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Only Relatively Equal? – The unintended consequence of the Equality Act 2010

Abstract: The Law and Unintended Consequences, Socio-Legal Studies Association Annual Conference 2016

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The aim of the Equality Act 2010 ('the Act') is principally equal treatment. The Act brings all 'protected characteristics'¹ together into one piece of legislation, all separate 'silos'² but in theory equal before the law, no one more important than the other. However in recent years as the number of protected characteristics has increased, tensions have emerged within the case law. Some protected characteristics may have an impact on one's ability to do a particular job at particular times, such as disability, and are subject to special rules. Others, such as sexual orientation, sex, race and religion, should have no impact and ought therefore to be ignored by an employer.³ As demonstrated by religious discrimination cases⁴ and disability discrimination cases⁵, the Act can lead to tensions and a possible 'emerging hierarchy'.⁶ This paper seeks to explore the equal treatment principle and the protection offered by the Act and suggests that a developing hierarchy is inevitable given the way the law is framed. These tensions and in(equalities) are surely an unintended consequence of the Act?

¹Equality Act 2010, s 4: the following characteristics are protected characteristics – age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

²Iyiola Solanke, 'Infusing the Silos in the Equality Act 2010 with Synergy' [2011] ILJ 40, 336-358

³Unless that employer is seeking to rely on a particular work requirement having regard to the nature of the work, see Equality Act 2010, Sch 9.

⁴For example *Ladele v London Borough of Islington* [2009] EWCA Civ 1357, *Ewedia v British Airways Plc* [2010] EWCA Civ 80, *McFarlane v Relate Avon Ltd.* [2010] EWCA Civ 880.

⁵*Archibald v Fife Council* [2004] UKHL 32

⁶Lucy Vickers, 'Religious Discrimination in the Workplace: An Emerging Hierarchy?' [2010] Ecclesiastical Law Journal 12, 280-303.