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DISCRIMINATION AND LAW

*Results of Research on the Use Made of Positive Discrimination  
Provisions of the Sex Discrimination Act*

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RESULTS OF RESEARCH ON THE USE MADE OF POSITIVE DISCRIMINATION PROVISIONS OF THE SEX DISCRIMINATION ACT.

This research set out to survey the use which had been made of the positive discrimination provisions of the SDA by public employers, training bodies and trade unions.

Sections 47, 48 and 49 of the Sex Discrimination Act 1975 (as amended by section 4 of the Sex Discrimination Act 1986) enables

- i. any person to offer single sex training under certain conditions which are laid down in sections 47 (1), (2) and (3);
- ii. any person to encourage women only (or men) to take advantage of opportunities for doing work which previously has been done by comparatively few people of that sex ;
- iii. trade unions to offer single-sex training to hold union posts under certain conditions;
- iv. trade unions to encourage their female members to hold posts in that union where there was no or comparatively small numbers doing so within the past twelve months;
- v. trade unions to encourage women only (or men) to become members where there had been no or comparatively small numbers of that sex in membership during the preceding twelve months;
- vi. trade unions to reserve seats on their governing body under the same conditions as (v) above.

No real attempt was made to be evaluative; the research concentrated on the collection of data in order to examine how extensively provisions which departed from the equality principle had been used. Hansard reveals that speakers in the debate on these sections of the Bill had regarded them as necessary to remedy past discrimination, and that real equality of opportunity would not be achieved without the 'leg-up' which these provisions permit. In the light of other research and statistics which show that women are under-trained and as a consequence continue to occupy low-level jobs, and the general problem of under-training in the U.K. (compared to other EEC countries the UK is near the bottom of the training league), it could be argued that the training provisions of the SDA provide a special opportunity for trainers and employers to plug the skills gap. In 1986 the requirement that trainers apply for designation by the Department of Employment was removed in the hope that more training would be carried out.

It could also have been expected that in the light of falling membership within trade unions that unions would be anxious to provide special opportunities for women to play a fuller role in the union movement. However as will be shown, very little use has been made of any of the provisions listed above.

The following are some of the major findings of the research:

## PUBLIC SECTOR

- a. Knowledge of the legislation is scant, and even among those who had used it there is confusion and ignorance about the precise requirements. For example one College of Further Education running a "successful" engineering for women" course had no idea that there was a legal issue at all.
- b. The fact that public sector employers offer a very wide range of jobs and are spending public money, might have raised expectations that training for women was a priority issue. Yet despite the fact that the NHS is the largest employer of women in Europe, and that together with the Civil Service and Local Authorities, employ over half of the female workforce in the U.K., management and assertiveness courses were virtually the only single sex training courses on offer. In Australia and Canada the public sector have adopted affirmative action programmes to ensure that women are more evenly distributed throughout the sectoral hierarchy.
- c. Generally public sector employers are anxious to attract and retain women, but aim to keep them in existing jobs rather than develop their skills and careers. Thus where employers were addressing women's needs they thought primarily in terms of job-sharing, child care etc rather than skills training. Yet research among women wishing to return to work found that two-thirds said they needed training for new skills or to update old skills and that without such training they expected to get lower level jobs. (see Table 2)
- d. There is evidence that women prefer and do better on single sex courses where non-traditional skills are being taught. They are also less likely to be given places on training courses when in competition with men. While this research did not seriously address the issue of women's preferences for single-sex training and as very little monitoring of existing courses is carried out, it must remain a matter of impression that such courses provide an important means of re-skilling the workforce.
- e. The most common training for women only was assertiveness training. The legality of this is dubious unless as part of a skills course. Sections 47 (1) (b) and 48 (1) (b) of the SDA requires that such courses relate to 'particular work'. Few employers are aware of this and was one of the instances where ignorance of the law was evident.

## TRAINING BODIES

- f. Colleges of Further Education offered a very limited range of courses for women; 50% are Information Technology and Electronic courses, 25% are Management and the remainder mainly Engineering courses.
- g. Women's Skills Centres ( which now number approximately 60) offered a wide variety of skills training ranging from HGV Driving, plastering and bricklaying to electronics. The courses appeared to be popular and oversubscribed but their future is in doubt as funding (usually Local Authority and European Social Fund) will be affected by changes in the

ESF rules .Their successs was partly due to the fact that classes are held to coincide with school times and child care is provided but also because they addressed women's specific needs so accurately.

h. Many of these centres used women tutors only. They believed that they made the trainees more comfortable and served as role models. Some were aware of the dubious legality of this practice and thought the risk was worth taking while others were unaware of the legal dimension.

i. Certain problems were general to most training bodies:

1. Statistics are required to satisfy conditions of legislation and these are generally not available;

2. This led to many trainers adopting an impressionistic approach to the requirement that single sex training is only lawful where no or few women are doing the particular work in question.

