Our impact in Scotland 2020–21

Annual report
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### Our impact in Scotland 2020–21

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The Equality and Human Rights Commission (EHRC) began its year in the first weeks of lockdown as we responded across Britain to the coronavirus (COVID-19) pandemic that swept through every country and community.

We quickly revised our priorities across the EHRC, including in Scotland, where we refocused our business plan for 2020 to 2021 to take account of how the pandemic affected ethnic minorities, disabled people, older people and our health and social care system in Scotland.

Our strategic plan sets out three goals to make sure everyone in Britain gets a fair chance. These are:

1. to ensure that people’s life chances aren’t held back by barriers in their way
2. to make sure we have strong foundations on which to build a more equal and rights-respecting society, and
3. to protect the rights of people in the most vulnerable situations.
To achieve this, we developed and delivered an ambitious programme of work, putting equality and human rights at the heart of Scottish life, to help make Scotland a fairer place for all who live here.

We are proud that, while adjusting to these new circumstances and our need to re-prioritise, we have secured significant outcomes and impact from our work. For example, by taking legal action against NHS Greater Glasgow and Clyde and care provider HC One Ltd, we made sure that older people who lacked capacity to make decisions about their own welfare were not held in care homes without their agreement or legal authority.

Other highlights include:

• working with Scotland’s Chief Medical Officer to build equality into the clinical guidance and ethical advice and support framework in the earliest days of lockdown

• advising the Scottish Parliament on protecting freedom of expression in the Hate Crime and Public Order Act, and

• supporting public bodies to set equality outcomes that would make real change to the lives of people across Scotland.

We also published two briefings on the main equality issues in care homes that we identified during the pandemic, supporting care homes and public authorities to meet their obligations and embed equality into the response to the pandemic and beyond.

We launched a Britain-wide inquiry into racial inequality in health and social care workplaces to consider how ethnic minority health and social care workers’ treatment during the pandemic has been influenced by their race, employment status, immigration status and working conditions. This inquiry will report later in 2021.

In June, we published our Britain-wide inquiry report, Inclusive justice: a system designed for all, which looked at the experiences of disabled accused people in the criminal justice system. We met with the Scottish Government and the Lord President in Scotland who agreed to take our recommendations forward. Our recommendations helped inform decision-makers on adjustments that might be needed in virtual court processes for people with mental health conditions or neurodiverse conditions.

In Scotland we share our human rights mandate with the Scottish Human Rights Commission. I thank them for their collaborative partnership approach throughout this year.

None of our work would be possible without the support, hard work and commitment of my Scotland Committee colleagues and the focus of the Scotland staff team on delivering our plan in Scotland. I offer them my grateful thanks.

Dr Lesley Sawers,
Scotland Commissioner
Who we are

The Equality and Human Rights Commission (EHRC) is Great Britain’s national equality body and has been awarded an ‘A’ status as a National Human Rights Institution (NHRI) by the United Nations. We stand up for freedom, compassion and justice in changing times.

Our job is to help make Britain fairer. We do this by safeguarding and enforcing the laws that protect people’s rights to fairness, dignity and respect. Our work is driven by a simple belief: if everyone gets a fair chance in life, we all thrive.

As a statutory non-departmental public body established by the UK Equality Act 2006, the EHRC operates independently of government. We aim to be an expert and authoritative organisation that is a centre of excellence for evidence, analysis and equality and human rights law. We also aspire to be an essential point of contact for policymakers, public bodies and business.

We use our unique powers to challenge discrimination, promote equality of opportunity and protect human rights. We work with other organisations and individuals to achieve our aims, but are ready to take tough action against those who abuse the rights of others.

We work across Great Britain, identifying opportunities to advance equality and human rights in the specific contexts of Scotland, England and Wales. Our statutory Scotland and Wales committees help us identify and make the most of these opportunities. We work closely with the Scottish Human Rights Commission, with whom we share our human rights remit in Scotland.

Throughout this most challenging year, we have used our powers more robustly and strategically than ever before to make sure that equality is at the heart of decision-making.
The Scotland Committee

The Scotland Committee is one of our statutory committees. It advises the Board to make sure that our work meets the needs and priorities of people living in Scotland. The Committee is involved in setting our strategic direction and steers our work in Scotland. It is able to advise the Scottish Government on proposals that affect Scotland.

