

DISCRIMINATION AGAINST CUSTOMERS BY RETAIL CHAIN STORES AND THE IMPACT OF THE LAW

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Abstract

Profit and other related objectives of business emphasise the need to distinguish between different customers or groups of customers. The South African Constitution, on the other hand, specifically prohibits unfair discrimination. This paper examines the legal principle of non-discrimination, as set out in the Constitution and the Equality Act, as well as the impact that these provisions have on discrimination against customers. The literature study shows that there is a legal obligation on business to ensure the provision of equitable customer service. An exploratory study was conducted among the customers of retail chain store outlets in Clermont, a historically disadvantaged area, to identify examples of differentiated treatment of customers by retail chain stores. Customer perceptions have in fact shown areas of differentiation which could be viewed as unfair discrimination unless justified.

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1 Introduction

One of the three keys to customer relationship management (CRM) is: "Do not treat customers equally" (du Plessis, Jooste & Strydom, 2005: 296). Further, business must "distinguish between customers who generate profit and those who do not." Business is required, in terms of CRM, to first assess which are the most valuable customers and how best to reach and service them. Based on these findings, strategies are then designed for optimising investment in those customers. This appears to be diametrically opposed to the provisions of the South African Constitution (1996), especially Section 9, and the provisions of the Promotion of Equality and Prevention of Discrimination Act (2000) (referred to as the Equality Act).

In defining the right to equality, Section 9 (4) of the 1996 South African Constitution provides that "no person may unfairly discriminate directly or indirectly against anyone" (referred to as the 'non-discrimination clause'). The

Equality Act (2000) prohibits the provision of "inferior services to any racial group" (Section 7 (e)). A schedule to the Act contains a list of unfair business practices. In terms of this list, the 'provision of inferior services' to any race group would amount to unfair discrimination.

In the past there were glaring differences in service quality that was offered to different groups of customers. If such differentiation still exists, especially in terms of race, it would amount to a violation of Section 9 of the Constitution. Given the unique South African contexts, previous and present, if the obligation on business to ensure the provision of equitable customer service is legally enforceable, then the task ahead for managers responsible for customer service is an onerous one. Do business organisations discriminate against certain customers, especially on the grounds of race? Will such discrimination be fair or unfair? Can every case of discrimination be justified in terms of market segmentation? Is there a legal duty to provide equitable customer service? In attempting to provide answers to these questions, this article will:

- Firstly, examine the legal principle of non-discrimination (Section 9 (4) of the Constitution) and the Equality Act, and the effect that these provisions have on race discrimination against customers, through an examination of related literature, and
- Secondly, confirm through an exploratory study using questionnaires (as detailed below) whether differentiation on the grounds of race against customers still exists, and determine the nature and impact of such differentiation (if any) by retail chain stores.

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Service quality

The two main tasks of an organisation are to create customers and to keep them. To do this the organisation cannot simply provide a service. It must offer customers something that they value (du Plessis, Jooste & Strydom, 2005: 75). Garvin (1988: 39-48) formulated five approaches to studying quality: the transcendent approach; product-based approach; user-based approach; manufacturing-based approach and value-based approach. Parasaramen, Zeithaml and Berry (1988) assume that the product-based approach refers to the objective quality, whereas the user-based approach runs parallel to the subjective, perceived quality of the product or service. Garvin (1988) positions the user-based approach clearly within the field of marketing theory; hence such approach has been adopted for the purposes of the article. In the user-based approach, quality is determined by the customer. "It hinges upon the functionality of a good or service" and as a subjective approach is linked to the customer oriented perspective to quality: the perceived service quality (Kasper, van Heldsdingen & de Vries, 1999: 185).

2.1 Defining customer service quality

Service quality is "whatever the customer perceives it to be" (Gronroos, 2000: 63). Poor customer service means treating customers with disdain, adhering to standard rules and policies to the detriment of the customer's interests and

believing that the customer has no choice but to accept things as they are (Strydom, 1998: 19). Adequate service levels are therefore defined as the standard that customers are willing to accept (Zeithaml & Bitner, 1996: 204).

