

REPORT

Litigation Strategy Consultation

A summary of the submissions received in response to the litigation strategy consultation

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1. Introduction

1.1 Background

This report summarises responses made to the Equality and Human Rights Commission's (the Commission's) litigation strategy consultation which ran from 22nd September 2014 to 12th December 2014. The purpose of the consultation was to ensure that resources are deployed to maximum impact and to harness the experience and perspective of the sector in determining priorities. A total of 168 people responded to the consultation, either as individuals or on behalf of an organisation. The majority of these respondents represented advice centres, law firms, service providers, the voluntary sector or non-governmental organisations.

1.2 Consultation process

Stakeholders could share their views on human rights and equality issues by participating in an online survey, by attending consultation events and/or by sending a written response by email.

Consultation events

In November 2014, the Commission organised six consultation events in London, Manchester, Cardiff, Edinburgh and Glasgow. Over 120 individuals and organisations attended these events which provided participants with an opportunity to share their views on issues arising under human rights and equality legislation and to ask questions about the Commission's statutory litigation powers.

Online survey

In total, 47 organisations and individuals participated in the online survey, representing a wide range of sectors, including legal (9 respondents), service providers (7), NGOs (6), advocacy and lobby groups (5), advice sector (5), academic and research (2) and government departments (1). Around a quarter (11) of the

respondents and organisations carried out litigation themselves. The majority of respondents and organisations participating in the online survey were based in England (30 respondents) but Scotland (4 respondents) and Wales (8 respondents) were also well-represented. The remaining 5 respondents were either UK-wide organisations or did not state where they were based.

Responses by email

The Commission received 17 responses by email. Most of the email submissions answered the same questions that had been issued in the online survey.

1.3 Interpreting the results

The Commission was extremely encouraged by the range of responses and the contributions made to its understanding of views and perspectives, which will inform current and future planning and workstreams as outlined in section 3 below. It is important to note that this was a qualitative consultation process, not an opinion poll. The summary of the submissions helps to gain a general impression of stakeholders' views and concerns but the responses reported below are not representative of the population as a whole. The collation process involved reading each response and selecting a few items for discussion in this report. The Commission welcomes all submissions and does not attribute more importance and significance to the particular issues that are included in this summary.

2. Summary of responses

2.1 The Commission's role as a National Human Rights Institution

Which principles and criteria would be of value in the Commission's role as a National Human Rights Institution?

Several respondents shared the view that the role of the Commission is to promote human rights, including encouraging good human rights policies and practices and raising the profile of human rights in the UK. This seemed to be a particular concern in light of the current debate over the introduction of a British Bill of Rights as against the retention of the Human Rights Act 1998.

'My concern is that the true meaning of the principles within the Human Rights Act is often misinterpreted and misrepresented which exacerbates and fuels the campaign to abolish the Act. I believe that part of your role as a Commission is vital in educating and highlighting the true application of meaning of the Act...'

Some participants believed there was a need for the Commission to engage actively with other human rights organisations to develop strong partnerships for public policy reform and service improvement. Respondents supported the Commission's approach of engaging with other organisations in cases where other organisations may be better placed to deal with particular issues.

'It is important for the Commission to demonstrate proportionality and recognise when there are others better placed to address an issue.'

Many respondents shared the view that when choosing to exercise its statutory powers of litigation, the Commission needed to take into account the vulnerability of

the individual or the group, the number of people the litigation will affect, and the nature of the impact of a ruling on members of that group or on wider society. Some participants suggested that systemic human rights abuses should receive greater attention than issues which only affect individuals and might not establish important precedents.

‘The strategic litigation principles should also emphasise the role of the Commission in focusing on issues which have a substantial impact on vulnerable people, where litigation by individuals may be less likely. This could, for example, be constituted by a focus on children with mental health problems or learning disabilities in the criminal justice system.’

A key point for consideration that was mentioned across several of the responses was the need for the Commission to take a balanced approach in cases where there was a perceived conflict between different human rights.

‘The EHRC [Commission] should provide guidance on how to deal with cases with competing Human Rights, e.g. freedom of expression and freedom of religion, or when equality issues and human rights are at loggerheads.’

