

Scotland Directorate

2010/11 Review of the Year



Equality and
Human Rights
Commission

Scotland

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Introduction

I am delighted to present this Review of the Scotland Directorate's work which covers our business year 2010/11.

At a time of great change I believe we have delivered an ambitious programme this year which underpins our commitment to promote and protect equality, build opportunity, tackle injustice and support a society built on fairness, respect and dignity.

Promoting the Equality Act has been a major focus of our work and we have helped individuals, employers and public bodies understand their new rights and responsibilities. Over the course of this year we have reached hundreds of people through our own events and in partnership with other organisations.

The publication of the Commission's first Triennial Review and the completion of our Significant Inequalities in Scotland work provided landmark moments in terms of building understanding about equality and human rights across Britain and have helped inform public debate as to where society's combined resources and energies should be targeted.

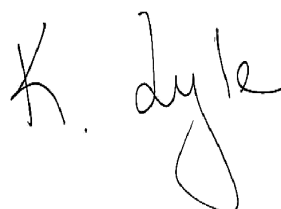
As public bodies across Scotland have begun to make difficult choices about spending cuts, the Commission published Public Sector Duties and Financial

Decisions guidance to all public bodies to help influence fairness and transparency in the decision making process. We know that spending cuts are a fact and that all local authorities have hard decisions to make, but we must be careful that at a time when fairness matters most, it is not considered least.

Our Human Trafficking and Disability Harassment Inquiries will work to ensure people feel a sense of safety and security and we continue to be engaged on a range of activity designed to push equality, good relations and human rights up the agenda and help build a consensus on what a fairer Scotland would look like.

My foreword doesn't provide an exhaustive account of all our activity but I hope you will see throughout this review how the Commission has made an impact in challenging times. As always, we haven't been able to deliver on our own and on behalf of the Scotland Directorate and Committee I'd like to thank friends and colleagues who have worked with us as we continue to help shape a Scotland built on fairness, dignity and respect.

Kaliani Lyle
Scotland Commissioner



Ensuring an effective Equality Act

The Equality Act has been a major focus of our work throughout the year and we have helped individuals, employers and public authorities understand their new rights and responsibilities.

We have:

- Consulted with the further and higher education sector on our Equality Act Code and how it affects their work
- Delivered 5 dedicated events on the Equality Act to over two hundred and fifty people including solicitors, trade union representatives, and citizen advice advisors
- Participated in a range of events giving addresses, providing information, facilitating workshops and holding question and answer sessions to over two hundred people
- We have produced, for consultation, a Scottish Schools Code
- We are producing a Scotland Public Sector Duty Code

The Commission also submitted our response to the Scottish Government's consultation on the new Public Sector Duties which saw us making key recommendations which have helped to develop the distinct Scottish specific duties. Until the Scottish specific duties are introduced we will publish temporary guidance in due course to assist public bodies in meeting the general duty.

“Not sure how you would be able to better this event. The speakers were both relaxed and fully informative.”

“I’ve learned so much about how to advise my clients, as well as to identify discrimination itself – good job!”

“I found all the day very good ... it allowed me to explore my lack of knowledge in a safe environment all my misconceptions were clarified.”

Building a Safer Scotland

Reducing Violence and Harassment for protected groups

Trafficking

We launched our formal inquiry into Human Trafficking in February 2010 which is led by the prominent criminal and human rights barrister, Baroness Helena Kennedy QC. The Inquiry aims to identify the nature and extent of human trafficking in Scotland, understand its underlying influences and causes, as well as learn how and where policy and practice needs to improve.

