

Equality and Human Rights Commission

# Scotland Annual Report

2015/16

# Contents

<b>1.</b>	Who are we are and what we do .....	2
<b>1.1</b>	Our role.....	2
<b>1.2</b>	The Scotland Team .....	3
<b>1.3</b>	The Board and our Scotland Committee.....	3
<b>2.</b>	Scotland highlights 2015/16 .....	4
<b>2.1</b>	'Is Scotland Fairer?' .....	5
<b>2.2</b>	Pregnancy and maternity discrimination .....	6
<b>2.3</b>	Monitoring the Public Sector Equality Duty .....	7
<b>2.4</b>	Scotland Act 2016.....	8
<b>2.5</b>	Our legal work.....	8
<b>2.6</b>	Migrant workers in the fishing and farming industries in Scotland .....	13
<b>2.7</b>	Ageing and the economy .....	13
<b>2.8</b>	Beyond the Commonwealth Games .....	14
<b>3.</b>	Looking to the future: 2016/17.....	15
	Contacts .....	16

# 1. Who are we and what we do

The Equality and Human Rights Commission ('the Commission') is the National Equality Body for Scotland, England and Wales, working across the nine protected characteristics set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

We are an 'A' status National Human Rights Institution (NHRI) and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).

Through our work with the public, private and voluntary sectors, the Scottish Government, and with individuals, we seek to ensure that our society is one in which everyone has the opportunity to achieve their full potential.

## 1.1 Our role

---

The Commission's statutory powers give us a range of tools to address the areas of work that we have prioritised. We aim to be:

A **catalyst for change**, using our statutory powers to explore systemic issues, gather evidence and develop possible solutions.

An **information provider**, helping people understand their rights and responsibilities and improve compliance with the law.

An **influencer**, through our legal expertise, research, insight and analysis, influencing public policy and inform debates.

An **evaluator**, monitoring the effectiveness of the laws on equality and human rights and measuring progress in society.

An **enforcer**, using our strategic enforcement powers to protect people against abuses of their rights and to clarify equality and human rights law.

## 1.2 The Scotland Team

---

There are 18 staff in the Scotland Directorate made up of Legal, Policy, Parliamentary, Communications and Business Support. We work on a wide variety of issues important to the people of Scotland, as set out in our annual [Business Plan](#) and our three-year [Strategic Plan](#).

## 1.3 The Board and our Scotland Committee

---

Our Board of Commissioners is responsible for the strategic direction and oversight of the Commission across Great Britain and includes the Scotland Commissioner, Kaliani Lyle, who also chaired the Scotland Committee. Kaliani finished her five-year tenure at the end of March 2016 and was replaced by Dr Lesley Sawers.

The Scotland Committee is a statutory decision-making committee and is responsible for ensuring the overall work of the Commission reflects the needs and priorities of the people of Scotland.

The Scotland Committee has between seven and nine members. During 2015/16 one member retired (Elaine Noad) and two new members were appointed (Lorraine Barrie and Emma Ritch), who join Des McNulty, Neelam Bakshi, Dr Donald Lyons, Colin Young and Morag McLaughlin.

The Scotland Committee led a number of stakeholder engagement events during 2015/16 including hosting the launch of new research on migrant workers in Aberdeen in November 2015; the 'Is Britain Fairer?' consultation event in Edinburgh in July 2015; and the 'Is Scotland Fairer?' launch in Edinburgh in January 2016.

The Committee were also involved in the Commission's Disability Committee visit to Scotland which tied in with the launch of the Scottish Government's consultation on their Convention on the Rights of Disabled People Delivery Strategy.

## 2. Scotland highlights 2015/16

Our team work closely with colleagues in England and Wales on programmes spanning the public and private sector, domestic and international human rights, and in using our legal powers. The Commission's work in 2015/16 across Great Britain is detailed in our [Annual Report and Accounts 2015-16](#).