A few respondents were of the opinion that, in the past, certain protected characteristics had received less favourable treatment in court than others and this was particularly acute in relation to cases involving religion and belief.

‘Freedom of conscience, freedom of thought and freedom of speech have all been threatened by recent rulings which have favoured the protected characteristic of sexual orientation over that of religion and belief.’

2.2 The Commission’s role as a National Equality Body

Which principles and criteria would be of value in the Commission’s role as the National Equality Body?

Participants highlighted the need for the Commission to promote the Equality Act 2010 and to help people and organisations to understand their statutory rights and obligations.

Respondents also addressed the question of whether there was competition between different groups sharing protected characteristics. A few respondents felt very strongly about this, arguing that the Commission had failed to conduct a proper balancing exercise when dealing with competing rights.

'The Commission's litigation needs to appear even handed, and so far, cases appear to have been brought only against Christians. The challenges for the Commission are to demonstrate neutrality, and to revise its understanding of what is meant by "enforcing" and "ensuring compliance" with equalities legislation. Its focus should be on ensuring "equality of opportunity" (which protects diversity) – not "equality of outcome" (which results in the coercion of behaviour and thought, and leads to unjust results).'

However, other respondents held a contrary view, arguing that religion and belief had received a disproportionate amount of attention.

'Religion is given a platform and respect in our society which is disproportional from a demographic and from an ideological point of view. There is grotesque discrimination against women and gay people by religious groups and that seems not to be a problem for people because it's a religious group.'

At the same time, there were many respondents who emphasised that 'competitive victimhood' was not a status that should be encouraged by the work of the Commission. A few respondents suggested that a good approach forward would be to enhance the rights for all people regardless of the protected characteristic arising.

'The current Protected Characteristics serve only to magnify and maintain discourse across all groups by ensuring fragmentation. Looking

to migrate to a more thematic approach [...] would greatly enhance the ability for all groups to move forward – as everyone will be entitled to the rights contained under the themes (and not split humans out based on disability, skin colour, biological sex, etc.).’

‘All equalities ought to be treated the same, as no single equality can trump, or is trumped by, other equalities in the Equality Act 2010.’

Another point that was raised a number of times by participants was the perceived view that the Commission as the National Equality Body needed ‘to have teeth’. Some participants believed that the values of equality and diversity had been watered down and that the Commission’s statutory powers were too limited to counter this effect.

‘For many people, the Commission is the watchdog of compliance to legislation relating to human rights, equality, inclusivity and accessibility. The Commission must be allowed to have teeth in terms of enforcement of legal obligations, be able to impose sanctions if needed, provide advice on support to comply with legislation, and increase public awareness of its role and powers.’

2.3 Areas where the law is unclear

Which provisions of the Equality Act 2010 are not working or need clarifying?

Many respondents submitted comments on specific sections in the Equality Act which they felt were unclear. In some cases the responses indicated specific concerns about the direction of travel of the legislation rather than pointing to any specific area which was in need of clarification.

Some respondents, for instance, felt that confusion resulted from combining religion and belief as one protected characteristic. Others stated that there was incoherence, inconsistency and confusion with respect to the definition of direct and indirect discrimination.

Several comments were also received on section 20 of the Equality Act which provides the duty to make reasonable adjustments. One respondent stated that the term 'reasonable adjustments' was too broad to address the needs of individuals with a disability. Another participating organisation felt that the relevant section should be simplified.

'We consider that the provision in relation to reasonable adjustments needs to be simplified. The concept of the duty to provide reasonable adjustments is clear and helpful, but the legal framework of section 20 is confusing for many un-represented claimants and non-specialist legal representatives. The requirement to identify the provision, criterion or practice creates a conflated approach to claims and is likely to deter many claimants.'

Other responses were received in relation to section 25(1) of the Equality Act which covers age discrimination. Most of these comments related to employment (such as forced retirement and flexible working for those with caring responsibilities) and access to goods, facilities and services (such as hospital treatment and access to financial services).