3. Funding is very difficult. Almost by definition women who attend these courses need financial support and can't pay fees. This makes their future uncertain; it also makes monitoring impossible.

4 . In the case of a number of access or 'taster' courses non-traditional skills were mixed with more traditional ones where women are probably over-represented. Unless these courses could be classified as 'encouragement' under section 47 (1) and (2) (b), they are probably not lawful.

TRADE UNIONS ( see Table 1 )

j. Trade unions have been erratic in their use of the legislation. The research showed that the unions which had reserved seats on their Executive had found that this led to women's issues becoming more prominent in union policies and actions. That this is the view of the TUC too is evidenced by the fact that since this research was completed (August 1989) the TUC has increased their reserved seats to 12. More use could be made of this provision than is currently the case.

k. Many unions wished to recruit more women members especially because of falling membership. Although legislation allows special measures to be taken to attract them, the only steps which had been taken was to provide literature of special interest to women. Only a few unions had taken other initiatives and these mainly consisted of arranging meetings at times more convenient to women. It is unclear what 'special measures' was envisaged by the legislature.

l. It is noteworthy that unions with relatively high female membership used the legislation more than those with lower numbers of women; this is against both the letter and the spirit of the Act and reinforced widely found data that the law was little understood and followed.

m. Very little use was made of the possibility of training women to hold posts in unions and this is, like reserved seats, a significant omission.

## CONCLUSIONS

Parliament included sections 47, 48 and 49 in the SDA because it was thought that general measures like these were essential in order to

rectify the historical imbalances. The fact that these sections are so little used showed that the legislation is not having the effect desired i.e., to enable more women to selectively receive the sorts of training needed to equip them for jobs from which they had either been excluded or discouraged from entering. It could be inferred from the popularity of the courses offered by Women's Training Centres that, at least for non-traditional work, women really like this option but as monitoring was scant this remains a matter of impression.

The almost complete absence of monitoring of existing courses is a very serious matter. Without this it is difficult to provide a model for others to follow; difficult to be sure of the real value of the courses in terms of the future of the trainees and their value in the labourmarket. Such monitoring that existed was very positive. The Women's Training Centres are the only significant source of women only courses, and they are so chronically underfunded, that monitoring imposed too great a strain on their resources. It is understood that the ESF intend to evaluate the courses they fund and this will help to fill a need. Trade Unions do collect statistics on membership by gender but have not evaluated their strategy to increase female membership.

A number of legal problems presented themselves in the course of the research. Some of these have been referred to above. Reference has also been made to the ignorance of many employers and trainers as to the existence and /or detailed requirements of the law. This was widespread. Although there have been no legal challenges to any courses as yet some of those surveyed were conscious that they were open to challenge and had not made any attempt to develop a strategy to meet the possibility. Another legal problem is that the wording of the relevant sections is both precise and vague; the former in that it only permits positive discrimination where there is under-representation both numerically and within a geographical area, but vague in that the phrase 'comparatively small' has no absolute meaning. In any case statistics of the kind required are not collected by the DOE. Most people interviewed paid no heed to any of the qualifications just described, but thought that they could take advantage of those sections where there was thought to be few women.

Table 1: Measures taken under section 49(1) to show unions which had reserved seats for women; section 48(3) to encourage women to become union members; and measures taken under 48(2) to help fit women for holding posts within the union.