This report highlights just some of the notable outcomes that have been delivered in Scotland in 2015/16:

- We published our five-yearly report '**Is Scotland Fairer?**', studying progress on equality and human rights.
- We launched a major campaign to end **pregnancy and maternity discrimination** across Scotland.
- We **monitored compliance with the Public Sector Equality Duty (PSED)**, publishing our assessment of 240 public bodies' compliance with the Scotland Specific Equality Duties.
- We worked on the **Scotland Bill**, helping to maximise opportunities to promote and protect equality and human rights in Scotland.
- We intervened in a case against **Fife Council** where a disabled pupil was informed that the support package in place to allow him to continue in education would be removed on his 18th birthday.
- We assisted Scotland's 5,000 kinship carers to get a fairer deal through increased financial support.
- We intervened in a **judicial review** brought to challenge the fact that there was no effective mechanism to allow people detained in medium secure units to challenge that level of security.
- We worked with the Department for Work and Pensions (DWP) to ensure that the mental health components of the new medical assessment rules were non-discriminatory.
- We ran three legal stakeholder 'Transfer of Expertise' (ToE) events and a major annual Discrimination Law Conference.
- We launched our new **Legal eBulletin** and developed a series of innovative **webinars**.

- We published scoping research into the employment conditions of migrant workers in the fishing and farming industries in Scotland.
- We commissioned research to explore **ageing and the economy** and how older people's lives in Scotland are changing.
- Following the success of the **Commonwealth Games** in 2014, we worked with **sportscotland** to find out to what extent sports in Scotland were open and accessible to Scotland's diverse communities.

## 2.1 'Is Scotland Fairer?'

---

In 2010, the Commission produced its first report on equality, 'How Fair is Britain?', with a separate report on human rights in 2012. 'Is Britain Fairer?' (2015) was the Commission's follow-up report on both equality and human rights.

In January, we supplemented this report with 'Is Scotland Fairer?', the country's biggest ever study into progress on equality and human rights.

Our research team gathered and analysed hundreds of pages of data, assisted by analysts from the Scottish Government who quality assured our findings.

The report found that:

- Overall, educational attainment has increased since 2010, but some Scots fared worse including disabled pupils, pupils from socio-economically deprived communities and Gypsy/Travellers.
- Although women were more likely to hold a degree than men, they were less likely to be in work, and if they were in work they were less likely to hold a senior position.
- Ethnic minorities and disabled people were most likely to be living in relative poverty.
- People living in deprived areas had lower life expectancy, and some ethnic minority groups – Gypsy/Travellers and older Indian, Pakistani and Bangladeshi women – reported poorer general health than other Scots.
- In terms of how safe people felt living in Scotland, both the experience and fear of crime has decreased since 2010, but some people – disabled people and women – were more likely to feel unsafe being alone after dark.

We have outlined seven key equality and human rights challenges for improvement in Scotland in the coming years:

- **Improve the evidence** and the ability to assess how fair society is.

- Raise standards and close attainment gaps in **education**.
- Encourage fair recruitment, development and reward in **employment**.
- Support improved **living conditions** in cohesive societies.
- Encourage **democratic participation** and ensure access to justice.
- Ensure all people can access the **health** services they need.
- Tackle targeted **harassment and abuse** of people who share particular protected characteristics.

The report launch received a great deal of positive media coverage, as well as significant stakeholder support.

In the coming year we will be holding stakeholder roundtables across the country and publishing reports on issues such as educational attainment and hate crime. These will frame our engagement with the Scottish Government, stakeholders and communities across Scotland.

## 2.2 Pregnancy and maternity discrimination

In 2015, working with the Department for Business, Innovation and Skills, we published initial findings into pregnancy and maternity discrimination based on interviews with 3,000 employees and 3,000 employers across Great Britain.

This research was followed up in March 2016 with Scottish-specific findings which suggest that around three-quarters of pregnant women and new mothers in Scotland – the equivalent of over 30,000 women – experience negative or potentially discriminatory treatment at work each year.