Service quality is defined as "the extent in which the service, the service process, and the service organisation can satisfy the expectations of the user" (Kasper, van Heldsdingen & de Vries, 1999: 188).

2.2 Using expectations and perceptions to determine quality

In the literature on quality and satisfaction, expectations and perceptions play a decisive role. The concept of expectation has been widely used in many studies (Kasper, van Heldsdingen & de Vries, 1999: 196). Perceptions are observations. Perceptions are defined as "the process by which an individual selects, organises and interprets stimuli into a meaningful and coherent picture of the world" (Schiffman & Kanuk, 1987: 174). In evaluating dissatisfaction with the quality of service, many techniques can be used. Usually questionnaires are used. According to Kasper, Heldsdingen and de Vries, satisfaction will occur when service delivery meets or exceeds the expectations of customers (1999: 203). They maintain further that dissatisfaction will occur when the product or service is below the expected level. Hence, satisfaction and dissatisfaction are the result of a subjective evaluation process. Robert Johnston (1995: 53-71) discussed a large number of studies in which customer service attributes were used and set out the following 18 determinants of service quality: aesthetic; attentiveness/helpfulness; availability; care; cleanliness/tidiness; comfort; commitment; communication; competence; courtesy; flexibility; friendliness; functionality; integrity; reliability; responsiveness; and security.

As it would not be possible to test for all these attributes in a limited exploratory study, certain attributes must be selected with reference to certain factors, such as the ease of eliciting customer perceived responses in a retail chain

store environment. The following key elements were identified by Kasper, Heldsdingen and de Vries (1999: 211-2):

- Aesthetics – which includes the appearance and presentation of service facilities;
- Helpfulness refers to the contact with staff and their willingness to serve;
- Cleanliness/tidiness – which refers to the neat and tidy appearance of the various components of the service experience, including the service environment, facilities, goods and staff;
- Functionality – includes serviceability and fitness for use or the product quality;
- Responsiveness – refers to the speed and timeliness of service delivery. This includes the speed of throughput and the ability of the service provider to respond promptly to customer requests, with minimal waiting and queuing time; and
- Integrity – meaning the honesty, justice, fairness and trust with which customers are treated (this would include fairness in pricing and correlation of prices to quality).

3

Discrimination against customers

Are all customers equal in the eyes of the service provider? The apartheid system was responsible not only for state inflicted (vertical) discrimination but it also supported, fostered and encouraged discrimination by private individuals or corporate bodies against other individuals (horizontal discrimination) primarily on the grounds of race, as observed by Justice Madladla in a Constitutional Court judgement:

“Ours is a multi-racial, multi-cultural, multi-lingual society in which the ravages of apartheid, disadvantage and inequality are just immeasurable. The extent of the oppressive measures in South Africa was not confined to government/individual relations, but equally to individual/individual relations” (*Du Plessis v De Klerk*, 1996: para 163).

Business organisations’ customer service policies and thinking were permeated in many

instances by unfair and discriminatory practices. For example, in the retail arena, chain stores did not even service many historically disadvantaged areas. In certain instances, discrimination against certain groups of customers or potential customers was legally prescribed. Many service providers did not even regard persons belonging to particular racial groups as “customers”. In another Constitutional Court case Justice O’Regan observes: “Our history is of particular relevance to the concept of equality. The policy of apartheid, in law and in fact, systematically discriminated against black people in all aspects of social life... many shops were also closed to black people. Instead, separate and inferior facilities were provided.” (*Brinks v Kitshoff*, 1996: para 40).

4

An overview of the legal principle of non-discrimination

The principle of non-discrimination has been set out in Section 9 of the Bill of Rights in the 1996 Constitution and the Equality Act.