TRADE UNION	% OF WOMEN		Reserved Seats	Equal Opps. organ- isational structure, initiating policy to include women's participation	Lit. targeting women	Women only training
<b>COHSE</b> (Confederation of Health Service Employees)	1989 1985	79 80	None 19% of Executive seats held by women	Since 1979 a national Equal Opportunities Cte. Regional Committees encouraged to be estab.	✓	1 Regional and national courses
<b>NUPE</b> (National Union of Public Employees)	1989 1985	77 66	5 since 1975 50% of Executive seats held by women, 2 on each divisional council	Since 1982 a national and divisional women's committee	✓	1 Nat & Regional Assertiveness courses 2 Course on women's issues, eg health 3 Proposed course for cte members to teach the full extent of resp. involved
<b>IRSF</b> (Inland Revenue Staff Federation)	1989 1985	61 62	None. (A conscious decision in 1988 because tokenism was feared. 32% of Executive seats held by women.	Since 1988 a national Equal Opportunities Committee	✓	1 Some work- shops on equality issues. 2 Self- Assertiveness courses since '89
<b>USDAW</b> (Union of Shop & Distributive & Allied Workers)	1989 1985	61 61	None 25% of Executive seats held by women.	Since 1985 national and regional women's committees. Annual Women's Conference	✓	1 Courses on Cte skills. 2 Confidence- bldg w'shops. 3 Day & weekend w'shops on women's issues eg. harassment
<b>BIFU</b> (Banking, Insurance & Finance Union)	1989 1985	54 52	None (abandoned in 1976). 23% of Executive seats held by women.	Since 1976 national Equal Opportunities Cte. Since mid-1980s institutional Equal Opps sub-cte.	✓	None at a national level
<b>NALGO</b> (National & Local Government Officers Association)	1989 1985	49 52	None 41% of Executive seats held by women.	Since 1977 a national Equal Opportunities Committee. Encourage these at regional level, 11 exist, some include race and disability in terms of reference.	✓	1 Public speaking sessions. 2 Introductory w'shop for new members. 3 Assertiveness crs 4 Equal Opp. weekends.
<b>GMB/APEX</b> (Gen. Municipal Boilermakers & Allied Trades Union/ Assoc. of Prof. Executive, Clerical & Computer Staff) (Amalgamated 1989)	1989 1985	30/54	10 since 1987 (re GMB, none re APEX) 30%/37% of Executive seats held by women.	Women's Officer since 1980s. National Equal Rights Cte. Equal Rights dept. and Annual Conference. Since 1988 Branch Equality Officers mandatory	✓	1 Courses for female shop stewards. 2 Assertiveness courses and confidence bldg for equality off.
<b>UCW</b> (Union of Commun- ication Workers)	1989 1985	26 25	None. 14% of Executive seats held by women.	None	✓	None
<b>SOGAT</b> (Society of Graphical & Allied Trades '82)	1989 1985	24 33	None 8% of Executive seats held by women.	Since 1982 a national women's committee	✓	1 Reg. and Nat. courses for active women on public spkg, union org. etc. 2 5 day residential women's course.
<b>TGWU</b> (Transport & General Workers Union)	1989 1985	18 16.2	None 5% of Executive seats held by women.	Since 1984 National Women's Advisory Committee	✓	None

Table 2: Local Authorities - various measures adopted including those under ss.47 and 48

	(Lab) Camden	(Lab) Islington	(Lab) Ham'smith & Fulham	(Lab) South- wark	(Cons) West- Minster	(Cons) Wands- worth	(Cons) Kingston	(Lab) Slough	(Cons) Woking	(Lab) B'ham	(Lab) Bristol	(Hung) Oxford
Women's Officer	For providing community services for women only	For providing community services for women only	✓	✓	-	-	-	-	-	-	✓	✓
Women's Unit Committee	For providing community services for women only	-	✓	✓	-	-	-	-	-	Abandoned by council in 1987	✓	✓
Monitoring	-	✓	-	-	-	-	-	✓	-	✓	-	✓
Assertiveness Training	✓	-	✓	✓	✓	-	-	-	✓	✓	✓	-
Management Training (s.48)	✓	-	Under discussion	✓	-	-	Distance Learning programme	-	-	✓	✓	-
Other Training (s.48)	Traineeships are offered to women in non-traditional areas	✓	Proposed	-	-	-	1 Career planning seminars 2 Sponsoring Further Ed courses	-	-	Proposed for female manual workers	Training officer and employee choose a suitable course together	-
s.48 Advertising	✓	✓	-	✓	-	-	-	-	-	✓	✓	✓
Job-sharing	✓	✓	✓	✓	✓	-	✓	✓	✓	✓	✓	✓
Career-break schemes	✓	✓	✓	✓	-	-	✓	✓	✓	Proposed	✓	✓
Child-care	✓	-	-	✓	-	-	-	✓	✓	Proposed	✓	✓