This potential discrimination experienced by three out of four working mothers in Scotland included dismissal, a risk or impact on their health or welfare, financial loss or being harassed by their line manager or colleagues.

We published wide-ranging proposals for change, including ending women being asked whether they intend to have children in job interviews.

Following this research, the Commission in Scotland worked extensively with the Scottish



Infographic from the Commission’s pregnancy and maternity rights campaign

Government which resulted in their commitment to improve the working conditions of pregnant women and those on maternity leave. This includes:

- Setting up a working group to create guidelines for employers on best practice in the recruitment, retention and development of pregnant workers.
- Strengthening employer advice to ensure that work environments are safe and healthy for pregnant women and new mothers, including providing employment rights information.
- Improving public monitoring and reporting of pregnancy and maternity under the PSED.

We look forward to working together, alongside the Fair Work Convention and Working Families, to deliver these commitments for the benefit of both working women and employers.

## 2.3 Monitoring the Public Sector Equality Duty

---

The PSED, as set out in the Equality Act 2010, requires listed public authorities, in the exercise of their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and other prohibited conduct
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not, and
- foster good relations between people who share a protected characteristic and those who do not.

In Scotland, most listed authorities subject to the PSED are subject to specific duties which were introduced in May 2012 and cover a four-year reporting cycle. The purpose of the specific duties is to help those authorities comply with the PSED.

The Commission has been working since the introduction of the specific duties to monitor their effectiveness. During 2015/16 we published two 'Measuring Up?' reports focusing on public bodies' performance and practice. These reports were drawn from an evaluation of the content and quality of 238 public authorities' reported outcomes, mainstreaming reports and employee data. We found that:

- 96 per cent of listed authorities published a mainstreaming report
- 96 per cent of listed authorities reported on progress made to achieve their equality outcomes

- 95 per cent of required listed authorities published gender pay gap information, and
- 89 per cent of assessed listed authorities published some employee information.

However, we also found that there are improvements to be made in collecting information on all protected characteristics and in all areas of employment monitoring. As a result we have continued to engage with the **Scottish Government National Equality Improvement Programme** (SNEIP) and worked with them on a series of networking and capacity-building events held between June and October 2015.

We also began our work to assess the Scottish Ministers' Duty and the publication of equality outcomes and mainstreaming reports by a further 35 public bodies in April 2016. A monitoring report on the performance of listed authorities against reporting requirements will be published in 2017 at the end of the first four-year cycle of reporting.

## 2.4 Scotland Act 2016

---

The Scotland Bill had its first reading in the UK Parliament in May 2015. It contained an equality clause, designed to give effect to the Smith Commission's recommendation that 'The powers of the Scottish Parliament will include, but not be limited to, the introduction of gender quotas in respect of public bodies in Scotland. The Scottish Parliament can legislate in relation to socio-economic rights in devolved areas'.

The Equality and Human Rights Commission worked over the course of the Bill's journey through Parliament to ensure a coherent and workable legal framework which would achieve the Smith Commission's recommendation. We drafted amendments to the Bill to improve the clarity of the equality provisions and produced a number of briefings for parliamentarians.

The Scotland Act 2016 was given royal assent on 23 March 2016. It contains provisions: devolving equal opportunities in relation to Scottish public authorities; allowing the Scottish Parliament to legislate in relation to board diversity; and bringing the socio-economic duty into force in Scotland.

## 2.5 Our legal work

---

The focus of our regulatory role is to help organisations meet their responsibilities. We do this by providing advice and guidance, publishing information and undertaking research. When these methods are ineffective, we also have a range of enforcement powers.

These powers are set out in the Equality Act 2006. There are a number of different approaches we can take, depending on the particular circumstances. They range from guidance and assistance to investigations and court action. We use our strategic litigation policy to decide which powers can best be used to tackle particular problems.

