The Equality and Human Rights Commission is the National Equality Body (NEB) for Scotland, England and Wales, and works to eliminate discrimination and promote equality across the nine protected grounds in the Equality Act 2010: age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. 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).

This submission supplements the SPiCE briefing provided to the Committee as background to the inquiry. The EHRC’s briefing focuses on disparities in employment by ethnic group, gender, occupation and geography. In common with the SPiCE briefing we have tended to rely on 2011 Census data as this provides the most detailed and comprehensive data on ethnic minority employment outcomes. Official data produced at UK level collapses ethnic groups into broader categories (for example “Asian” which can prevent the analysis of specific experiences of particular communities such as “Indians” as distinct from “Pakistanis”). This briefing also provides further information on Positive Action.

The EHRC would be happy to provide further evidence to the Committee either in writing or as oral evidence as the Committee wishes.

**The Equality Act 2010**

Discrimination on the grounds of race in employment is unlawful.

Further information about the types of discrimination that are unlawful is set out on the EHRC’s [website](#).

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 gives further shape to the General Duty of the Equality Act (to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.) which is relevant to listed public bodies’ role as employers. These public bodies are required to produce information about the proportion of their workforce by ethnic group as well as to report on issues of recruitment, development and retention. Public bodies are also required to report on how they have used this data to better perform the General Equality Duty. The most recent data was required to be published by the 30th April 2015 and the EHRC is currently assessing and analysing this data with a view to publishing the results in August 2015.
Positive Action

Equality law allows an employer to treat a disabled person better – or more favourably – than a non-disabled person. This recognises that disabled people in general face a lot of barriers to participating in work and other activities. You can choose to treat a disabled job applicant more favourably even if they are not at a disadvantage due to their disability in the particular situation. However for other people with protected characteristics positive discrimination in recruitment and promotion is unlawful.

In relation to the other protected characteristics such as race, where certain criteria are met, the Act allows for positive action which may include more favourable treatment because of a protected characteristic.

Positive action is voluntary. A body is not required to take positive action even where it identifies some disadvantage experienced by a protected group or low participation rates. However, as a matter of good practice, organisations may wish to take positive action measures to help alleviate disadvantage experienced by groups sharing a protected characteristic or to take action directed at increasing the participation of underrepresented groups in particular roles or sectors.

Where certain conditions are met it will not be unlawful to take special measures aimed at alleviating disadvantage or under-representation experienced by those with protected characteristics.

Where a body reasonably thinks that persons who share a protected characteristic suffer a disadvantage connected to that protected characteristic, have needs that are different from the needs of persons who do not share it, or where participation in an activity by persons who share a protected characteristic is disproportionately low positive action measures are permissible.

The Act does not prohibit that body from taking action which is a proportionate means of achieving any of the following specific aims:

• enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage
• meeting those needs, or
• enabling or encouraging persons who share the protected characteristic to participate in that activity.

Some information or evidence will be required to indicate that there is an existing disadvantage, disproportionately low involvement or different needs – but it does not need to be sophisticated statistical data or research. It may simply involve looking at the profiles of their client base or contractors and/or making enquiries of others in the area or sector as a whole.

So, for example Positive Action Training Housing (PATH) is a Glasgow based voluntary organisation which arranges positive action placements for ethnic minority
candidates who are interested in developing a career in housing. Data from the sector has shown persistently that ethnic minorities are underrepresented at all levels and in all professions associated with housing. The positive action PATH provides includes access to professional study as well as a series of placements with housing agencies where the participants can gain experience of work in a housing setting. This enables participants to compete more actively at interviews. Positive action would not however permit quotas of employees or interviewees or the reservation of jobs for particular groups as a means of addressing previous inequalities.

A similar scheme is also currently being operated by NHS Lothian which aims to boost the number of ethnic minority senior nurses by offering training, work shadowing and placements.

Access to Justice

The introduction in fees for Employment Tribunal claims has clearly had a significant impact on the number of claims being pursued both in Scotland and across GB. The most significant areas of impact are on sex discrimination and equal pay claims but race discrimination claims have also dropped from 157 in 2012-13 to 90 in 2013-14.


In addition to the points made in the SPiCE submission the EHRC would like to draw the following points to the Committees attention.

It is difficult to describe an “ethnic minority experience” of employment except in very general terms. The Census and other data strongly suggests that the experience of employment is unique to each ethnic group and influenced strongly by factors of age and gender (little or no data is available about the experience of ethnic minority disabled people in employment). There are also very noticeable trends about occupation which vary significantly by ethnic group.

Age & Industry - Indian and Chinese communities are often cited as having the most positive educational outcomes and positive destinations when leaving school and data is presented in the SPiCE briefing to support this. However, this is a relatively recent development and when looking more closely at the data we see that significant sections of the community are disproportionately concentrated as employees in service industries – 38% of Indians are employment in Wholesale / Retail industries (against a 15% national figure) and 32% of Chinese people are employed in the Accommodation and Food industries (6%).

Whilst we do see other examples of “ethnic concentrations” in industries they are not as pronounced as the examples above – around 20% of Polish people are concentrated in both construction and accommodation respectively, African and Pakistani people are particularly concentrated in health and social care (28% and 24% respectively against a national average of 8%).
Gender - In terms of gender the Census reports significantly different outcomes for men and women most notably in the Pakistani community. Whilst male Pakistanis are as likely to be employed as the total male population, Pakistani women are only half as likely to be employed and twice as likely to be economically inactive as the general population. Pakistani women’s economic inactivity also rises with age.

Geography – The EHRC has separated out Census data on ethnicity between Edinburgh and Glasgow to see if geography has any influence on employability. In Edinburgh both Asian and African communities are more likely to be in employment than in Glasgow (by 10% in relation to Africans). Unemployment rates are correspondingly unequal with Africans in particular being twice as likely to be unemployed in Glasgow than in Edinburgh.

The data demonstrates that there are significant differences between and within ethnic minority communities in terms of employment outcomes which make a group analysis of ethnicity and employment problematic. The relative success of younger Indian and Chinese people for example needs to be balanced by the strong reliance of others in the community on service industries.

Access to Modern Apprenticeships.

The EHRC published research into access to Modern Apprenticeships (MAs) in Scotland in 2013. At that time less than 1% of the total number of MAs in Scotland came from ethnic minorities. The latest data published in June 2015 suggests that this has increased marginally to 1.4% for MAs and 2% for the Employability Fund. The EHRC has set out a number of recommendations for Skills Development Scotland around: monitoring applicants for the schemes (currently there is no data on how many people from any group apply for an apprenticeship compared to how many achieve an apprenticeship); introducing targets for attainment year on year, and; making such targets contractual conditions for the funding of suppliers of MA programmes.

EHRC activity on race and employment issues.

The EHRC has a number of programmes in place currently which are looking at issues of ethnic minority employment either specifically or as part of a larger project. Examples of these include

- Public Sector Duty Monitoring of employment outcomes in public bodies (publication due in August 2015)
- Fish & Food Processing – experience of migrant labour in NE and Central Scotland (November 2015)
- Discriminatory conduct by recruitment agencies – guidance due Summer 2015
- Pay Gaps – an examination of the extent and causes of pay gaps for ethnic minority and disabled people (2016)
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