'We note the ongoing problem of age discrimination in the financial services sector which restricts older people's access to essential products such as car insurance [...]. It is a major concern that the financial services sector has been exempted from the ban on age discrimination and we believe that the breadth of this exemption should be clarified.'

Additional responses were submitted on section 25(2) of the Equality Act which covers disability discrimination. A number of suggestions were made in relation to potential test cases concerning planning and accessibility of services and buildings. One of the organisations that participated in the consultation raised an issue concerning disability discrimination and sickness absence. They had experience of disabled employees being threatened with disciplinary action or losing their jobs because of sickness absence records. Another organisation from Wales was also concerned about discrimination against Deaf people in accessing public services (such as the NHS and local authority services) and also in finding employment

which, according to the response, was evident in the low success rates for interview and job offers.

The equal work provision under section 65 of the Equality Act was another area of the law where respondents felt that clarification was needed. Participants highlighted the need to continue making equal pay a top priority, especially in light of the increase of the gender pay gap in recent years. A respondent expressed frustration in the way pay gap cases were dealt with by the courts.

'The concept of equal value was introduced in order to tackle occupational segregation, which is widely acknowledged to be one of the key causes of the gender pay gap. Yet 30 years on from its introduction the notion of what equal value amounts to in practice has yet to be elucidated, and cases can take up to 15 years to conclude.'

Respondents also reported other issues in the field of employment and occupation where legislation was unclear and/or where test case litigation would be of value. There were as follows:

- Liability of employers for harassment by third parties under the Equality Act (and EU law) after the partial repeal of section 40 of the Equality Act
- Protection for breastfeeding mothers in the workplace
- Secrecy clauses concerning pay
- Pre-action disclosure in Equal Pay claims in the County Court
- Use of the PSED in public authority employment decision-making
- Use of the Genuine Occupational Requirement provisions in cases concerning transgender persons and their relationship to the Gender Recognition Act.

Other matters raised in the consultation responses included:

- The Independent Living Fund
- Position of Traveller communities
- Position of people of Irish ethnic origin
- Reductions in community care
- Caste as a characteristic of race
- Recruitment obstacles facing ethnic minority groups
- Use of stop and search powers (and those used in relation to traffic stops)

- Use of strip search powers
- Absence of protection against discrimination against persons with disabilities in relation to transport
- Duties of public authorities to promote good relations under section 149
- Scope and implementation of section 193 in respect of charities and the PSED duty of the Charity Commission.

Are there issues arising out of the Human Rights Act 1998 where you believe the Commission is particularly well-placed to bring or support a challenge?

In addition to the provisions of the Equality Act that were perceived not to be working or to need clarifying, respondents submitted comments on specific articles under the Human Rights Act 1998 where they felt the Commission was particularly well-placed to bring or support a challenge. Due to the limited scope of this report, only a small number of issues that were raised are discussed here.

With respect to Article 3 (prohibition of torture), respondents referred to the importance of bringing cases concerning degrading treatment in care homes and denial of health care leading to degrading treatment. Cases were also discussed in relation to allegations of systemic degrading treatment of asylum seekers.

With respect to Article 5 (right to liberty and security), some respondents drew attention to the detention of vulnerable people and encouraged the Commission to bring cases that illustrate systemic shortcomings.

Responses also submitted numerous comments relating to Article 6 (right to a fair trial). The single most debated issue in the consultation was the introduction of Employment Tribunal fees in 2013 and the possible adverse effects that this had on access to justice.

‘We’ve seen a huge fall in discrimination cases since the introduction of Employment Tribunal fees but other issues such as cuts to funding for advice services and access to legal aid are [also] having a significant impact on the ability of some of the most vulnerable to enforce their rights.’

Many respondents shared the view that the introduction of the Employment Tribunal fees and other changes in the area of legal aid would disproportionately affect individuals from vulnerable and minority groups.

'It is imperative that people who face discrimination and abuse of their human rights are able to access the courts. Most people who experience human rights abuses are members of minorities, and consequently experience the most prejudice and discrimination. This presents lifelong disadvantages especially in employment – very few of these people have the income level or savings to pursue their rights. The collapse of legal aid has left them without any avenue to resolve their grievances, or to obtain justice.'

