

A Legal Enforcement update from the Equality and Human Rights Commission

Introduction

The Equality and Human Rights Commission (the Commission) is charged with the task of systematically enforcing human rights and equality obligations in both the public and private sectors.

The Commission probes, exposes, challenges and secures change across organisations with the aim of securing a fairer, more equal society.

The Commission's Enforcement team helps carry out the regulatory function of the Commission by addressing inequalities relating to race, sex, disability, age, sexual orientation, religion and belief, and human rights. They respond to concerns relating to these issues by conducting inquiries and investigations, intervening in judicial proceedings instigated by third parties that raise significant equality principles, and issuing legal proceedings in the Commission's name.

A particular obligation falls on public sector organisations to be proactive about eliminating systemic inequalities and disadvantage relating to race, disability and gender. The Commission has specific powers with respect to these issues, allowing it to address the most persistent and entrenched inequalities in public authorities.

Enforcement principles

The Commission's enforcement approach is based on a number of principles. These principles underpin each decision made by the Commission when it determines whether or not to pursue a particular case. They include proportionality, ensuring that any action the Commission proposes to undertake is in proportion to the nature and severity of the breach at hand, and consistency, whereby the Commission applies a similar approach to compliance and enforcement decisions within and across sectors.

Enforcement actions

How does an issue come to our attention?

An issue relating to inequality can come to the Commission's attention by any number of means, including a call to the Commission's helpline, or from a stakeholder organisation or individual. The Commission also actively monitors court cases, parliamentary business and press articles for evidence of human rights or inequality breaches.

How do we respond to the equality / human rights issue?

The first step the Commission will take in response to a potential equality / human rights issue is to make preliminary inquiries and gather information.

When all the available evidence is to hand, it will decide whether to pursue the issue via enforcement proceedings. Even if such a decision is made, the Commission will look to resolve the issue through pre-enforcement action and cooperation, rather than through more formal legal means. Pre-enforcement action can take the form of writing a letter to the alleged offending body pointing out the potential noncompliance, giving them specific advice or working with them to ensure that remedial or preventative action can be taken to rectify the situation. These avenues are generally less time consuming and costly than formal actions.

The vast majority of cases are resolved this way. However, when pre-enforcement action fails to achieve the desired outcome, the Commission does not hesitate to take more formal action where it is warranted. Formal action can involve:

- (a) ordering an inquiry into the matter
- (b) carrying out an investigation
- (c) applying for an injunction to prevent an organisation committing an unlawful act
- (d) using a legal power under the public sector duties, for example serving a compliance notice.