4.1 Section 9 of the Constitution

Section 9 (4) of the Constitution provides: “No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3)”. Section 9 (3) lists the grounds of discrimination to include race. With regard to the concept of non-discrimination, two particular issues are relevant, namely, what is implied by “unfair discrimination”, and the issue of “indirect discrimination”.

4.1.1 Unfair discrimination

The non-discrimination clause does not imply that there should be no differentiation whatsoever in how the law or practice and policies of private or juristic persons affect different groups of people (Reddy, 2002: 679). It is impossible for a state to regulate the affairs of its inhabitants “without differentiation and without classifications which treat people differently and which impact on people

differently” (*Prinsloo v Van der Linde*, 1997: para 24). The Income Tax Act, for instance, imposes a higher rate of tax on those with high incomes than on those with low incomes. Likewise, “market segmentation” (see below) which allows for differentiation in the quality and nature of products sold by a retailer would generally not be regarded as discriminatory, especially if it is justified by correlated pricing. Generally such differentiation, which has been termed “mere differentiation” in the judgement of *Prinsloo v Van der Linde* (1997: para 25), rarely constitutes unfair discrimination. Hence, Section 9 prohibits unfair “discrimination” and not unfair “differentiation”.

How will a court then decide whether discrimination is fair or unfair? The determination of “unfair” discrimination was set out in *Prinsloo v Van der Linde* (1997: paras 23-33) and subsequently clarified in *Harksen v Lane* (1997: para 53). In determining whether the differentiation complained of amounts to unfair discrimination, the following was stated:

- If the discrimination is on one of the listed grounds (e.g. race, gender), then discrimination is established.
- If the discrimination is on a listed ground, it is presumed to be unfair (*Prinsloo v Van der Linde*, 1997: para 32).

Where the discrimination is not based on the listed grounds, it would be regarded as unfair if it satisfies certain conditions, for instance if it impairs the human dignity of a person or group of persons, unless business can show that it is fair. Hence, not all discrimination is prohibited. In terms of Section 9 (5) discrimination is permitted if it is fair.

4.1.2 Indirect discrimination

Sections 9 (3) and 9 (4) prohibit both “direct” and “indirect” discrimination. Direct discrimination is where a person is prejudiced on grounds, for instance, of race, sex, religion, or some other distinguishing feature. Indirect discrimination is where conduct which appears to be “neutral and non-discriminatory”, adversely affects a disproportionate number of persons of a certain group, i.e. it results in discrimination (*City Council of Pretoria v*

Walker, 1998: para 32). In *City Council of Pretoria v Walker*, Walker argued that the municipality had discriminated against him by charging different rates for municipal services in the former black townships in the area under its control as compared to the areas previously reserved for whites only (Carpenter, 2002). The court found that such differentiation constituted indirect discrimination on the basis of race although it appeared to be purely on geographical lines (1998: para 43).

4.2 The Promotion of Equality and Prevention of Discrimination Act

The impediments imposed by the apartheid system discriminated against disadvantaged groups. Measures dealing with discrimination need to address systemic inequality. Section 9 of the Constitution provides for the enactment of national legislation to eliminate discrimination and promote equality. The Equality Act was enacted for such purpose. Section 7 (e) of the Act specifically prohibits the provision of “inferior services to any racial group”. In determining whether such services are of an inferior nature, comparison is made with the quality of such services offered to other groups.

5

The impact of the non-discrimination clause on discrimination against customers

Do business organisations have the freedom to determine the quality of customer service offered and can they differentiate between customers or groups of customers in terms of service quality? This section of the article examines the application of the non-discrimination clause to discrimination against customers.

5.1 Are business organisations bound by the non-discrimination clause?

Are business organisations bound by the non-discrimination provision? The final Consti-

tution is explicit in this respect. The non-discrimination clause (Section 9 (4) of the Constitution) states that “no person may unfairly discriminate directly or indirectly against anyone”. Further, the Equality Act provides that not only the state but all persons have a duty and responsibility to promote equality and eliminate discrimination on grounds of race, gender and disability (Sections 24 and 28 (3)). Like the non-discrimination clause in the Constitution, the provisions of this Act are applicable to the State as well as individuals and juristic persons (Section 6). Business organisations have to therefore ensure that their customer service policies are in accordance with the non-discrimination clause.