“Human Trafficking is recognised as a grave abuse of human rights, involving coercion and deception. It entails ongoing exploitation and its victims suffer untold misery”

Baroness Helena Kennedy QC

The Inquiry to date has:

- involved extensive evidence gathering from a range of interests and the development of relationships with a diverse group of stakeholders, mainly but not only in Scotland
- taken evidence from victims, organisations with responsibilities against human trafficking in Scotland, and from a range of bodies in the public and private sectors, as well from civil society
- developed good relationships with the key stakeholders in Scotland responsible for preventing or tackling human trafficking, most notably through its expert Advisory Group

The Inquiry will analyse its evidence, develop and where appropriate discuss its emerging findings and draft recommendations, before publishing its final report with findings and recommendations later this year.

Disability Harassment Inquiry

The Disability Harassment Inquiry has sought to determine how public authorities identify and address disability-related harassment, which can be everything from low-level anti-social behaviour through to the most serious types of sexual and violent crime.

The inquiry is looking at, among other issues: the effectiveness of evidence gathering and information-sharing; the involvement of disabled people in developing policy and practice; how public authorities manage risk while respecting individuals' autonomy; and compliance with the Human Rights Act and Public Sector Equality Duties.

In Scotland, we have :

- Engaged with disabled people's organisations and charities, as well as the key actors in the criminal justice, social care, transport, and audit and scrutiny sectors
- We have taken written evidence, conducted interviews and focus groups and held extensive hearings
- The inquiry is scheduled to publish its final report and recommendations in the summer 2011, and we will be working with organisations across Scotland to implement these

“By highlighting the failures as well as learning from examples of good practice, the Commission’s Inquiry will help public bodies try to ensure that future tragedies are prevented and transform the way that the people of Britain value and respect disabled people.”

**Kaliani Lyle, Scotland
Commissioner**

Building Understanding about Equality and Human Rights

“Our 21st century challenge is the danger of a society divided by the barriers of inequality and injustice. We now need to look unflinchingly at the evidence and focus action and resource on changing this situation. Wishful thinking itself won’t bring equality.”

Trevor Philips, Chair of the Equality and Human Rights Commission

The Commission’s first triennial review: ‘How Fair is Britain?’ was laid before the UK Parliament in October. This landmark report provides the most comprehensive compilation of evidence on discrimination and disadvantage in Britain, including a range of data on inequality in Scotland. It shows that some long-standing inequalities remain undiminished and that new social and economic fault-lines are emerging as Britain becomes older and more ethnically and religiously diverse.

The Review has become an essential resource for our work, helping us to identify 15 significant challenges where society’s combined resources and energies should be targeted. It will also be an essential resource for organisations throughout the

country as they consider how to make progress on equality. In particular, the Review offers public bodies guidelines on good practice such as setting and measuring equality outcomes.

We also:

- hosted a round table at which key Scottish stakeholders discussed the findings and implications of ‘How Fair is Britain?’ The discussion focused on how we can make best use of the Triennial Review data
- published research on Significant Inequalities in Scotland to inform thinking on the best way to identify and measure significant inequalities. The research offers us a greater insight into the criteria used by academics, professionals and practitioners in defining significant inequalities and will give us a better understanding of the equality issues that a wide range of stakeholders feel should be the focus of attention to address significant inequality in Scotland
- we published a think piece on national identity and its relationship to equality issues in Scotland. The paper offers opportunities to use identity as a focus for a range of our work and our good relations activity in particular

Public Spending Cuts

Influencing fairness and transparency and reducing a disproportionate impact on vulnerable groups

We have issued guidance on ‘Using the equality duties to make fair financial decisions’ to all public bodies in Scotland. The guidance was issued alongside our report ‘Counting the Cost’ which highlighted concerns around local authorities’ budgetary decision-making processes and made clear recommendations for those dealing with the implementation of public spending cuts, helping them to make decisions in a fairer more transparent way.

We are working in partnership with the Improvement Service and Scottish Government to improve and build an authoritative evidence base that councils/ Community Planning Partnerships (CPPs) can use to measure and evaluate progress towards equality, taking account of age, disability, ethnicity, gender, gender identity, religion and belief and sexual orientation. Having this evidence is crucial to help public bodies meet various needs and requirements, including making evidence based decisions to improve the outcomes of the equality groups and communities that they serve.

