About the Equality and Human Rights Commission

Who we are

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 characteristics set out in the Equality Act (EA) 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).

How we have approached our response

The Commission welcomes the opportunity to respond to the Equalities and Human Right’s Committee’s inquiry into race equality, employment and skills. Our submission to this inquiry is informed directly by our work to ensure that people’s life chances aren’t held back by barriers in their way. We have taken questions three and four together in our response below.

Our response

Our strategic plan

Our Strategic Plan, adopted last year, includes six priority aims. One of these is that: People in Britain have equal access to the labour market and are treated fairly at work. This aim is based on evidence that disabled people and women are more likely to be in low-pay jobs, people from ethnic minorities and older people find it harder to access work, and that sexual harassment and bullying at work is a big problem.

In 2017, we introduced Fair opportunities for all: A strategy to reduce pay gaps in Britain which focuses on ethnicity, disability and gender and calls for the Scottish, UK and Welsh governments and employers to address pay gaps in a comprehensive and coordinated way.

The evidence base

The Commission publishes Is Scotland Fairer? (ISF) every three years. This is the most comprehensive review of how Scotland is performing on equality and human rights and the last version was issued in 2018.
ISF identified disparities in employment status between ethnic groups. The ‘Other White’ group was significantly more likely to be in employment than ‘White British’, and the ‘Mixed/Multiple’ group had a particularly low employment rate. Some positive trends were identified, including a significant increase in the employment rate of Pakistani people. This shows the importance of disaggregating data as far as possible, going beyond broad White and Non-White categories.

The Scottish Government’s Equality Evidence Finder states that in 2018:

- The employment rate for the minority ethnic population aged 16-64 was 55.4 per cent which is lower than the White population with an employment rate of 75.1 per cent.
- The minority ethnic employment gap (difference between the employment rates for white and minority ethnic people) was 19.7 percentage points, higher than the gap in 2017 (14.5 percentage points).
- The minority ethnic employment gap was much higher for women than men; for women the minority ethnic employment gap was 26.8 percentage points and for men was 11.2 percentage points.
- The minority ethnic employment gap was largest for those aged 25-34 (40.9 percentage points), followed by 16-24 year olds (28.2 percentage points), 35-49 year olds (11.8 percentage points) and 50-64 year olds (2.9 percentage points).
- The self-employment rate for minority ethnic adults (17.4%) was higher than for the ‘White’ ethnic group (12.0%).
- 95.1% of young people (aged 16-19) from minority ethnic groups were participating in education, employment or training, compared to 91.4% of those from non-minority (White) ethnic groups.

However, it is important to understand that differences in employment and educational patterns exist both between and within ethnic minority groups. The Commission continues to call for the collection of more detailed data on ethnic minority employment and educational status, while acknowledging that often small sample sizes present methodological problems.

For example, Commission work on pay gaps in 2018 found that the ethnicity pay gap for men in particular is large. White British, Indian, Chinese and British-born Black African men earn similar amounts, but men from other ethnic groups experience clear pay gaps. The ethnicity pay gap for men has not narrowed over recent decades, and it has increased for some groups. For women, the ethnicity pay gap has remained relatively stable over time, and it is smaller in absolute terms than for men. The Commission has called for employers to publish data on ethnicity and disability pay gaps, as is currently the case for gender.

It is also important to acknowledge intersectional issues: that is, where the impact of holding a given protected characteristic is compounded by holding a second, eg. the lower employment rate of women from some ethnic minority backgrounds.

The Scottish Government’s Race Equality Framework acknowledges the need for improved collection and use of robust data on ethnicity to inform policy. The Scottish
Government must continue to pursue this objective through its current Race Equality Action Plan and in the development of the next one.

**Precarious work and the gig economy**

TUC analysis in 2019 found that people from ethnic minority groups in the UK are more likely to be in temporary or insecure work – such as agency, temporary, or zero-hour contracts – and to be under-employed.

**Covid-19**

Covid-19 and responses to the pandemic will also shape our economic and employment context for some time to come. The Scottish Government’s early analysis anticipates a fall of one-third in Scottish GDP. It is essential that the impact of this on those sharing protected characteristics, including race, is understood in order to design equitable policy interventions and mitigate this impact.

**Brexit**

A report for the Scottish Government indicates that the UK’s exit from the European Union could also have a negative impact on the economic and employment prospects of people from ethnic minority groups in Scotland.

**The legal and policy context**

Employment, company and equality law are all generally reserved to the UK Parliament. Therefore, the Scottish Government’s work in this area has been largely based on policy change. Relevant policy interventions include the Scottish Government’s:

- Economic Strategy
- Labour Market Strategy
- Race Equality Framework
- Race Equality Action Plan
- Scottish Business Pledge.

**City Deals**

City Deals represent an opportunity to advance equality of opportunity through employment and inclusive growth. The Commission has been engaging with the Scottish Government and local authorities for several years and a Commission member of staff is seconded to the Scottish Government to work on the City Deals programme.

**Equality Act 2010 – the Public Sector Equality Duty**

The purpose of the public sector equality duty (PSED) is to ensure that public authorities consider how they can positively contribute to a more equal society. The
The public sector equality duty consists of a general equality duty and specific equality duties.

The general quality duty is a duty to have due regard to the need to:

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

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 places additional obligations on listed public authorities to support their compliance with the general duty. Based on previous work by the Commission, the Scottish Government’s Race Equality Framework identified the need for more effective practice linked to the Scottish Specific Public Sector Equality Duties. Public authorities have a duty to advance equality of opportunity and employment is a crucial element of this. Our 2018 report, Effectiveness of the PSED Specific Duties in Scotland, found little evidence of progress to date.