Another respondent also considered that the introduction of the fee scheme was having a knock-on effect on the way grievances in the workplace were dealt with.

'Perhaps less talked about is the knock-on effect that this has in the workplace. Whereas previously much of my work involved early intervention, solving problems through internal grievances etc., employers are becoming increasingly unwilling to engage in this process. In most cases, they are now completely ignoring grievances. Employment Tribunal action was a last resource but as this is now inaccessible for most, the threat is removed, and discriminatory cultures are blossoming.'

Respondents pointed out that many non-governmental organisations did not have the funding or ability to take cases. Participants therefore suggested that the Commission should be more willing to undertake own-name litigation in the future, thereby facilitating access to justice for poor or vulnerable individuals and minority groups.

Another Convention Article which received attention was Article 8 (right to respect for private and family life). Some submissions referred to the right to privacy and its link to protected characteristics, and encouraged the Commission to support a challenge where the claimant required anonymity for privacy reasons. This might include a transgender claimant who brings a claim and requires his/her identity to be anonymised. Other issues raised by respondents included the privacy of sensitive information in health services, and the right to family life of disabled people and separated non-resident parents.

2.4 Most pressing issues in the areas of discrimination and/or human rights

What are the most pressing issues in the areas of discrimination and/or human rights law?

Numerous different themes emerged from the responses to this question. Many of these issues have been discussed in previous sections. The following have not been mentioned elsewhere in this summary:

- Benefit sanctions
- Care homes/health
- Hate crime
- Housing and the introduction of immigration checks by landlords
- Mental illness
- Provision of services including social care
- Trafficking and the responsibilities under PSED of local authorities
- Compliance with and enforcement of the PSVAR – (the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002)
- Access and Use requirements of Part M of the Building Regulations
- Use of the PSED in relation to enforcement of the Minimum Wage enforcement duties
- Female genital mutilation.

3. How the consultation responses will influence the work of the Commission

The Commission wishes to thank all organisations and individuals who participated in the litigation strategy consultation between September and December 2014. Due to the limited scope of this summary, it was only possible to present a small number of responses in this report. However, all submissions were analysed in great depth and will help to shape the Commission's work in the following areas:

a) Strategic litigation policy

The responses from individuals and organisations have been fundamental in shaping the Commission's new strategic litigation policy which can be found in the Annex of this report.

b) Stakeholder engagement policy

Prompted by the feedback from stakeholders that participated in the litigation strategy consultation, the Commission's Legal Team is currently developing a stakeholder engagement policy to further strengthen relevant partnerships and ensuring ongoing feedback in the area of equality and human rights insofar as they relate to litigation and legal work.

c) *Is Britain Fairer?*

The views shared by respondents have also been taken into account in relation to the work on *Is Britain Fairer?* – the Commission's five-yearly review of progress on equality and human rights in Great Britain which will be laid before Parliament in late autumn 2015. The review focuses on 10 domains that are most important to 21st century life: life; health; physical security; legal security; education and learning; standard of living; productive and valued activities; individual, family and social life; Identity, expression and self-respect; and participation, influence and voice.

Acknowledgements

We would like to thank the following organisations for participating in the Commission's litigation strategy consultation.

Organisations

11KWB	CTC Kingshurst Academy
Age UK	Department for Culture, Media and Sport
Arden Chambers	Disability Law Service
Assembly Commission	Disability Wales
BCC – The Church	Discrimination Law Association
Bindmans	Diverse Cymru
Blackpool Council Football Club	Dorset County Council
Brodies Solicitors	Doughty Street Chambers
Brown & Co Solicitors	Edinburgh Secular Society
Caerphilly Job Centre	Elite Care Services (UK) Ltd
Cardiff University	Employment Lawyers Association
Carers UK	Equality and Diversity Forum
Castlemilk Law and Money Advice Centre	Equality North West
Christian Concern and Christian Legal Centre	Ethical Record
Citizens Advice	Evangelical Alliance
City of Edinburgh Council	Faculty of Advocates
Clan Childlaw	Families Need Fathers Scotland
Community Law Partnership	Fife Law Centre
	Friends, Families and Travellers
	Garden Court Chambers