Our Scotland Committee members use their networks and experience to help increase the influence, reach and impact of our work in Scotland. They also make sure that we accurately reflect and consider the views and lived experience of communities across Scotland.

The Committee's work

The Scotland Committee is chaired by the Scotland Commissioner and met six times during 2020–21.

The Scotland Commissioner continued to engage with senior stakeholders across Scotland. This included meetings with:

• the Scottish Government Minister for Older People and Equalities, Scottish Government Minister for Business, Fair Work and Skills
• the UK Government Scotland Office Minister
• the co-chairs of the First Minister’s National Advisory Council on Women and Girls, and
• a roundtable discussion hosted jointly with the Scotland Office Minister, to engage with the leaders of Scotland’s business representative organisations.

The Scotland Committee took part in engagements representing the EHRC during the year, including roundtables with stakeholders to help us understand how the COVID-19 pandemic affected people with protected characteristics. We had to cancel some planned stakeholder events as a result of the pandemic.

The Scotland Committee advised the Board on a range of issues including:

• our response to COVID-19 and the likely effects on the Scottish context and priorities following the pandemic
• our business plan for work in Scotland in 2020–21 and our stakeholder engagement strategy, which were both revised in response to COVID-19, and
• new COVID-19-related activities and how they could be undertaken in Scotland, including our health and social care inquiry and programme of work.
As the effects of the pandemic swept across the country, we moved quickly to share our expertise on how to put equality at the centre of critical decisions being made at unprecedented speed.

This year, we focused on making sure equality was central to actions taken by the Scottish Government and Parliament to reduce the effects of the pandemic and recover from it.

We used our expertise to inform and educate businesses, governments and public bodies on equality during the pandemic. We worked with the Scottish Human Rights Commission to make sure the Chief Medical Officer for Scotland’s guidance for medical professionals put equality and human rights at the centre of decision-making about access to care and treatment. We also advised the Scottish Qualifications Authority on its alternative assessment model for the cancelled May 2020 exam diet.

We provided expertise across other policy areas, including:

- workplace guidance
- fair and flexible work
- childcare, and
- calling for the Scottish Parliament’s Equality and Human Rights Committee to conduct an inquiry.
With the Scottish Human Rights Commission and the Children and Young People’s Commissioner for Scotland, we wrote to the Scottish Parliament’s Equalities and Human Rights Committee calling on them to conduct an inquiry into the impact of COVID-19 on different groups in society. The Committee published its final report in March 2021, citing our evidence and noting our advice to the Scottish Government and public bodies on prioritising equality considerations in difficult times.

Our continued engagement throughout the year ensured that the Scottish Government’s response to the Advisory Group on Economic Recovery included adding a recommendation to highlight the importance of an equality and human rights-based approach. In addition, our discussions with the Scottish Government informed the repeal of parts of the Scottish COVID-19 legislation that we highlighted as unsuitable.

We have continued to champion and uphold equality and the importance of considering the needs of people with protected characteristics, safeguarding the most disadvantaged people in society and those in the most vulnerable situations.

In December, we published our briefing for the 2021 Scottish Parliament election, highlighting that Scotland has the opportunity, capability and will to tackle deeply entrenched inequalities and become a fairer, more prosperous and inclusive society. We also proposed policy priorities for parties to consider in their commitments for the next Scottish Parliament. Our briefing included a joint statement with the Scottish Human Rights Commission and the Children and Young People’s Commissioner for Scotland.
Using our powers

Access to justice for disabled accused people

We had concerns that disabled people can face barriers during the criminal justice process. We used our inquiry power to understand whether the criminal justice systems in Scotland and in England and Wales treat disabled accused people fairly.

In June, we published our report, Inclusive justice: a system designed for all, which presented our findings. We also made recommendations to make sure disabled people with mental health conditions or neurodiverse conditions are properly supported to participate in justice proceedings.