Some of our notable work in 2015/16 included:

### **Fife Council**

A disabled pupil at a residential independent school was informed by Fife Council that the support package in place to allow him to continue in education would be removed on his 18th birthday. There was no assessment of his needs or the impact the decision would have on him. The Sheriff found that the Council had breached age and disability requirements of the Equality Act 2010. He awarded the pupil damages and ordered Fife Council to pay his fees for his last year at school. The Council appealed the Sheriff's decision to the Court of Session and the Commission applied for permission to intervene in the case, which was granted.

The Commission's intervention aimed to assist the Court in the correct approach to interpreting direct age discrimination, indirect disability discrimination, discrimination arising from disability, failure to make reasonable adjustments and, in particular, the approach to comparators.

We drew the Court's attention to the Commission's Services Code of Practice, our Technical Guidance on PSED, relevant sources of EU law, and issues raised by Articles 8 and 14 of the European Convention of Human Rights.

The Court of Session upheld the Sheriff's finding of indirect disability discrimination and a failure to make reasonable adjustments. However, they held that it was not a reasonable adjustment for Fife Council to reimburse the pupil's school fees. The decision is now being appealed to the Supreme Court.

## **Kinship care**

The Commission was approached by the Poverty Truth Commission, who raised concerns that children in kinship care (children looked after by family members as an alternative to going into care) received far lower levels of financial aid than children in foster care.

We examined the issue and identified human rights concerns, which we raised with the Scottish Government and the Convention of Scottish Local Authorities (COSLA). To address these concerns, the Scottish Government is now providing an additional £10.1 million every year to councils to increase kinship allowances to the same level as foster allowances. The Government also announced that it expects councils to be publishing their foster and kinship allowance rates to ensure that parity of allowances is clear and transparent.

## **Judicial review concerning the Mental Health (Care and Treatment) Act 2003**

The Commission intervened in a judicial review brought to challenge the fact that there was no effective mechanism to allow people detained in medium secure units to challenge that level of security. Only patients held in high security at the state hospital could challenge the level of security under which they were kept. The Scottish Ministers had not laid regulations which would extend the law to patients in medium and low secure facilities, despite a previous court ruling that they should do so.

The Commission's intervention focused on Article 5 (which provides a qualified right to liberty) and Article 14 (the non-discrimination provision) of the European Convention of Human Rights, alongside the UN Convention on the Rights of Persons with a Disability and a Council of Europe Recommendation concerning the legal protection of incapable adults. We argued that all individuals in the medium or low secure estate should have the same protection, and the same right, to challenge the place and conditions of security of detention in the same manner and through the same processes as those detained in a state hospital.

The Commission recommended that an individual who is potentially subject to an excessive level of security must have a right to appeal against such treatment. As a result of the action, the Scottish Government proposed a timetable for bringing forward regulations to resolve the problem.

### **Department of Work and Pensions Employment Support Allowance guidance on significant risk to mental health**

Concern was raised with the Commission that the recently revised DWP (Training and Development Work Capability Assessment) Handbook for Health Care Professionals who carry out medical assessments was potentially discriminatory. The guidance applied to medical assessments of claimants' capacity for work.

The criteria to be applied in the assessment of risk to mental health made a distinction between male and female claimants. Male claimants had a lower threshold than female claimants for the number of 'personal factors' they had to reach, meaning that they were less likely to have sanctions imposed on them.

The Commission contacted the DWP to raise our concerns about potential direct discrimination. The DWP indicated that they were reviewing the guidance. We are pleased that the new guidance removes any difference between men and women in the criteria to be applied.

### **Transfer of Expertise events**

Our legal team delivers a ToE programme each year to lawyers, voluntary sector advisors and trade unions to increase awareness and understanding of equality and human rights law and to improve access to better quality advice on discrimination and human rights. Ultimately access to better information and advocacy is a means of reducing discrimination claims through conciliation and negotiation. It also ensures advisors are able to recognise and use discrimination law where necessary.