5.2 Market segmentation, differentiation and unfair discrimination

In a homogeneous market more or less similar types of customers make similar demands of the market offering. The market in South Africa, however, is of a heterogeneous nature, with different types of customers with divergent needs, demands and preferences. Market segmentation then is the process whereby a heterogeneous market is divided into homogeneous market segments (Kotler & Armstrong, 1999: 197). One of the objectives for market segmentation is to improve customers’ need satisfaction (Strydom, Jooste & Cant, 2000: 102). Market segments may be defined in terms of various bases including geographic, income and race (Ziethaml & Bitner, 1996: 182). Two major market segments identified in this country are the white consumer market and black consumer market. Some market segments may prefer a product or service that is less expensive and are prepared to accept a proportionate drop in quality in comparison with other customers. Would such differentiation amount to unfair discrimination and a violation of the non-discrimination clause?

As seen earlier, the non-discrimination clause does not imply that there should be no differentiation whatsoever between different groups of people. It would be impossible for organisations to carry on their business without

differentiation. Differentiation is permitted as long as it amounts to fair discrimination (Constitution, Section 9 (5)). For instance, if a certain group of customers are prepared to pay a higher price and in return they receive more than other customers, this would not be unfair. What is required is that “the justification for differentiation must be legitimate” (Devenish, 1999: 44).

6

The exploratory study

6.1 Determining the nature of discrimination in customer service quality

The study is not aimed at determining the extent of prevalence of the discriminatory service practices of retail outlets. It aims to obtain, qualitatively, a sample of the types of discriminatory practices that are prevalent and to examine the impact of such practices in terms of the law. As mentioned earlier, the Equality Act specifically prohibits the provision of “inferior services to any racial group” (Section 7 (e)). In determining whether the provision of such services is of an inferior nature, a comparison must be made with the quality of such services offered to ‘other groups’. An exploratory study was therefore conducted on the perceptions of customers of retail chain stores in Clermont, a historically disadvantaged area in the vicinity of Durban.

6.2 Methodology for the exploratory study

A sample of 50 customers was randomly selected. Statisticians generally agree that a sample size of thirty or more is usually adequate to enable a normal distribution to occur (Kress, 1988: 178). Where a particular respondent was reluctant to complete the questionnaire, the next customer was selected. The area of Clermont was selected for several reasons: firstly, Clermont is historically a black township and the determination of discriminatory treatment against customers from such area would be relevant to the study. Secondly, Clermont was

selected for logistical reasons, being in close proximity to the researcher, and easily accessible to the research assistants. Thirdly, the existence of a number of 'other' retail chain store outlets in the historically advantaged areas of Durban-Pinetown, meant that respondents would be able to make adequate comparisons with regard to the selected elements of customer service quality.

The questionnaires were personally administered by research assistants. The respondents completed the questionnaires themselves. As all 50 questionnaires were completed, the questionnaire return rate was 100 per cent.

The questionnaire included open-ended and closed questions to facilitate ease of processing. Open-ended questions were included to test the opinions of the respondents and to allow for the diversity of expected responses. The questionnaire was scrutinized for face-validity by two academics who expressed their satisfaction that the instrument adequately tested what the study intended to achieve. The questionnaires have been processed in order to extract frequencies of responses and to analyse common themes in the responses to the open-ended questions.

6.3 Findings

1. The respondents were asked where they did their regular shopping (for their household needs: groceries, etc.): there are two retail outlets in the area. 18 of the respondents indicated that they shop at store A and 32 indicated store B. None indicated both.
2. In response to a question on how frequently they visited the stores: 10 indicated daily;

5 indicated 3-5 times a week; 9 indicated twice a week; 25 indicated at least once a week and one did not respond.

