

Women and Equalities Committee Inquiry

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

Written evidence submitted by the Educational Institute of Scotland

5 October 2018

Summary of our suggestions:

- Detailed examples of the types of discrimination should be made easily accessible;
- Access to judicial mediation should be increased;
- Vento bands for compensation awards should be increased so that awards act as a real deterrent and an employer's resources are taken into account;
- There should be increased use of recommendations as a remedy and follow up, and penalty where recommendations are not implemented; and
- Due consideration should be given to how people are made aware of their rights under the Act and how professional learning on any changes will be provided for.

The EIS's interest in the Inquiry

The Educational Institute of Scotland¹ is the largest trade union for teachers and lecturers in Scotland, representing over 80% of Scotland's teachers and lecturers, across all sectors. The EIS supports members with any employment issues and has a dedicated Education and Equality Department promoting equality in education. Our Equality Committee has a keen interest in members' awareness (or not) of their rights under the Equality Act 2010; and members of our national network of Equality Reps perceive the Act as an important driver of equality in education settings, and receive training on its contents. The EIS regularly provides legal support to members who wish to pursue employment tribunal claims against their employer and many of these claims are brought under the Equality Act 2010. The EIS has insight into issues members face in accessing justice when they feel they have been discriminated against.

¹ www.eis.org.uk

Response to Inquiry

Q1: How easy is it for people to understand and enforce their rights under the Equality Act?

(a) Understanding rights under the Act

1. It is our submission that materials provided by ACAS are helpful in setting out an individual's rights under the Equality Act. The materials can be found with a basic Google search, providing that the individual requiring advice has access to the internet.
2. However, it is sometimes unclear to our members which type of discrimination is applicable to the treatment they have received. The concept of harassment is regularly misunderstood. Our members have access to legal advice; however we anticipate that without advice, framing a claim such that the treatment complained of falls within a section of the Act would be challenging. It would be helpful if the Government's own website provided detailed examples of the types of discrimination that individuals may experience.
3. In reference to people's understanding of the rights more generally, beyond those who have or may perceive that they personally have experienced discrimination, we find that people often do not understand the difference between direct and indirect discrimination, for example. We would also suggest that the most vulnerable people, with protected characteristics (such as people with disabilities and transgender people) are the least well placed to understand and claim their rights.

(b) Enforcing rights under the Act

4. Firstly, the removal of employment tribunal fees is most welcome. These created a barrier to justice which was completely unacceptable.
5. Secondly, it is our observation that it is not yet widely known that contacting ACAS to commence the Early Conciliation process is a pre-requisite to bringing an employment tribunal claim.
6. Our members tend to find entering the ACAS Early Conciliation process an overly formal step if they do not ultimately wish to pursue an employment tribunal claim (this is usually for health reasons). It would be helpful to promote conciliation/mediation as being a means of addressing discrimination in the workplace without the need to follow up with legal action.
7. It would also be helpful to consider whether the 3-month timeframe for a person to contact ACAS after an incident occurs, which can elapse very quickly while a person considers how to act in response to possible discriminatory treatment, is appropriate. We consider that this is not long enough. In some cases, a 6-month timeframe might be more appropriate.

Q2: How well does enforcement action under the Equality Act work as a mechanism for achieving widescale change?

8. The EIS does not have any evidence that suggests that employment tribunal findings of discrimination in the workplace influence change in employers' practices/attitudes. Findings of discrimination are not published widely enough, in our view. Further, the awards granted are often not significant enough to act as a deterrent to employers, in our estimation.

Q3: How effective and accessible are tribunals and other legal means of redress under the Equality Act, and what changes would improve those processes?

9. We would encourage an increase in access to judicial mediation. The EIS has found that the possibility of judicial mediation is discussed at a preliminary hearing (after considerable cost has been incurred by both parties) and often scheduled to take place a month or so prior to a hearing. Given the sensitive nature of discrimination cases and the limited outcomes that are available at an employment tribunal hearing (compensation, declaration, recommendation) it would be preferable if claimants could indicate at an earlier stage if they are willing to engage in judicial mediation. In this way more cases could benefit from mediation before costs are incurred in attending a preliminary hearing. The EIS accepts that if the issues are not clear, a preliminary hearing may be necessary to allow for an effective judicial mediation process.

Q4: How effective are current remedies for findings of discrimination in achieving change, and what alternatives or additional penalties should be available?

10. The EIS has found that there are limited remedies for findings of discrimination; compensation for injury to feelings is the outcome usually sought by claimants, in our experience. However, claimants often simply wish to be listened to, to have change implemented and perhaps to receive an apology – remedies which are not available to claimants in the employment tribunal. Again, judicial mediation can be useful in achieving such alternative remedies.
11. The current updated Vento bands are low and, particularly for companies with larger resources, do not serve as a deterrent or a punishment to employers who discriminate against employees.

12. The EIS has not found many recommendations to be made by employment tribunal judges and without follow up, this remedy lacks teeth. The EIS would support penalties in line with the upper Vento band for failure to implement a recommendation.

Q5: The effectiveness of the Equality and Human Rights Commission as an enforcement body.

13. The EIS has not had any direct experience of the EHRC using its powers and cannot therefore comment on its effectiveness. However, we observe that its budget has been significantly cut in recent years; it reported in 2017 that its expenditure had reduced by 68% since its first full year in operation² and was facing further substantial cuts. We suggest that in order to be an effective arbiter of equality and human rights the Commission must be sufficiently resourced and staffed.

Q6: Whether there are other models of enforcement, in the UK or other countries, that could be a more effective means of achieving widespread compliance with the Equality Act 2010, either overall or in specific sectors.

14. We do not have information on other models of enforcement.

General remarks

15. The EIS has heard from members that they lack awareness of the Equality Act 2010, and have not had adequate professional learning on its contents, or indeed been introduced to the Act during their initial teacher education. Given the scope of the Act, and its direct relevance to teachers, both as employees, and as educators who have an important role in preventing discrimination, promoting equality and fostering good relations between people with and without protected characteristics, this is concerning.

16. A sample survey of members conducted in spring 2017 found that fewer than half of respondents had had training on the Equality Act 2010: 40% of respondents had received training on this legislation, but 60% had not. It is our position that all teachers should be conversant with this legislation. People will not be able to understand and enforce their rights (and those of others) if they lack basic awareness of the legal framework on which those rights are built. If the Act is amended we would ask that due consideration is given to how people will be made aware of the changes.

² <https://www.equalityhumanrights.com/en/file/22551/download?token=pbllaRx9>