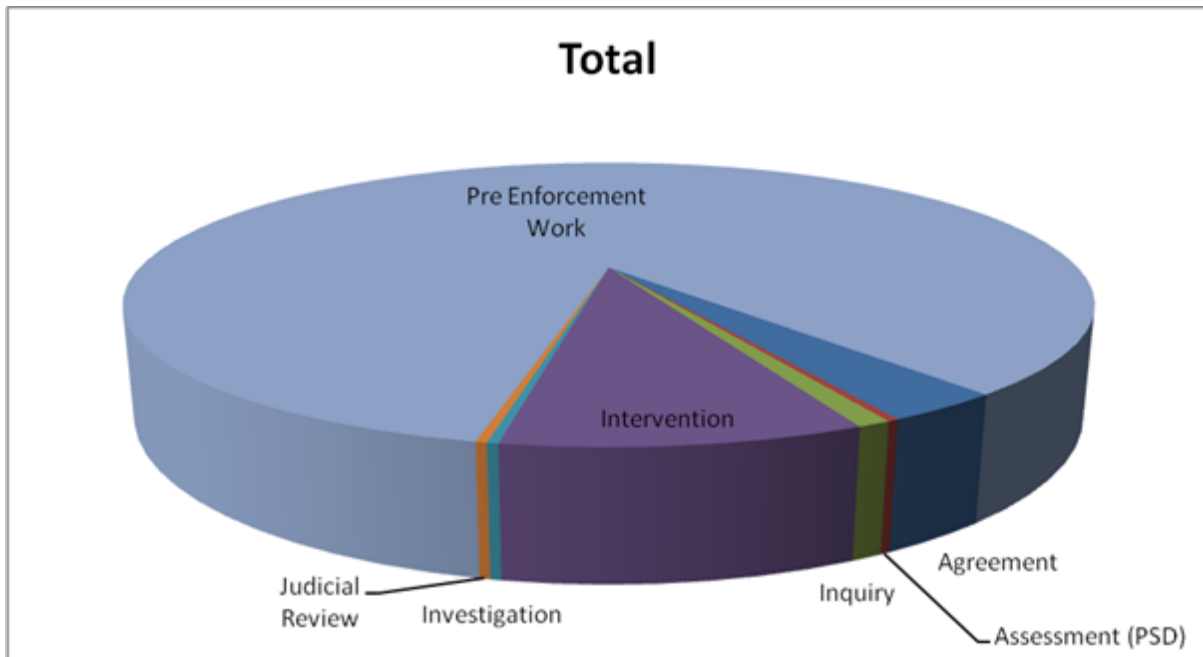
Progress so far

Since the Commission came into being on 1 October 2007, it has pursued some 337 cases, with over one third having been resolved. Some matters that remain unresolved are awaiting hearing dates in the European Court of Human Rights, while others are awaiting judgement from domestic courts.

What action has the Commission taken?

As can be seen below, the Commission has used a wide variety of powers to tackle inequalities.

Type of action taken



How were cases resolved?

The Commission has been extremely effective at resolving cases at an early stage, without the need for formal enforcement proceedings. About 80% of cases (approximately 99) were resolved in this way.

In those cases where the Commission has invoked its formal powers, they were dealt with as follows:

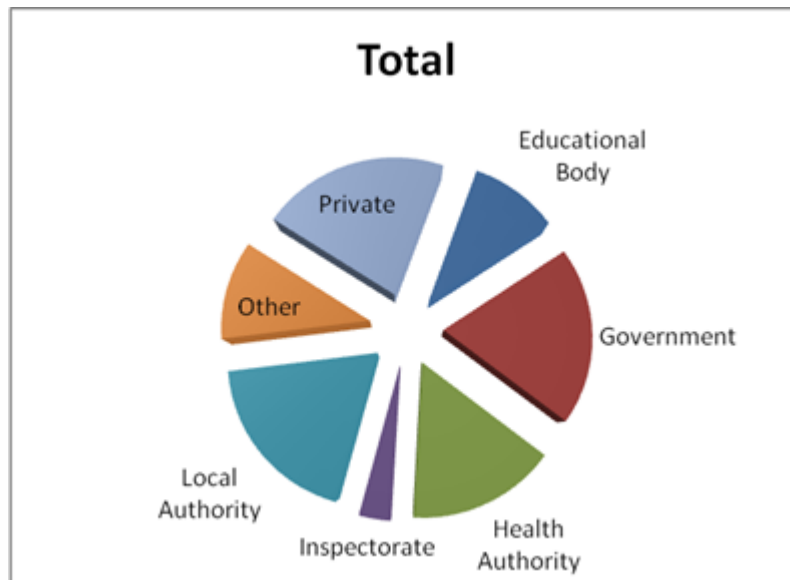
Breakdown of formal cases

	Ongoing	Final outcome
Inquiry	3	-
Intervention	14	16
Investigation	1	-
Judicial review	1	-
Assessment	1	-
Agreement	3	4
TOTAL	23	20

What sectors did the cases come from?

The graph below shows the sectors where the Commission has taken action. The relatively large proportion of actions taken against the public sector reflects the additional requirements imposed on that sector obliging them to be *proactive* in respect of duties relating to race, disability and gender.

