Enforcement Project

The Equality and Human Rights Commission is the National Equality Body (NEB) for Scotland, England and Wales. We work to eliminate discrimination and promote equality across the nine protected grounds 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).

The Commission has a range of unique powers to help it achieve its aims. These strategic powers help the Commission, when necessary, to challenge policies or practices, whether of public authorities, private businesses or Governments, which are discriminatory or breach the human rights of individuals.

The Commission in Scotland has recently commenced an enforcement project which will run until September 2019. The enforcement project seeks to reduce discrimination and achieve better human rights outcomes for people in Scotland through the effective use of our range of powers. The project will work with stakeholders to identify issues where the Commission can make a positive difference to the lives of individuals or groups in society by using the statutory powers that we have.

The Commission’s enforcement powers are set out in the Equality Act 2006. They include:

1. **Legal Assistance:** The Commission can assist a person who thinks they have been discriminated against under the Equality Act 2010. We can provide funding for cases or provide direct representation.
2. **Investigation:** The Commission may conduct an investigation on whether an unlawful act has been committed under the Equality Act 2010. Where the Commission finds that there has been an unlawful act, it may give the person concerned an unlawful act notice requiring them to prepare an action plan outlining the steps they will take to avoid the unlawful act being continued or committed again.

3. **Agreement:** Where the Commission thinks that a person has committed an act which is unlawful under the Equality Act 2010, it may enter into an agreement with that person under which they agree not to commit the unlawful act.

4. **Application to Court:** The Commission may apply to the Sheriff Court for an interdict stopping a person from committing an act which is unlawful under the Equality Act 2010 if it is likely that the act would otherwise occur. The Commission can also apply to the Sheriff Court for an order requiring a person to comply with an agreement they have entered into with the Commission under its agreement power.

5. **Legal Intervention:** The Commission can seek to intervene in legal cases which concern equality and diversity or human rights to offer its expertise in these areas to the court.

6. **Own-name Judicial Review:** The Commission can bring a judicial review where the legal challenge relates to equality and diversity or human rights.

7. **Public Sector Duties Assessment:** The Commission can assess whether a public body has complied with their public sector equality duty under section 149 of the Equality Act 2010. It may serve a compliance notice on a person where it thinks that a person has failed to comply with a public sector duty.

However, due to limited resources, the Commission may only exercise its powers where the issue in strategically important to the Commission, in that the exercise of the Commission’s powers would likely not only benefit the individual at the heart of the case, but would also have
positive wider implications. For example, it would be strategic for the Commission to exercise its powers to clarify the law, so that people and organisations have a clearer understanding of their rights and duties. It may take action to highlight priority issues and push these higher up the agenda. Similarly, taking action to challenge policies or practices which are causing significant disadvantage for a large group of people would be strategic.

Given the wide range of effective powers at the Commission’s disposal, the enforcement project will enable the Commission to increase its effective use of these powers in order to ultimately ensure greater compliance with equality law and human rights law in Scotland. We will do this through greater engagement with stakeholders to increase our knowledge of systemic equality and human rights issues where it would be appropriate for the Commission to exercise its enforcement powers. As a result, the project is keen to hear from third sector organisations and legal advisors who are aware of discrimination and human rights issues where the Commission may be able to use its enforcement powers to effect strategic change.

For more information about the enforcement project, please contact Caragh Nimmo in the Legal team at caragh.nimmo@equalityhumanrights.com