The legal team ran three stakeholder engagement and training sessions in Edinburgh, Dunfermline and Hamilton between December and March. With over 60 people attending, there was a broad range of delegates from a number of organisations, including advocacy groups as well as legal advisors and union reps. We are currently planning our ToE programme for the coming year.

The team also commissioned a new database of 2,500 advisors and solicitors across Scotland. We have used the database to introduce our Legal eBulletin and to provide information on our Handbook for Advisors.

### **Discrimination Law Conference**

In January, we hosted a major conference in Edinburgh run in partnership with the editor of the Equal Opportunities Review, Michael Rubenstein.

The conference featured six leading discrimination law experts who gave their views on the latest legislative developments and landmark equality cases.

Our pregnancy and maternity and 'Is Scotland Fairer?' reports were cited in various discussions on employment law.

## Webinars

**'Excellent analysis of the most recent legal developments. I am studying for an LLM in legal practice and it has provided me with excellent resources.'**

**'Well-informed speakers who made very relevant presentations supported by good handouts.'**

**'I had to advise a client on a discrimination issue and cases cited in the talk were useful to distil the advice.'**

This year, the legal team developed a series of innovative webcasts which provide accessible and flexible legal training to experienced advisors and solicitors across Scotland. We were keen to ensure our training should be inclusive and available across the entire country, not just in the central belt.

We secured the expertise of experienced advocates and Commission staff to develop a series of episodes discussing a variety of topics: the UN treaty monitoring system; Article 14 of the European Convention of Human Rights; and an introduction to EU Equality legislation.

Advisors and solicitors found the webcasts to be a very useful tool which broadened their understanding of a complex area of law.

We improved each edition of the webcast using feedback from viewers. For example, we developed resources to accompany the webcasts; these contain useful readings and important cases for legal advisors and professionals to use.

These webcasts were widely promoted through the Commission's stakeholder networks, leading to many views on YouTube.

## Legal eBulletin

Four editions of the eBulletin were published, each reaching an audience of at least 800. This number has increased with every edition published. Each edition contains news from across equality and human rights, as well as specialist articles written by the Commission in Scotland's lawyers.

## 2.6 Migrant workers in the fishing and farming industries in Scotland

Previous Commission inquiries into the cleaning and meat processing industries have found that women and migrant workers are likely to experience discrimination in these workplaces. In 2015, we decided to conduct an exploratory study to see if there were similar issues occurring in the Scottish fish and farm processing industries as they have similar workforce profiles.

Central Scotland and Grampian Race Equality Councils conducted fieldwork for us in the fish processing and farming industries. They interviewed a number of current and past employees to survey their experiences of issues, including wage deductions, shift patterns and general treatment at work. The final report did not identify the same problems that we have observed in other similar sectors but did raise some issues about a perceived hierarchy of nationalities employed in the industries, where better treatment was afforded to those in majority communities in the workplace.

The research was intended to be exploratory and we found no grounds for extending the work into an inquiry. We launched the research in Aberdeen with representatives from the sectors, the unions and employees, and suggested areas in which employers might want to pay closer attention to staff relations that could improve the overall satisfaction of employees and thus potentially efficiency and productivity.

## 2.7 Ageing and the economy

A number of Scottish charities expressed concern that older people's lives have become more constrained since the economic downturn and that this was impacting on their quality of life. We wanted to assess whether that was the case, examine who

was most affected, and use the data as a starting point for further work.



Health gap between rich and poor pensioners is growing in Scotland

OLDER people in Scotland are facing greater inequality and isolation, are working longer and taking on more unpaid care.

And a report shows the health gap between the rich and poor of Scotland's elders widening.

Professionals and those living in their own home are dramatically healthier than routine manual workers and older people living in council and housing association properties.

