

Enforcing the Equality Act: the law and the role of the EHRC

Women and Equalities Committee

October 2018

Written evidence submitted by Fife Centre for Equalities

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Fife Centre for Equalities (FCE) welcomes this opportunity to respond to the Women and Equalities Committee inquiry into the enforcement of the Equality Act. This written submission is based on insights from consulting with individuals from protected characteristics groups, advocacy organisations and recurring themes addressed in delivering training on Equality Act compliance.

Summary

Fife Centre for Equality welcomes the undertaking of the committee to address the issues in enforcing the Equality, including using this legislation as a mechanism for systemic change. Our view is that while the Equality Act is indeed useful and transformative in terms of mainstreaming equality, there are still several issues that prevent widescale change. Those include:

- 1. The process of exercising rights should not equate with increased litigation**
- 2. Enforcement action under the Equality Act is perceived as an organisational mechanism**
- 3. Enforcement action or ‘instruments’ does not meet individual’s everyday experiences of discrimination**
- 4. Lack of clarity around what rights people actually hold in various situations**

Written submission by Fife Centre for Equalities:

1. The process of exercising rights should not equate with increased litigation

1.1. Equality and human rights support organisations, Trade Unions or Advocacy organisations tend to use a negotiating stance in order to defend the rights of their services users and would seek legal redress as a final resort.

1.2. This is a more civil method for conflict resolution that ought to be encouraged and strengthened through formalising discrimination conversations, complaints or the process of exercising their rights. We contrast this to being careful not to emphasise litigation as it would have the negative effect of further polarise conversations which are essentially about rebalancing power, equality and mutual respect.

1.3. This is not to say that strengthening equality case law is not required, in our view it is very much needed in order to challenge institutional discrimination. However, we would prefer to see normalised is the capacity for people to hold conversations about exercising rights in a solution-focussed manner instead of instead of litigation being seen as the only significant recourse.

1.4. Currently, the focus on enforcement and strategic litigation unfortunately allows defendants or defending organisations to 'wait out' on potential discrimination cases that are not of high priority and thus delay or stall any progress in equality simply through attrition.

1.5. Potential claimants in this situation then are heavily reliant on having the financial or social capital personally or through a support network, as well as know-how and the emotional and mental resources to build a case that can be argued convincingly enough to be deemed worth settling amicably; this, simply because defendants can wait and see if they would lose if it went to court.

1.6. We (FCE) had recently success in securing a positive outcome for a disabled within an internal grievance process. This was possible because we supported the individual to raise a grievance and negotiated an outcome that was in the complainant's best interests. In this instance, the role of Trade Union Rep was limited they did not have a lot knowledge about supporting a disabled employee.

2. Enforcement action under the Equality Act is perceived as an organisational mechanism

2.1. Enforcement work such as the EHRC's work on Stop and Search, is seen as positive but not directly relatable or applicable to individual's everyday experiences of discrimination, such as micro-aggressions, hate incidents (i.e not crime), exclusion etc.

2.2. In terms of organisational enforcement, an example of the Commission is using its powers well is Gender Paygap reporting. It shows an understanding and also firm approach to progressing equality through transparency.

2.3. In our view, an even more effective use of the power the Commission holds, and more in the spirit of equality would not only to research and report on, but to extend paygap reporting to all protected characteristics.

3. Enforcement actions or 'instruments' does not meet individual's everyday experiences of discrimination

3.1. Everyday discrimination, such as micro-aggressions, exclusion and hate incidents which do not amount to crime that can be reported to the police is widespread.

3.2. Due to this, there is under-reporting and monitoring, and a lack of action that could lead to widescale change. We (FCE) are working with local agencies

and communities to increase reporting of incidents that tend to stay 'under the radar', however this is not led by legislation.

4. Lack of clarity around what rights people actually hold in various situations

4.1. This includes how the Equality Act 2010 and Human Rights Act 1998 complement or contradict each other, the degree to which they are limited and contestable in certain contexts (e.g. hospital orders) the lack of know-how and confidence in exercising those rights.

5. Conclusion

5.1. In our conversations with partners and service users, the main view taken is that while the EHRC's role as an enforcer is known and understood, this is mainly seen as concerning organisational policies and practices.

5.2. Considering the perception of individuals and their immediate worldview, the most effective deterrents to discrimination are key members of staff, support agencies or community organisations that are well trained and aware of the relevant equality principles that are relevant to their specific issue at hand.

About Fife Centre for Equalities.

Fife Centre for Equalities (FCE), funded by Fife Council, started in 2014 with the **vision** to inspire and enable everyone we work with to take action that makes Fife a more equal, fairer place to live, work and study.

FCE's **mission** is to develop a harmonised approach to build a collective voice to champion equality, diversity, inclusion and social justice.

Our **values** are to work with honesty, integrity, respect and transparency, and strive to demonstrate a fully inclusive approach in everything we do. We want everyone we work with to share these values in the belief that they will help make Fife a fairer and more equal place.

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