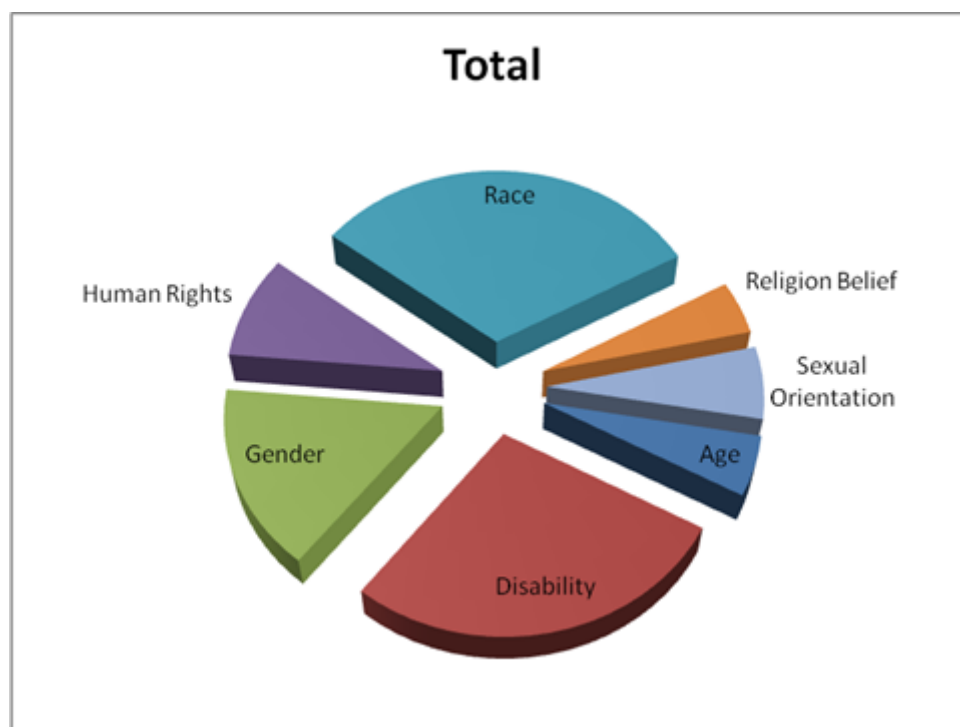
Breakdown by sector type



What did the cases involve?

Nearly 120 cases involved allegations relating to race. Disability and gender also featured prominently.

Breakdown by equality strand



What about public sector duties?

The duties put a legal obligation on public bodies to demonstrate they are taking action on race, disability and gender equality in policy making, delivery of services and employment practices. The unique duties require them to take steps not just to eliminate unlawful discrimination and harassment, but also to actively promote equality.

The Commission takes a strategic approach to enforcing public sector duties, focussing most of its effort on those public authorities and policy agendas where it can have the greatest impact on advancing equality and human rights. Where the Commission believes a public body is not adequately carrying out these duties it will intervene to ensure enforcement.

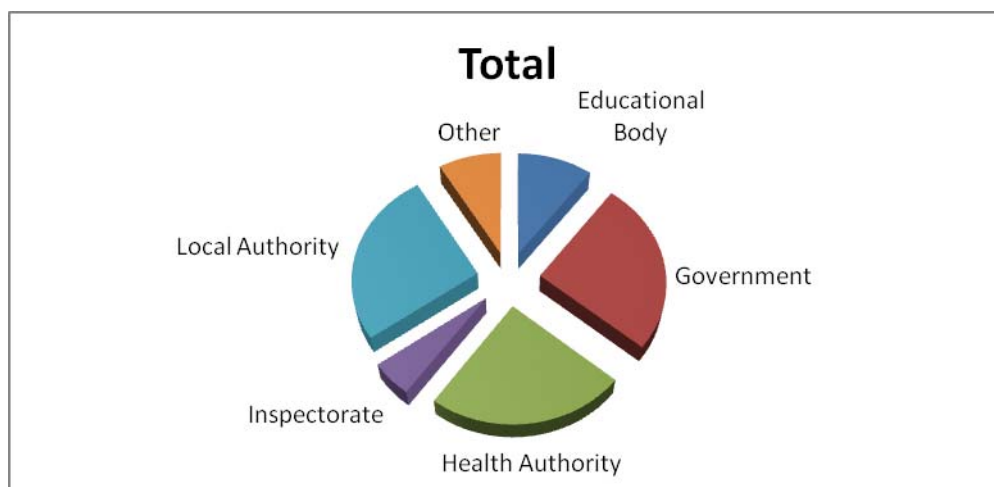
What has the Commission achieved with respect to public sector duties?

Of the 337 cases outlined above, 175 relate to the public sector duties. Work on approximately 90 these 175 cases is ongoing, while the other 85 have now concluded.

Of those cases concluded, 76 were concluded at the pre-enforcement stage, while 9 were concluded by way of formal interventions.

Considering these 175 cases by sector reveals that central government, local authorities and health bodies feature most prominently.

Breakdown of PSD cases by sector



The 175 cases also include files inherited from the three legacy commissions, such as those handed over by the Commission for Race Equality on 15 Whitehall departments and agencies that had compliance issues with the employment duty of the Race Equality Duty (RED). All fifteen departments and agencies have now complied with that duty, although five are still being dealt with by the Commission for reasons relating to wider concerns regarding performance in respect of the disability, gender and race equality duties.