Together we are carrying out an action research project with five councils Edinburgh, Glasgow, Highland, Perth and Kinross and South Lanarkshire. The starting point of the project is our Equality

Measurement Framework, and we are providing specialist hands-on support to help identify and address the key challenges councils face in developing an authoritative evidence base and in implementing an outcomes approach to service planning and delivery.

- Our guidance on ‘Using the equality duties to make fair financial decisions’ has been well received with several public authorities requesting copies of the guide, particularly from the health and social work sectors
- Our Scotland Director helped raise awareness of making fair and transparent decisions at the Convention of Scottish Local Authorities (COSLA) leaders’ conference in late October
- Our monthly Public Sector Duty Panel considers complaints about possible breaches of the PSD in decision making and we have challenged individual public authorities on key issues such as Equality Impact Assessment and Governance
- The Equality Measurement Framework project is also engaging with a wide range of public bodies so they too can benefit from the learning, issues and good practice emerging from the project

Working in Partnership

Independent Living

The Commission continues to support the Independent Living project which aims to strengthen the Independent Living Movement and to support disabled people to have their voices heard.

This year we have set up two co-production pilot projects in partnership with the Scottish Government. Local disabled people in Argyll and Bute and North Lanarkshire are being supported to co-produce parts Local Housing Strategies, working in equal partnership with local government housing officials.

In February the project hosted the first ever Festival of the Independent Living Movement in Scotland. Disabled people from across Scotland rallied in Glasgow to hear from international speakers and to get connected with others in the Movement. A one-day only exhibition charting the history of disability and the Movement took centre stage.

“Independent Living in Scotland is absolutely vital to the successful integration of disabled people in society.”

Participant at Festival

Convention on the Elimination of Racial Discrimination

As part of the preparation for responding to the UK Convention on the Elimination of Racial Discrimination examination in August 2011 the Commission met with representative of Scottish ethnic minority organisations in Dumfries, Stirling and Edinburgh. These outreach events were designed to hear directly from those working on race equality issues both at the local and national level and the events were facilitated by the Coalition for Racial Equality and Rights (CRER), the Black and Ethnic Minority Infrastructure in Scotland (BEMIS) and the Council of Ethnic Minority Voluntary Sector Organisations (CEMVO).

A large number of concerns were raised about equal access to employment, and the issue of ethnic minorities and migrants under employment was repeatedly raised. The other major issues of concern were media portrayals of gypsy travellers and asylum seekers, access to further and higher education and access to services more generally.

Equal Marriage Symposium

The Commission recently hosted an event which sought to investigate the perceived barriers to equal marriage in order to produce a roadmap of options for legislators, suggest areas for further consideration and generate recommendations for moving forward. The event explored political, legal, religious and social perspectives on Equal Marriage.

The event included presentations, panel sessions and group discussions, and speakers including Professor John Curtice, Shirley-Anne Somerville MSP, Margaret Smith MSP, Patrick Harvie MSP, Professor Kenneth Norrie, Rev Ian Galloway, Simon Stockwell and Tim Hopkins.

“ In all the years I have attended conferences and seminars this, by far, has been the best yet. I came from it feeling much more than ever, informed about the issues surrounding marriage for same sex couples, all the issues involved and the contributors were absolutely fantastic.”

Alan Sneddon, UK Gay Police Association

Influencing Change

Since March 2010 the Directorate's Legal Team have engaged and encouraged Scotland's 32 local authorities and the COSLA to ensure issues of equality, non-discrimination, and accessibility are sufficiently integrated into the online recruitment portal: www.myjobscotland.gov.uk. The project led to positive outcomes in that councils engaged in a constructive dialogue on how [councils can best to embed equality](#) into their development, use and monitoring of the portal through, for example equality assessments and monitoring. The recruitment portal is now the main way for most local authorities to advertise and process job applications.

