


Equality and Human Rights Commission

Tackling Inequality and Discrimination

PLP Wales Conference: Public Law and Discrimination

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Equality and
Human Rights
Commission

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 @ehrc

What we will cover

Tacking inequality – how the Commission does it

1. Who we are and what we do
2. Our approaches to tackling discrimination
 - Providing support, encouraging compliance, influencing developments
 - Regulatory enforcement
 - Litigation
 - Advisor Support & Legal Support Project

EHRC: Who we are and what we do

EHRC – The basics

- Established by Equality Act 2006
- NDPB – operating independently
- “A” status UN National Human Rights Institution in England & Wales
- National Equality Body as mandated by EU Equality Directives
- Covering: human rights and the 9 protected characteristics in the EA 2010: age, disability, gender reassignment, marriage & civil partnership, pregnancy & maternity, race, religion or belief, sex, sexual orientation

EHRC: General duty: overarching context

Encouraging & supporting the development of a society in which:

- (a) people's ability to achieve their potential is not limited by prejudice or discrimination
- (b) there is respect for and protection of each individual's human rights
- (c) there is respect for the dignity and worth of each individual
- (d) each individual has an equal opportunity to participate in society &
- (e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

The Commission's duties

- promote understanding of the importance of equality and diversity and human rights
- encourage good practice
- promote equality of opportunity
- promote awareness and understanding of human rights and of rights under the Equality Act 2010
- **enforce EA 2010 and encourage compliance with HRA**
- work towards the elimination of unlawful discrimination and harassment
- monitor law and progress

The Commission's general powers

Include:

- give advice or guidance
- publish ideas or information
- undertake research
- provide education or training
- issue Codes of Practice
- conduct inquiries
- make grants

We aim to be:

“expert and authoritative”

“a centre of excellence for evidence, analysis and equality and human rights law”

“essential point of contact for policy makers, public bodies and business”

The Commission's enforcement powers

Regulatory Enforcement

- Investigations (s20 EA 2006)
 - Unlawful act notice (s21) / Action Plan (s22)
- Agreements (s23)
- Assessment of compliance with PSED (s31)
- Compliance notice for breach of PSED (s32)

Litigation

- Application for an injunction (s24)
- Legal assistance to individuals (s28)
- Institute or intervene in legal proceedings, including judicial review (s30)

Evidence base

- Own research: Is Britain Fairer?
- Own inquiries
- Select committees
- Complaints from individuals and members of the public
- EASS helpline
- Information from other regulators, stakeholders
- Contact from lawyers
- Findings of the Courts – we monitor Employment Tribunal decisions and we are notified of proceedings in the county courts
- Media reports

Tackling discrimination: how we use our powers

Providing support, encouraging compliance and influencing developments

Tackling systemic issues

- Working Forward (Welsh Water, Welsh government, Public Health Wales)
- Sexual harassment
- Following Grenfell

Individual compliance actions

- Most matters dealt with at “pre-enforcement stage”
- Discriminatory adverts / pre-employment health questions

Influencing legislative and policy developments (eg Brexit)

Monitoring compliance with treaty obligations

Regulatory enforcement

Framework:

- Compliance & Enforcement Policy (open, transparent, accountable, evidence-based, consistent and proportionate)
- Powers are remedial not punitive (eg no power to fine)
- Gender Pay Gap enforcement (c.20 companies reported so far in Wales)
- Large-scale investigations: Metropolitan Police Service, Premier League

Strategic Litigation Policy – factors relevant to a particular case

- Extent of potential impact in preventing breaches by setting precedent / raising interest
- Opportunity to
 - clarify or strengthen the law or extend or test compliance
 - secure better understanding of rights / obligations
 - improve policies and practices of strategically significant organisation, or sector
 - address continuing or widespread / systemic breaches
- Scale / severity of underlying detriment
- Prospects of success

Focus on s28: legal assistance

- Power to assist an individual who is or may become party to legal proceedings if:
 - (a) the proceedings relate or may relate (wholly or partly) to a provision of the EqA 2010, and
 - (b) the individual alleges that he has been the victim of behaviour contrary to that Act.
- Limits on scope of proceedings covered by s.28?
 - “free standing” HRA cases
 - proceedings ancillary to discrimination claims
- Form of assistance (s.28(4))
 - Representation (in house) or funding case
 - Contribution to costs

Section 30: intervene in/ institute proceedings

- Limits on scope : “proceedings are relevant to a matter in connection with which EHRC has a function”

Intervene

- Neutral legal or policy expert
- Add value beyond the arguments advanced by the parties
- Clarifying points that will lead to systemic change beyond the facts of the case

Institute proceedings (inc JR)

- EHRC does not need to fulfil the ‘victim’ requirement in HRA 1998 order to take JR proceedings, e.g. EHRC v 13 CCGs

Tacking discrimination through litigation

- 2017/18:
 - Provided full s28 assistance in **16** cases and limited s28 assistance in **18** others;
 - Intervened in **22** cases
 - Pursued an injunction / interdicts in **2** cases
- **UNISON v Lord Chancellor** (s30 intervention) – fees cease to be payable for employment claims
- **FirstGroup Plc v Paulley** (s28) - wheelchair users should be given priority for wheelchair spaces on buses
- **EHRC v Wilson** (s24) - injunction prevents W from having discriminatory letting criteria

EHRC Advisor Support:

Helpline for advice sector, solicitors, trade unions, and ombudsman schemes

- England: 0161 829 8190
- Scotland: 0141 228 5990
- Wales: 029 2044 7790

Legal Support Project

Solicitors or specialist advice centres may apply for funding for cases that involve discrimination in education, housing or social security law.

England & Wales: educationcases@equalityhumanrights.com
housingandsocialsecurity@equalityhumanrights.com
0161 829 8140

Engaging with stakeholders in Wales

We are committed to developing deeper and more dynamic relationships with stakeholders to increase their understanding of our work and its impact, and to help create a fairer and more equal Wales.

- EHRC Advisor Support
- ACAS Wales Conference
- Equality and Human Rights Exchange Network Events
- Welsh Government
- SNAP CYMRU: Discrimination in Education conference

Stay in touch!

Requesting EHRC involvement in a case or issue

If you are a lawyer/have a professional interest in a case:

- complete the *Request for Assistance or Intervention form* appended to the Strategic Litigation Policy on our website and email it to:
legalrequest@equalityhumanrights.com



or

- send brief details to the email address above

or

- contact the EHRC legal team for a discussion:
Lawyer's Referral Helpline on 0161 829 8407
Tues to Thurs 10am to 1 pm

Stay in touch

- Follow us on Twitter @EHRC: 
- Facebook: 
- Sign up for our E-news bulletin via our website:
<http://www.equalityhumanrights.com>

Thank you

Any questions?