3. The respondents were asked whether they had shopped at other branches of the store (especially in the historically advantaged areas): 49 answered in the affirmative while one had no response.
4. The respondents were then asked to identify the outlets of such chain stores with which they had made comparisons. The following historically advantaged areas, or centres in such areas, were identified: Westville, New Germany, Kloof, Pinetown, Davenport, Berea, Point, West Street and Hillcrest.
5. There are various elements to customer service quality in the retail chain store scenario. The following key elements were identified because of the ease of obtaining responses to them, and since they were generally apparent to the customer:
 - prices of products generally,
 - prices of staple foods,
 - the quality of fresh produce,
 - the quality of products generally,
 - the cleanliness of the stores, and
 - adequacy of tellers, in terms of the time spent in queues at till points.

The respondents were then asked to compare and rate the store that they shopped at with other branches of the store (in historically advantaged areas) in terms of each of the key elements. Table 1 sets out the responses received for each of these key elements in respect of the 50 respondents.

Table 1:

Rating of shopping experiences in comparison to such experiences at retail outlets in historically advantaged areas.

| | Less expensive | Same | More expensive | No response |
|---|---------------------------------|-------------|--------------------------------|--------------------|
| 1.1 Prices of products generally | 0 | 23 | 27 | 0 |
| 1.2 Prices of staple foods | 3 | 20 | 26 | 1 |
| | Better than other stores | Same | Worse than other stores | No response |
| 2. Quality of fresh produce | 1 | 14 | 35 | 0 |
| 3. Quality of other products | 1 | 23 | 26 | 0 |
| 4. Cleanliness of the store | 1 | 28 | 21 | 0 |
| 5. Whether tellers were adequate in relation to time spent in queues at till points | 3 | 26 | 21 | 0 |

6.3.1 *'Products generally are more expensive' and 'staple foods more expensive'*

More than half of the respondents felt that the prices generally and the prices of staple foods were higher. However, this in itself does not show that all retail outlets in historically advantaged areas demand higher prices for such goods or what proportion of such outlets are guilty of such practice. Yet, it has to be acknowledged that this is an indication of possible differentiation in price. What is also significant is that none of the respondents felt that the prices at the store they shopped at were less expensive than other outlets.

Nevertheless, the fact that one retail outlet, in comparison to others, charges a higher price for a particular product cannot in itself amount to unfair discrimination. The higher price could be justified e.g. by the cost of transporting the goods to an outlying store. What is needed then is a "justification which is legitimate" (Devenish, 1999: 44) for the difference in prices. If, however, the differentiation cannot be justified then it may be viewed as discriminatory. In instances where staple foods are perceived by respondents as being more expensive, similar findings would ensue. Twenty six of the respondents felt that staple foods were more expensive at the outlet that they shopped at. By contrast, 20 felt that the prices were the same and 3 felt that the prices were less expensive than outlets in historically advantaged areas. If

such price differentiation is true and it exists on one of the listed grounds, then it could amount to discrimination unless it can be justified.

6.3.2 *'Inferior quality of goods'*

A significant number of respondents (35) indicated that the quality of fresh produce at the outlet they shopped at was inferior to that sold at outlets in historically advantaged areas. Here again this does not prove conclusively that all retail outlets in historically disadvantaged areas sell an inferior quality of perishables, nor does it prove what proportion of such outlets sell inferior goods. However, from the perceptions of the respondents, there appears to be differentiation in the quality of goods sold. In response to an open-ended question later in the questionnaire where respondents were asked to list the aspects that they were dissatisfied with, 30 indicated that they were dissatisfied with the quality of products at the particular store.

If specific items are sold at different outlets of a chain store at the same price but the quality of goods in one of the outlets (e.g. which services predominantly black customers) is inferior, this amounts to differentiation and it could be viewed as discriminatory. Can a retail outlet sell goods that are inferior in quality in comparison to other outlets of the store? In terms of Section 7 (e) of the Equality Act the provision of "inferior services to any racial group" is

prohibited. 'Inferior services' would include supplying an inferior quality of goods to customers. To determine whether the goods are of an inferior nature, a comparison has to be made with the products of other outlets.