Appendix 1 - Case studies

These case studies give a flavour of work undertaken by the Commission since October 2007. They provide an insight into how the Commission is working to make a fairer and more equal Britain through pre-enforcement and enforcement action.

XYZ Church

In late 2008, a same sex couple contacted XYZ church to book its hall, which was available for commercial hire, for a dinner following their civil partnership. The church refused to take the booking on the grounds that the venue could not be used for same sex partnerships. The couple subsequently contacted the Commission about the issue.

As the decision contravened Equality Act regulations, the Commission contacted the church to make them aware of the non-compliance. Once contacted by the Commission, XYZ church quickly moved to amend the venue hire policy to bring it in line with the law.

Supermarket 'L'

A disabled woman contacted the Commission's helpline in Wales to ask for assistance. She alleged that supermarket staff had refused to assist her when she had attempted to use the supermarket's petrol pump.

Following intervention by the Commission, supermarket 'L' apologised to the woman and made a commitment to re-communicate to all stores in the region its policies on adjusting its service for disabled customers.

Formal Actions

Inquiries

Inquiry into sex discrimination in the finance industry

Recent failures in the banking industry have brought to light issues of sex discrimination in the industry. As a result, the Commission initiated an Inquiry under the Equality Act 2006 to look into these issues, including:

- the gender pay gap across the sector
- the extent and nature of sex discrimination in relation to recruitment, terms and conditions, promotion, and career paths
- the differential impact of job losses in the sector.

After conducting its investigation, including collecting evidence from a wide variety of sources, the Inquiry will make recommendations with the aim of addressing sex discrimination in the finance industry.

<http://www.equalityhumanrights.com/financeinquiry>

The Commission is also currently conducting inquiries into the construction industry and the meat and poultry processing industry. Information on these inquiries can also be found on the Commission's website.

Assessments

Assessment of compliance by Jobcentre Plus

The Commission is carrying out an assessment of the extent to which the Department of Work and Pensions, through Jobcentre Plus, is meeting the public sector equality duties in the development and implementation of its policies and practices.

The decision follows a complaint made to the former Commission for Racial Equality alleging that Jobcentre Plus had failed to carry out proper race equality impact assessments when it was required to do so.

<http://www.equalityhumanrights.com/en/policyresearch/usinglegalpowers/pages/jobcentreplusassessment.aspx>

Agreements

'T' Engineering

'T' is a civil engineering company which is part of a large commercial group. The Commission's Investigations and Enforcement Unit began enquiries into the company following an Employment Tribunal case involving sexual harassment of an employee.

The company was extremely keen to work with the Commission to tackle harassment and bullying in particular, but also to improve its approach to equality and diversity more generally. An agreement between the Commission and 'T' was signed in early 2009 detailing the way in which 'T' would deal with equality and diversity in its workplace.

Although the existence of enforcement powers influenced 'T's' decision to work with the Commission, the Commission's staff focused on building a positive, collaborative relationship with the Commission which resulted in the agreement being signed.

Interventions

Southall Black Sisters

This case involved the withdrawal of funding to the domestic violence support group, Southall Black Sisters, by Ealing Council. It was alleged that the Council had failed

to comply with Race Equality Duties by not carrying out an impact assessment of its decision to change the funding criteria.

The Commission intervened in the case, arguing that the Council had not taken proper steps to determine the impact of proposed funding changes, and that the decision to withdraw funding could be unlawful.

Ealing Council conceded the claims during the hearing, accepting that the Commission's position on the relevant law was, in fact, correct. The effect of this was that Ealing Council had to re-consider the funding criteria and the process for inviting competitive bids for domestic violence services.

Investigations

Royal Mail

In March 2009 the Commission announced that it had ended its formal investigation into allegations of sexual harassment of female employees of Royal Mail.

The Commission wrote to Royal Mail Group (RMG) Chief Executive Adam Crozier informing him that the Investigation was ended on condition that RMG provide the Commission with regular updates on how it is working to eliminate harassment, and in particular sexual harassment.

In reaching its decision, the Commission took into account both the effort and resources RMG put into the work on implementing an action plan agreed with the Commission and its predecessor, the Equal Opportunities Commission.

August 2009