General Medical Council
Glasgow University
Govan Law Centre
Government Legal Services Scotland
Greater Manchester Police
Halton Borough Council
Hareonna Diversity
Hearing Loss
Heart Wisdom
Hill Dickinson LLP
Hindu Council UK
Hiten Shah Consulting Limited
Human Rights Consortium Scotland
Humanist Society Scotland
Inclusion Scotland
Independent Living in Scotland
Independent Police Complaints Commission
Irish Community Care Merseyside
Irish in Britain
Jewish Care
John K Jones Ltd
Latta & Co Solicitors
Law Centres Network
Legal Services Agency
Leigh Day
Lewisham Irish Community Centre,
Lloyds Banking Group
Manchester City Council
Manchester Metropolitan University
Matrix Chambers
MBS Solicitors
Mental Welfare Commission for Scotland
Merseyside Employment Law
Monckton Chambers
Morton Fraser
Muslim Council Wales
National Secular Society
NHS Centre for Equality and Human Rights
NHS Employers
Nottingham Trent University
NW Regional Access Association
Old Square Chambers
Older People's Commissioner for Wales
Outreach Service for Gypsy Roma Travellers
Oxfam Cymru
Pembrokeshire County Hall
Pinsent Masons
Places for People
Plumstead Community Law Centre
Prospect
Queen Mary University of London
Royal College of General Practitioners
Scotland's Commissioner for Children and Young People

Scottish Environment Protection Agency
Scottish Government Legal Directorate
Scottish Human Rights Commission
Scottish Information Commissioner
Scottish Parliament
Sheffield Citizens Advice and Law Centre
Sheffield Hallam University
Sheffield Mental Health Advocacy Service
SNAP Cymru
Staffordshire Branch of UNISON
Stevenson & Marshall Solicitors
StopWatch
TC Young Solicitors
The Board of Deputies of British Jews
The ManKind Initiative
The Traveller Movement
The University of Sheffield

Thorntons Law
Tribunal Judge
TUC
Unite The Union
University and College Union
Vegan Society
Women Adding Value to the Economy
Welsh European Funding Office
Welsh Government
Welsh Language Commission
Welsh Women's Aid
West Norfolk Disability information Service (WNDiS)
Wheelchair User Forum, Hillingdon
Women's Resource Centre
Young & Partners

Annex: The Equality and Human Rights Commission's Strategic litigation policy

1. Introduction

1.1. Purpose of the policy

- 1.1.1. This policy lists the factors which the Commission will consider when determining whether to exercise its statutory litigation powers.
- 1.1.2. The main focus of this policy will be to determine when the Commission will exercise its powers under s24, s28 and s30 of the Equality Act 2006 ('the 2006 Act') but the policy will be applied to the use of any of the Commission's litigation powers.
- 1.1.3. The form provided at Annex A provides guidance as to the type of information the Commission will find of assistance from relevant applicants in relation to the exercise of the Commission's powers.

1.2. General framework for decision-making

1.2.1. The Commission will in relation to all its relevant functions act in accordance with the Regulators' Code, which can be found at <https://www.gov.uk/government/publications/regulators-code>. The requirement to act proportionately will be particularly relevant in relation to this policy.

1.2.2. The Commission will in relation to all its relevant functions act in accordance with its compliance and enforcement policy, which can be found at <http://www.equalityhumanrights.com/legal-and-policy/commission/enforcement-powers>.

1.2.3. The Commission will also act to support and further the aims and objectives of its current Strategic Plan and Business Plan and the issues or areas of work identified in those documents. These indicate the current focus of the Commission. Reference to these issues is only one of the factors which the Commission will consider. Other issues are not excluded but greater weight is likely to be placed on the achievement of the Commission's published aims.

1.2.4. The issues in the Strategic Plan and Business Plan are selected as a result of the Commission's intelligence-led approach. Sources include the Quinquennial Review, legal and general stakeholder engagement and the exercise of other of the Commission's functions, such as statutory inquiries. This includes applications (whether successful or not) to exercise powers in accordance with this policy.