Can the inferior quality of goods offered by one outlet be justified by comparatively lower prices? The context of each situation must be examined to determine whether lower prices can justify an inferior quality of products and therefore not amount to a discriminatory practice. However, there would be serious health and ethical ramifications if such practice was not controlled, for instance, where perishables are kept much longer than is reasonable.

Similar findings may be made in the case of non-food items. More than half of the respondents (26) indicated that the quality of other products are worse than at outlets in historically advantaged areas.

6.3.3 'Cleanliness of stores'

Some respondents (21) have indicated that the cleanliness of the store they shop at was worse than outlets in historically advantaged areas. Being an indication of perceptions, this does not prove conclusively that there is a problem generally at retail outlets in historically disadvantaged areas. However, here too the perceptions of the respondents point to some degree of differentiation between retail outlets in historically disadvantaged areas as compared to historically advantaged areas. If this is true it would indicate a disregard for the safety and comfort of customers. Cleanliness of stores is a component of the 'quality of service' offered to customers. If the quality of such service is inferior, then again in terms of Section 7 (e) it would amount to unfair discrimination.

Where the 'inferior quality of goods' and 'cleanliness of stores' are a problem at retail outlets in poorer areas this could amount to discrimination on 'other grounds', viz. socio-economic status. Socio-economic status refers to the situation where a person is 'disadvantaged by poverty, low employment status or lack of, or low-level educational qualifications (Equality Act, 2000: Section 1 (1) (xxvi)). "Indeed, poverty, low-level employment status

and low educational qualifications are often wrongly and unfairly used to judge people and to determine the benefits and services to which they should be entitled" (Albertyn, Goldblat & Roederer, 2001: 84). There is an overlap between discrimination on grounds of economic status and discrimination on grounds of race and gender in South Africa (Poverty and Inequality in South Africa, 1998).

To show that discrimination on the grounds of socio-economic status exists, customers in a particular area must have a low level of income, low level employment status and low educational qualifications. Further, according to Albertyn, Goldblat and Roederer (2001), socio-economic circumstances must be linked to systemic disadvantage. It must be shown that discrimination on the basis of socio-economic status would perpetuate such disadvantage. Alternatively, if it can be shown that such discrimination undermines the inherent human dignity of a person or group it will amount to unfair discrimination (*Harksen v Lane NO & Others*, 1997: para 46).

Hence differentiation in terms of the standard of cleanliness of retail outlets is clearly a ground of discrimination whether it is viewed in terms of the grounds of race or socio-economic conditions. The respondents in the study are from an area with a low socio-economic status and to discriminate on this ground would perpetuate such disadvantage.

6.3.4 Adequacy of tellers and time spent at till points

Twenty one respondents felt that the adequacy of tellers and consequent delays in queues at till points, was worse than at outlets in historically advantaged areas. This does not show that all such outlets in historically disadvantaged areas are guilty of such conduct. Nor does it show that there is no problem with the adequacy of tellers and time spent at till points at such stores. Yet again there is an indication of another possible area of differentiation. Again, later in the questionnaire, when respondents were asked to list aspects of their shopping experience that they were dissatisfied with, 31 respondents indicated that they were dissatisfied with the time spent

in “waiting at tills”. Whether this amounts to unfair discrimination would depend on the particular circumstances. The arguments in respect of an ‘inferior quality of service’ as set out in the Equality Act (Section 7 (e)), would be valid here too.