The report from the The Equality and Human Rights Commission uses information from the 2011 census and shows that while two-thirds of homeowners over 65 report being in good health, only a third of those in socially rented housing said the same.

In the 50 to 74 age group, 17 per cent of those who worked in routine roles have poor health, compared to only four per cent who were in higher professional or managerial roles.

We commissioned researchers from Stirling University to analyse 2011 census data to explore how older people's lives in Scotland were changing, focusing on any socio-economic, gender and ethnicity differences.

We published a report in November 2015 which showed an increased number of Scots are working

**Article in the *Daily Record* about the Commission's research**

past retirement with over 9,000 men and women aged between 65 and 74 clocking up over 49 hours per week.

The report also showed older people are at risk of isolation with two-thirds of older Scots living alone and potentially cut off from society due to health problems or a lack of public transport.

The report was widely reported in the media with over 10,000,000 opportunities to see (OTS) and sparked ongoing dialogue with a wide variety of stakeholders about the impact of future policy on Scotland's older people.

## 2.8 Beyond the Commonwealth Games

---

Following the successes of the 2014 Commonwealth Games, the Commission was interested to see to what extent sports in Scotland were open and accessible to Scotland's diverse communities.

We worked with **sportscotland** to publish a report in January 2016, speaking to over 550 staff working across all levels of the sporting infrastructure. The report found that awareness of equalities in the sporting sector has grown in recent years. We found that women, disabled people, Pakistani adults, and Muslims are all less likely to take part in sport. We also identified a lack of evidence about sports participation and sexual orientation, gender reassignment, pregnancy and maternity, and marriage and civil partnerships.

The report identified a number of key themes which can affect participation: negative experiences of physical education, concerns about self-esteem and body confidence, the attitudes of others and the influence of family and peers, as well as issues relating to facilities, opportunities, and pathways.

Since the publication of the report we have been working with the Scottish Government and **sportscotland** to agree an action plan to enable greater access and participation from grassroots sport and physical activity through to elite sporting opportunities.

### 3. Looking to the future: 2016/17

Over the next year the Scotland Committee will be running a series of seminars to explore some of the issues which sit behind the headlines of 'Is Scotland Fairer?', focusing on educational attainment, hate crime, and civil and political participation.

The Scotland Committee will also lead on three new areas of work:

- Focusing on the new social security powers being devolved to the Scottish Government and how we might fashion a more supportive system based on 'dignity and respect'.
- Leading the 'Is Scotland Fairer?' stakeholder roundtables described above, producing new resources to accompany these with a particular focus on filling some of the evidence gaps.
- Examining the experiences of people with learning disabilities, specifically those accused or convicted in the criminal justice system.

The Commission in Scotland will publish our review of the Scottish Ministers' Duty and of the first publication of their specific duty reporting requirements by the 35 new 'listed bodies' in Scotland – primarily Integration Joint Boards.

We will take forward work on employment and the economy with a continued focus on pregnancy and maternity, pay gaps, and diversity on boards.

We will continue to focus our legal powers where we believe they can have the greatest impact.

## Contacts

Please contact the Scotland Team for further information about other Commission reports, or visit our [website](#).

Post: Equality and Human Rights Commission  
2<sup>nd</sup> Floor  
151 West George Street  
Glasgow G2 2JJ

Email: [scotland@equalityhumanrights.com](mailto:scotland@equalityhumanrights.com)

Telephone: 0141 228 5910

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.

Telephone: 0808 800 0082

Textphone: 0808 800 0084

Hours: 09:00 to 20:00 (Monday to Friday)

10:00 to 14:00 (Saturday)

Post: FREEPOST Equality Advisory Support Service FPN4431

### Alternative formats

This publication is also available as a Microsoft Word file from the Commission's [website](#). For information on accessing a Commission publication in an alternative format, please contact: [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com).

© 2016 Equality and Human Rights Commission

Published September 2016

You can download this publication from

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

© 2016 Equality and Human Rights Commission

Published: September 2016