We have achieved a change in the practice of the Chartered Institute of Environmental Health (CIEH) who have agreed to take steps to stop the [publication of adverts](#) in their professional journal that included [selection criteria that were potentially indirectly discriminatory on grounds of national origin](#).

We have influenced NHS Boards to take more rigorous actions to achieve higher rates of [recording of ethnic and equalities monitoring](#) of patients. Performance will continue to be monitored.

We identified that the Scottish Government was categorising Gender Reassignment Services (GRS) as non-essential cosmetic procedures and this may be unlawful indirect discrimination under the Equality Act 2010. We secured the agreement of the Scottish Government to [remove Gender Reassignment Services from the Exceptional Aesthetic Referral Protocol](#) and draft a new Protocol specifically for the provision of GRS in Scotland. This achievement should have a significant impact on clarifying the requirements for Scottish Health Boards to provide access to GRS and to do so within the Government's own waiting time targets.

We supported a case involving a lesbian couple denied access to IVF treatment by a Health Board. The case was successfully settled including an undertaking by the Health Board to treat them and to allow other [same sex couples seeking IVF to be treated on same basis as any other couple](#).

We successfully supported a long running disability discrimination case against a hotel which resulted in a settlement of [compensation being paid to a wheelchair user unable to access toilet facilities](#) at his daughter's wedding reception.

We successfully resolved a complaint brought by the mother of a young man with profound brain impairment who was asked by a theatre to leave a performance of a children's musical, for being noisy. A successful outcome was achieved through mediation with the theatre paying compensation, apologising and committing to train all staff and review policies within a tight timescale.

We supported the successful claimants in the case of Buchanan and Holland v Skills Development Scotland Co Ltd. Both claimants were employed as Customer Services Managers and claimed that they had been paid approximately £10,000 a year less than a male Customer Services Manager. The case is currently the subject of an appeal to the Employment Appeal Tribunal by the employer.

“To finally gain some parity is a huge relief, but we are all too aware that there are still thousands of women in a similar position. We are very grateful for the support of the Equality and Human Rights Commission, who have fought our case throughout.”

Mairi Buchanan

We supported the case of a Latvian fish processing worker who argued that he had been discriminated against because of his partner's pregnancy when he was dismissed for helping her with heavy lifting. We have now been granted leave to appeal to the Court of Session where we will argue that this position does not comply with European Law and that men should have equal protection in cases of pregnancy discrimination.

We used our powers to intervene for the first time in the Court of Session appeal case North and ors v Dumfries and Galloway Council. This was an equal pay case where the female claimants – classroom assistants and nursery nurses employed at the Council's schools – claimed equal pay with male manual workers employed by the Council at various depots. We were successful in helping to clarify the law, and the Court found that the claimants could compare themselves with male manual workers even though it was highly unlikely that the men would ever be employed at the schools in question. However, the claimants were unsuccessful on the particular facts of the case as the Court found that the male comparators' terms and conditions would need to be significantly varied to make it possible for them to work at the schools.

In January 2010 a community development organisation – the Capacity Building Project – raised a Judicial Review against the City of Edinburgh Council’s decision to evict them from their community centre premises. The Commission became an interested party to the proceedings for the purpose of assisting the court on the interpretation and application of the public sector duties. However, once we raised our concerns via our intervention the Council addressed the issues without a hearing having to take place.

The Commission has continued to engage closely with the Scottish Parliament, in particular with the Equal Opportunities Committee. This year we have engaged with a number of the Committee’s inquiries, submitting both written and oral evidence to the EOC’s migration and trafficking inquiry as well as written evidence in relation to the Forced Marriage Bill which is currently being considered in Parliament. The Commission has also been active in providing evidence to other pieces of Scottish legislation including The Autism (Scotland) Bill, the End of Life Assistance (Scotland) Bill as well as the Budget Scrutiny Inquiry held by the Local Government Committee.

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All publications are also available to download and order in a variety of formats from our website,

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