1.3. The Commission's strategic function

1.3.1. The Commission is a strategic regulator and both the nature of this role and its limited resources (and the need to use public funding in the most effective way possible) will inform the exercise of its discretion in relation to the use of its powers.

1.3.2. The factors below provide an indication of its approach, particularly with regard to whether a case is strategic. These factors are not intended to be prescriptive or exhaustive and will be subject to [annual] review.

2. General purpose of the Commission's litigation powers

2.1. In considering the exercise of its litigation powers, the Commission shall have regard to its statutory duties set out under sections 3, 8 and 9 and listed in Annex B to this policy.

2.2. The Commission shall also have regard to the exercise of its other statutory powers listed in Annex C to this policy.

3. Commission's roles

3.1. The following factors will influence the exercise of the Commission's powers in the role of a National Human Rights Institution:

- 3.1.1. The Commission shall act in accordance with the Paris Principles.¹
 - 3.1.2. The Commission shall have due regard, where appropriate, to the activities of the European Network of National Human Rights Institutions, of which it is a member.
 - 3.1.3. Where effective, appropriate and possible the Commission will work in partnership with other relevant bodies.
 - 3.1.4. The Commission shall give particular consideration to cases which require the balance of different rights under the European Convention on Human Rights and other international human rights instruments and treaties (together referred to in this policy as 'human rights law').
- 3.2.** The following factors will influence the exercise of the Commission's powers in its role as a National Equality Body ('NEB')
- 3.2.1. The Commission will, including in relation to the powers listed in Annex C, ensure at all times that consideration is given in each case to identifying the most appropriate, proportionate and effective power.
 - 3.2.2. The Commission will, where appropriate and possible, work appropriately to engage in activity across all protected characteristics under the Equality Act 2010 ('the 2010 Act').
 - 3.2.3. The Commission will ensure that the functions of the NEB are discharged effectively with the use, where appropriate, of measures likely to result in sustainable impact and change.
 - 3.2.4. The Commission shall have due regard, where appropriate, to the activities of the European Network of Equality Bodies, of which it is a member.

4. Factors considered in implementing this policy

- 4.1.** This section outlines a non-exhaustive list of factors which the Commission will consider in implementing this policy. In general, the Commission will need to be satisfied that a case meets sufficient of the criteria outlined in both paragraphs 4.2 and 4.3 below to establish to the satisfaction of the Commission that it would be appropriate to exercise its powers. An

¹ 'The Principles relating to the Status of National Institutions' adopted by General Assembly resolution 48/134 of 20 December 1993.

application will not need to demonstrate a high priority in accordance with every individual criterion. However, there will need, in each of the two paragraphs, to be a sufficiency of reasons to proceed either in terms of the number of criteria met or the degree to which any is satisfied.

4.2. Factors relevant to the case

- 4.2.1. Whether and to what extent the issue has potential to help to prevent breach of the 2010 Act or human rights law by setting precedent or by raising public interest in the issues raised.
- 4.2.2. Whether the case addresses continuing breaches of the 2010 Act or human rights law.
- 4.2.3. The assessment of the prospects of success of the case in terms of its factual and legal merits. The Commission will not normally support cases where the prospects of success are assessed at less than 50 per cent.
- 4.2.4. Whether and to what extent the case has progressed to an appellate level and the probability of settlement.
- 4.2.5. Whether the case is the most appropriate means to address the underlying issue, with regard to the following:
 - 4.2.5.1. The extent of the opportunity to clarify or strengthen the law or to extend or test compliance
 - 4.2.5.2. The extent of the opportunity to secure better understanding of rights and obligations
 - 4.2.5.3. The nature, scale and/or severity of the underlying detriment in terms of the 2010 Act or human rights law
 - 4.2.5.4. The opportunity to improve the compliance with the 2010 Act or human rights law in relation to the policies and practice of a strategically significant organisation or sector
 - 4.2.5.5. The opportunity to address widespread or systematic breaches of the 2010 Act or human rights law where litigation by others has failed to resolve the issue.