6.4 Unfair discrimination on grounds of race

The discriminatory treatment revealed by the study is against customers, predominantly black, located in a historically disadvantaged area. In the event of such a group of customers receiving a lower standard of customer service quality in comparison to customers at up market, historically white areas, it could be construed as unfair discrimination which is against the provisions of the Constitution. In terms of the *Walker* judgement, the practices of the retail chain stores mentioned would amount to differentiation between customers, indirectly on the basis of race. Since the differentiation is on a listed ground, namely race, there is a presumption that such differentiation would amount to discrimination as it “adversely affects a disproportionate number of persons of a certain group” (1998: para 32). Hence, where market segmentation leads to discrimination on the listed grounds, for instance, race, it is not necessary to prove that the segmentation prejudices the customer or group of customers. There is a presumption that the discrimination is unfair and business will have to prove that it is fair (*Prinsloo v Van der Linde*, 1997: para 28).

However, the process of determining whether the areas of differentiation in customer service quality identified by the study, amount to unfair discrimination, is simplified by the Equality Act. Section 7 of the Act specifically prohibits the provision of “inferior services to any racial group”. The instances of discrimination revealed by the study are examples of inferior services on a racial basis and would in fact violate Section 7 (e) and therefore amount to unfair discrimination, unless it can be justified by the retailer in terms of Section 36. The justification of an infringement should take place in a separate step (Vogt, 2001). Apart from

affirmative action, there is very little to defend race discrimination within or outside the ambit of customer service quality (*Moseneke and Others v Master of the High Court*, 2001: para 23).

7

Conclusions and recommendations

From the literature it is clear that the non-discrimination clause (Section 9 (4)) in the Constitution, prohibits “unfair” discrimination by “any person” on the grounds specified (race, gender, etc.) or any other grounds. It is also clear that this provision applies to business organisations, including retail chain stores. They are unequivocally bound by this provision not to discriminate, especially on the basis of race, in the area of customer service quality. The Equality Act outlaws specific forms of discrimination, including discrimination in customer service quality, such as the provision of “inferior services to any racial group”.

From the exploratory study the following conclusions may be drawn:

- Certainly, from the study one cannot conclude that all retail chain stores discriminate against customers supporting an outlet in a historically disadvantaged area. Yet the study of customer perceptions does show that differentiation in service quality does exist.
- Discrimination in customer service quality is a very real problem especially for the poorer communities. The study has highlighted the nature of such differentiated treatment against customers of retail chain stores in the historically disadvantaged area of Clermont. It is likely that customers in other historically disadvantaged areas suffer similar discriminatory treatment.
- An indication of differentiated treatment by offering an inferior service quality to customers in Clermont, a historically black township with predominantly black residents, would in fact amount to discrimination as it is on a listed ground, namely, race. The discriminatory practices

on which the study focused, could amount to indirect race discrimination, especially in light of the judgement in *City Council of Pretoria v Walker* (1998), since they have a “disproportionate effect on the black communities”. However, the court in each case would have to determine whether the discrimination in question is fair or not.

- Market segmentation in itself does not amount to unfair discrimination. Differentiation between different customers is permitted as long as it amounts to fair discrimination.
- In terms of the Equality Act, not just retail chain stores but all providers of customer service, are required to audit their present practices and policies and devise progressive policies to eliminate unfair discrimination. This may entail a change in the policies and outlook of such stores as well as training programmes for staff in the area of customer service quality with a view to treating all customers equally.
- Customers have recourse to ‘Equality Courts’ if a retail chain store or any other business organisation discriminates against them unfairly.

Areas for future research include a wider empirical study to determine the incidence of unfair discrimination in designated areas. Studies in other sectors of business, for instance, other retail sectors or the services sector, may be conducted to determine whether and the extent to which, their customer service practices comply with the non-discrimination provisions. Secondly, a study could be done to determine what has been done in other countries to address discrimination in customer service quality. Thirdly, an investigation may be undertaken to determine fully the sanctions that are in place or could be introduced to enforce the non-discrimination provisions. Undoubtedly the non-discrimination provisions in the Constitution, and the Equality Act, have substantial impact for business in the area of customer service quality.

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- 6 *President of South Africa v Hugo*. (1997) (6) BCLR 708 (CC).
- 7 *Prinsloo v Van der Linde*. (1997) (6) BCLR 759 (CC).