also of the capacity that all citizens have to be inattentive and unseeing in relation to duties of due regard. Rieux and Tarrou, the novel's two main characters, are determined to dare down voices and pressures of apathy, paranoia and despair, both in others and within themselves. Nevertheless, victories in their struggle against the plague are never lasting, and their essential and ultimate experience as human beings is of 'une interminable défaite', a 'never-ending defeat'. But, they say, 'ce n'est pas une raison de cesser de lutter', that's not a reason, whether for themselves, or for legislators and poets, or for anyone else, to give up the struggle (Camus, 1960: 108).

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