4.3. Factors relevant to the Commission's approach

- 4.3.1. The extent to which the case advances the duties and objectives of the Commission in relation to:

4.3.1.1. The Equality Act 2006

4.3.1.2. The Strategic Plan in the year of application

4.3.1.3. The Business Plan in the year of application

and the extent to which the exercise of the Commission's powers will assist in supporting continuing policy work by the Commission

- 4.3.2. Whether the Commission is the most appropriate organisation to take action in this case, including the existence of alternate sources of funding and including the engagement of other regulators.
- 4.3.3. Whether solutions other than litigation are available and more appropriate to resolve the case, given the obligations of the Commission to act in accordance with the Regulators' Code.
- 4.3.4. The extent to which the resources necessary to take forward the case will be effective and proportionate to the aims and will impact on the ability of the Commission to take other cases or to respond to emerging new significant issues.
- 4.3.5. Whether it would be appropriate for the Commission to act in partnership with others, including other regulators, in order to achieve the best outcome.

5. Additional specific criteria to be adopted in the use of different statutory powers

5.1. S24 (application for injunction or interdict)

- 5.1.1. The extent and nature of the urgency of the case.
- 5.1.2. The availability of any other means to resolve the situation.

5.2. S28 (provision of assistance in legal proceedings)

- 5.2.1. The strength of the case in relation to the issue arising under the 2010 Act, regardless of any additional contravention alleged in relation to the HRA.
- 5.2.2. Whether or not the case would proceed without assistance under section 28 and the implications of a failure to provide assistance in either event.
- 5.2.3. If relevant, whether use of section 30 would be more appropriate

- 5.2.4. The form of assistance sought under section 28(4).

5.3. S30 (intervention in proceedings)

- 5.3.1. The extent to which the Commission is effectively positioned to act as a neutral legal or policy expert.
- 5.3.2. The extent to which the Commission's submissions would add value to the court/tribunal beyond the arguments advanced by any of the parties to the case.
- 5.3.3. The extent to which the clarification of the relevant point of law is likely to lead to systematic change beyond the facts of the case.
- 5.3.4. The likelihood and identity of any other party intervening and the value of any possible joint intervention.
- 5.3.5. If relevant, whether use of section 28 would be more appropriate.

5.4. S30 (institution of proceedings)

- 5.4.1. The identification of affected individuals and/or relevant NGOs and the extent to which examples of specific and relevant impact can be evidenced in proceedings.
- 5.4.2. The comparative advantages (where relevant) in the respective use of section 30 and section 28.
- 5.4.3. In a judicial review, the prospects of the court granting the Commission permission to proceed.

6. National focus

6.1. Great Britain

- 6.1.1. The Commission will where appropriate take account of emerging information and advice from all stakeholders, including in relation to any issues with strategic impact locally, regionally or nationally.
- 6.1.2. The Commission will take account of information and advice from the Disability Committee in accordance with the governance framework.

- 6.1.3. The Commission will continue to take account of information and advice arising out of the Commission's stakeholder engagement functions.

6.2. Scotland

- 6.2.1. In relation to cases arising in Scotland, the Commission will take account of information and advice from the Scotland Committee and the Scotland directorate.
- 6.2.2. The Commission will ensure effective consideration of issues specific to Scotland.
- 6.2.3. The Commission will ensure effective consideration is given to the importance of developing Scottish caselaw.

6.3. Wales

- 6.3.1. In relation to cases arising in Wales, the Commission will take account of information and advice from the Wales Committee and the Wales directorate.
- 6.3.2. The Commission will ensure effective consideration of issues specific to Wales.
- 6.3.3. The Commission will ensure effective consideration is given to the importance of developing a body of cases in Wales.

Annex A – Application form to request exercise of Commission's strategic litigation powers

Request for Commission Assistance or Intervention

This form is for completion by external legal representatives or organisations only.

