

Is British cycling racing towards discrimination claims?

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British Cycling (BC) was, until recently, an icon of UK sporting success. However, it is now, in the lead up to the Rio Olympics, being forced to look in on itself and appears to be on the defensive. This week it has been reported that the interim head of BC, Andy Harrison, sent team members an email in which he appeared to warn them not to speak out against the team in the press, before issuing an apology for the tone of the email.

UK Sport is also undertaking an independent review of all forms of discrimination and bullying at BC, amidst various allegations of gender and disability discrimination. Amongst them are accusations of institutional sexism made by Olympic gold medallist, Nicole Cooke, particularly in relation to the use of funding.

For example, Cooke alleges that superior custom-fit bikes were commissioned for the men's team for the 2012 Olympics, including male reservists, but not made available to the women's team. She additionally claims that sponsorship money from Sky was used solely for the benefit of the men.

Aside from any ethical arguments this may raise, it could potentially give rise to legal challenges under the Equality Act 2010 (EA). There are two possible avenues for such claims: firstly, on the basis that cyclists are employees; alternatively, that BC is prohibited from discriminatory conduct as it is, in effect, a 'service-provider' to the cyclists, for instance in providing training resources.

The EA uses a wide definition of employment, protecting those whose contract obliges them personally to do work. As GB cyclists are required to train and ride, amongst other tasks, in return for funding (and could not, for instance, send a friend to ride in their place), it could be asserted that they are employees of BC for the purposes of discrimination legislation.

One potential challenge to BC under the EA is that it has directly discriminated against female cyclists by treating them less favourably because of their sex. Cooke and her teammates were overlooked for funding, and given inferior equipment, simply because they were women, so goes the argument. Direct discrimination cannot be justified under the EA. However, BC may assert that their actions were not directly discriminatory and that the funding decisions were not made because of the cyclists' sex, but instead on the basis that limited resources require focus to be placed on one part of the team. BC might say that this happens to benefit male, rather than female, cyclists, but that sex is not the reason.

This would push the legal challenge into the realm of indirect discrimination. This occurs when a provision, criterion or practice, even if ostensibly non-discriminatory, has the effect of disadvantaging people with a given protected characteristic. So, the assertion would be that BC's practice of allocating sponsorship money and equipment in a certain manner has the effect of placing female cyclists at a disadvantage, compared to their male counterparts. That argument could be made, for example, if the criteria for funding included the condition that there is already a privately-funded team which has overlapping membership (such as Team Sky, which consists only of men).

It is possible, under the EA, for indirect discrimination to be justified if the provision, criterion, or practice in question is a proportionate means of achieving a legitimate aim. A legitimate aim of BC may be competitive success, for which resources need to be narrowly focussed, leading to the unfortunate but necessary by-product of some (female) athletes losing out. However, given that the 'golden age' of British cycling since the turn of the millennium has seen unprecedented success for both genders, this would be a difficult case for BC to make out.

Whilst it remains to be seen whether the ructions within the cycling world can be resolved without litigation, recent events have provided a potential testing ground for interesting and novel discrimination claims.

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