Our recommendations included:

• ensuring oversight to monitor the effective participation of accused people

• having early and effective screening for impairments that may need adjustments, and

• creating a system to collect and share information on identified needs and recommended adjustments to allow disabled people to participate fully in justice proceedings.

We also highlighted the importance of addressing gaps in disability data for accused people.

Our findings and recommendations received positive commitments to act in Scotland by the Scottish Government’s Cabinet Secretary for Justice.
Protecting the rights of older disabled people

We took legal action when we discovered that some older people were being held in two care homes in Glasgow without consent or lawful authority. These people were patients who were medically fit to be discharged from hospital but who lacked capacity to make decisions about their personal welfare. They were kept, often against their will, in two units for periods ranging between a few weeks and a year, while they waited to be appointed a welfare guardian.

NHS Greater Glasgow and Clyde (NHSGGC) and HC One Oval Ltd, the owner of this chain of care homes, agreed to end the practice of placing patients in care homes without legal authority.

Following talks aimed at improving the process for discharging adults with incapacity from hospital, all existing patients in the two units were discharged. NHSGGC also committed to working with its partner local authorities to make sure that all patients and their families know what is happening and what their rights are.
Supporting organisational change

Strengthening and improving implementation of the Public Sector Equality Duty (PSED)

In times of crisis – as with the pandemic – equality becomes even more important. The PSED is a powerful tool, requiring public bodies to transform their approaches to fairness and equality in delivering public services.

From our Is Scotland Fairer? research and other work, we know certain equality groups continue to experience significantly worse outcomes than others. This suggests that the PSED has so far not resulted in the meaningful change that is needed.

This year, we ran a series of workshops to support public authorities in setting ambitious equality outcomes to tackle the most significant inequalities in our communities, and to create real change for the people they serve. We will examine the equality outcomes published early next year.

We also continued to work closely with the Scottish Funding Council (SFC) to progress our Memorandum of Understanding, which aims to increase the potential of the PSED and make real progress on equality for people experiencing unlawful discrimination and inequality in Scotland’s colleges and universities. This work includes setting national equality outcomes and including these in the formal agreements for funding between the SFC and each college or university.
Publishing guidance to prevent discrimination during uncertain times

The unprecedented restrictions brought in to try and stop the spread of COVID-19 created challenging circumstances across all areas of people’s lives.

We produced Britain-wide guidance for employers to make sure that their decisions around dismissing or furloughing staff were made lawfully, recognising the extreme circumstances that employers found themselves in.

In response to growing concerns about the accessibility of supermarkets and retailers, we also published new Britain-wide guidance to help the industry assist disabled customers while restrictions were still in place. This guidance included four steps to support retailers in anticipating disabled customers’ needs and making reasonable adjustments so they could shop with confidence, especially for food and essential items.
Our research into the use of sexual history evidence

We commissioned a review of the use of sexual history evidence in rape and sexual assault trials in Scotland and how this affects survivors’ access to justice. Based on the findings, we called for an urgent review of how the Crown Office and Procurator Fiscal Service (COPFS) responds when lawyers for accused people request the court’s permission to use details of survivors’ sexual history during sexual offences trials. The Lord Advocate confirmed that he would instruct the Chief Inspector of Prosecution in Scotland to assess the COPFS’ practice in this area. The assessment will be carried out in 2021.
Transfer of expertise

Due to lockdown restrictions we moved our programme of Scotland legal events for advisers and solicitors online. This served as a pilot for us to test whether there was interest in online transfer of expertise events, and whether we had the knowledge and skills to deliver interesting and engaging discussions remotely.

We ran seven events in 2020–21, each aligned to an area of our recent publications or work. These were well attended and evaluated positively.

Alongside this programme, we sent six editions of our legal e-bulletin to subscribers. This newsletter includes updates on equality law and articles written by legal colleagues exploring current equality matters.

Scotland events programme

We hosted two events to showcase the findings of our recent work.

The first, in July, examined the risks and opportunities for effective participation in remote hearings. With guest speaker, John Scott QC, we shared the findings from our inquiry into disabled people’s experiences of the criminal justice system. We highlighted the areas where improvements are needed for disabled accused people to fully participate in the justice process, including the effect of remote hearings.