Your details

Name

Address

E mail address

Phone number

Type of assistance

Legal representation/intervention

Conduct of case by external solicitor/Commission

Case details

Please give a brief summary of the facts, time limits, court hearings, other key dates and any settlement negotiations

Funding

Please give brief details of how the case would be funded without Commission assistance

Issues

Please give a brief summary of the key equality and human rights issues in the case

Strategic value

Please describe briefly the wider importance of the case with particular reference to paragraphs 4.2.2 and 4.2.5 of the Commission's strategic litigation policy

Intervention

Please describe how a Commission intervention would add value to the court hearing the case with particular reference to legal points which have not been addressed by the parties

Please give details of other interveners or potential interveners in the case and summarise the grounds of their intervention

Please send the completed form by e-mail to either:

- Requests in England and Wales – legalrequest@equalityhumanrights.com
- Requests in Scotland – legalrequestscotland@equalityhumanrights.com

The form will be reviewed by our legal team and we will get back to you with a decision and/or request further details as soon as possible. If you have any queries or difficulties in completing the form please contact:

- for England and Wales legalrequest@equalityhumanrights.com or ring our lawyer referral helpline on 0161 829 8407 which is open from 10am to 1pm Tuesday to Thursday;
- for Scotland legalrequestscotland@equalityhumanrights.com or ring our lawyer referral helpline on 0141 228 5951 which is open Monday to Friday 9am till 5pm.

Annex B – Commission’s statutory aims

Section 3 General duty

The Commission shall exercise its functions under this Part with a view to encouraging and supporting the development of a society in which—

- (a) people's ability to achieve their potential is not limited by prejudice or discrimination,
- (b) there is respect for and protection of each individual's human rights,
- (c) there is respect for the dignity and worth of each individual,
- (d) each individual has an equal opportunity to participate in society, and
- (e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

Section 8 Equality and diversity

(1) The Commission shall, by exercising the powers conferred by this Part—

- (a) promote understanding of the importance of equality and diversity,
- (b) encourage good practice in relation to equality and diversity,
- (c) promote equality of opportunity,
- (d) promote awareness and understanding of rights under the Equality Act 2010,
- (e) enforce that Act,
- (f) work towards the elimination of unlawful discrimination, and
- (g) work towards the elimination of unlawful harassment.

(2) In subsection (1)—

- ‘diversity’ means the fact that individuals are different,
- ‘equality’ means equality between individuals, and
- ‘unlawful’ is to be construed in accordance with section 34.

(3) In promoting equality of opportunity between disabled persons and others, the Commission may, in particular, promote the favourable treatment of disabled persons.

(4) In this Part ‘disabled person’ means a person who—

- (a) is a disabled person within the meaning of the Equality Act 2010, or
- (b) has been a disabled person within that meaning (whether or not at a time when that Act had effect).

Section 9 Human rights

- (1) The Commission shall, by exercising the powers conferred by this Part—
 - (a) promote understanding of the importance of human rights,
 - (b) encourage good practice in relation to human rights,
 - (c) promote awareness, understanding and protection of human rights, and
 - (d) encourage public authorities to comply with section 6 of the Human Rights Act 1998 (c. 42) (compliance with Convention rights).

- (2) In this Part ‘human rights’ means—
 - (a) the Convention rights within the meaning given by section 1 of the Human Rights Act 1998, and
 - (b) other human rights.

- (3) In determining what action to take in pursuance of this section the Commission shall have particular regard to the importance of exercising the powers conferred by this Part in relation to the Convention rights.

- (4) In fulfilling a duty under section 8 the Commission shall take account of any relevant human rights.

- (5) A reference in this Part (including this section) to human rights does not exclude any matter by reason only of its being a matter to which section 8 relates.

Annex C – list of the Commission’s statutory powers

Equality Act 2006

Section 16 (inquiries)

Section 20 (investigations)

Section 21 (unlawful act)

Section 22 (action plan)

Section 23 (agreement)

Section 24 (injunction/interdict)

Section 28 (legal assistance)

Section 30 (institution of or intervention in proceedings)

Section 31 (PSED assessment)

Section 32 (PSED compliance notice)

Equality Act 2010

Section 60 (pre-employment health questionnaire)

Contacts

This publication and related equality and human rights resources are available from the Commission's website: **www.equalityhumanrights.com**

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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ISBN: 978-1-84206-603-4

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Published March 2015