Our second event, in October, focused on the findings from our research on the use of sexual history evidence in Scottish criminal trials. With guest speaker, Dorothy Bain QC, we explored the experiences of survivors who have had their case taken to court, and discussed whether they align with the guidance on the use of bad character evidence.
Updates to laws and practice

This year, we provided three events focusing on areas where laws or policies had been updated:

- In November, we held an event on Retained EU Law and explored the principles and implications for equality and for the rights of workers.

- In our February event, we explored how the Equality Act 2010 can be used as a tool to secure good outcomes by front-line advisers who are supporting people in difficult situations.

- Our final event of the year examined the roadmap out of COVID-19, highlighting potentially problematic or difficult areas of employment law that might affect equality.

We were part of the European Network of Equality Bodies’ (Equinet) Equality Law Working Group, which conducted a year-long in-depth study reviewing recent Article 14 case law from the European Court of Human Rights.

The expert group produced two substantial pieces of work: ‘Compendium: Article 14 cases from the European Court of Human Rights’ and Equinet’s submission to the Court in the case of Toplak and Mrak v Slovenia.

We explored this work in our event on ‘Challenging discrimination under the European Convention on Human Rights’, in November, which attracted over 250 attendees.
Working with Government and Parliament

National Taskforce for Human Rights Leadership

The National Taskforce for Human Rights Leadership was set up to take forward recommendations made by the First Minister’s Advisory Group on Human Rights in its 2018 report. Its role was to prioritise actions to progress human rights and equality in Scotland. We were invited to join the Taskforce as it worked to develop proposals for a new statutory framework for human rights.

We used our expertise to advise and guide the Taskforce as it decided how to embed human rights conventions in Scot’s law. We also shared our experience and expertise in monitoring and regulating the PSED across Britain. This is particularly relevant when thinking about implementing new requirements on public bodies as a result of proposed laws.

The Taskforce published its final report in March 2021, which recommended incorporating four UN treaties and a number of other specific new rights and clauses. This framework will put legal protections into domestic law to protect the social, cultural, environmental and economic rights of every member of Scottish society.

We expect to continue supporting the development of the legislation to be presented to the next session of Parliament.
Scottish Parliament Committee meetings

We provided oral evidence at two Scottish Parliament Committee meetings this year.

At the Justice Committee in November 2020, we discussed our position on the Hate Crime and Public Order Bill, exploring the balance of freedom of expression and offences that stir up hatred.

At the Equalities and Human Rights Committee in February 2021, we discussed our current and future work programme. We reflected on our work over the last two years and on the priority equality areas requiring focus now.

Consultations and calls for evidence

This year, we submitted formal responses to 24 consultations and calls for evidence on a range of parliamentary, governmental and public body priorities.

In April, we submitted a response to the call for ideas on Scotland’s Fourth National Planning Framework. The analysis report reflected six of our recommendations, including our recommendation on integrating the PSED, Scotland-specific duties and Fairer Scotland Duty into national planning from the start.

Our response to the Social Security Administration (Scotland) Bill call for evidence set out important areas where the proposed laws could be strengthened. As a result of our input and follow-up discussions with Scottish Government officials, the Bill was amended to include new provisions, including safeguards for people with appointees representing them in the Scottish social security system.

In our response to the consultation on the Hate Crime and Public Order Bill, we raised our concern that the Bill as drafted could fragment freedom of expression and unintentionally create a hierarchy of protected characteristics. We argued for a single provision referencing the European Convention on Human Rights, and with our constructive engagement in the process this proved to be the solution that allowed parties to agree and to pass the Bill.

In our response to the consultation on a new digital strategy we highlighted that online processes are not accessible for everyone and stated the need to keep offline alternatives. We also talked about the need to co-design new processes with affected groups. Both recommendations were included in the final strategy.
Contacts

This publication and related equality and human rights resources are available from our website.

Questions and comments regarding this publication may be addressed to: scotland@equalityhumanrights.com. We welcome your feedback.

For information on accessing one of our publications in an alternative format, please contact: correspondence@equalityhumanrights.com.

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EASS
For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

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