Inquiry questions

1. How should employers, schools, colleges and universities work together to help people from minority ethnic communities move into work?

Colleges and universities

In 2019, the Commission published Tackling Racial Harassment: Universities Challenged, which presented the findings of our inquiry into racial harassment in publicly funded universities in Scotland, England and Wales. These findings showed:

- the profound negative effects of racial harassment on individuals’ wellbeing, educational outcomes, and careers
- that staff and students are not adequately protected by law
- that the higher education sector does not fully understand racial harassment and that staff lack confidence in dealing with race issues
- issues around non-reporting, under-reporting, and over-confidence in and mixed use of complaint-handling processes
- some institutions are taking positive steps to address issues relating to reporting of racial harassment.

Since the publication of the report, the Commission has engaged with the Scottish Government (including Richard Lochhead, Minister for FE, HE and Science), the
Scottish Funding Council (SFC), and the sector to consider next steps. In March, we announced that we had signed a Memorandum of Understanding with the SFC to work together to support Scotland’s colleges and universities to meet the requirements and achieve the aspirations of the PSED and take action to tackle the most persistent inequalities in our society. The MoU is supported by a Joint Action Plan that sets out activities to tackle the most pressing inequalities and guidance on how to support the sector in tracking the effectiveness and impact of these efforts.

Despite the issues identified in our inquiry, evidence from Skills Development Scotland shows that:

“Ethnic minority groups perform well in the education system but their labour market outcomes are far poorer in comparison to the wider population. Significant variations exist across and within ethnic groups.”

It goes on to add:

“Although large proportions of ethnic minority people study STEM subjects they are less likely to have successful labour market outcomes in this area.” This apparent disconnect between educational outcomes and labour market outcomes raises questions about recruitment practices in Scotland. It suggests that the issue is not one of supply – ethnic minority groups in general are not less well-qualified than the wider population – but one of demand.

**Modern Apprenticeships**

The Commission has previously pointed to the disproportionately small numbers of people from ethnic minority groups participating in Modern Apprenticeships. The most recent data from SDS shows that in Q3 of 2019/20, 2.3% of new starts identified as being from an ethnic minority group. This is up slightly from 2.1% in the same quarter in 2018/19 and 2.0% in 2017/18.

Progress is slow. The Commission has previously highlighted that an equality impact assessment (EQIA) was not built into the design phase of Modern Apprenticeship policy and was only done after the fact. It is essential that EQIAs form part of the original development phase of public policies, in line with requirements under the Scottish Specific Duties.

The Commission, in partnership with the University of Chester and the Young Women’s Trust, published Exploring positive action as a tool to address under-representation in apprenticeships in 2019. This report found that “while there are a number of examples of positive action in relation to gender, there are far fewer in relation to race”. It recommends:
“Employers [should] monitor recruitment, retention and progression by ethnicity, disability and gender, and use positive action to address any disparities. Employers are often unaware of or lack understanding as to why positive action is necessary in the first place. Knowing more about their workforce will help employers understand where groups may be at a disadvantage or under-represented, and establish a strong evidence base for taking action.”

2. How should employers encourage more people from minority ethnic communities to apply to work with them?

The Commission has published extensive equality guidance for employers. This includes What equality law means for you as an employer: when you recruit someone to work for you. This guide includes information about different forms of discrimination, and provides employers with advice on how to avoid unlawful discrimination with regard to:

- Job adverts
- Application forms and CVs
- Shortlisting applicants to meet or interview
- Interviews, meetings and tests
- Recruiting women who are pregnant or on maternity leave
- Equality good practice
- Using positive action to recruit a wider range of people
- Using monitoring forms during recruitment.

The CBI has also published guidance for employers on closing the ethnicity pay gap.

The Scottish Government's 2019 employer perspectives survey found that: “Word of mouth or personal recommendation’ is the most commonly used recruitment approach by employers with a vacancy (78%), compared to 77% in 2016. Other internal resources such as their ‘own social media’ (56%) or ‘website’ (53%) are also commonly used, compared to 47% and 55% in 2016 respectively. 33% of employers who have experienced vacancies use only ‘internal resources’; an increase from 29% in 2016. 12% use only ‘word of mouth or personal recommendation’ to advertise vacancies; an increase from 10% in 2016.”

The survey also found that just over half (51%) of employers collected information to monitor the diversity of applicants to their vacancies.

Employers should follow existing guidance relating to equality and recruitment to develop a more structured and inclusive approach.
3. How do employers deal with racism and discrimination at work? For example, does everyone know their responsibilities?

Research published in 2019 by Edinburgh University found that:
“Discrimination at work could include unfair assumptions about an employee’s ability in relation to promotion, and employers not wanting a particular racial profile to become the public face of an organisation.

“Of those who had experienced discrimination, 25 per cent said it had happened when applying for a job, while 18 per cent said it had affected their promotion chances and another 18 per cent their attempts to seek equal pay.”

Earlier this year, the Commission published new technical guidance on harassment at work. The guidance is intended to help employers, workers and their representatives understand the extent and impact of harassment in the workplace, the law in this area and best practice for effective prevention and response.

Although the guidance highlights sexual harassment, it applies to all forms of harassment at work. Indeed, it cites a TUC report, Racism Ruins Lives, which was published in 2019 and which found that over 70 per cent of Asian and Black workers in the UK reported that they had experienced racial harassment at work in the last five years. More than 40 per cent of workers who reported a racist incident to their employer said that their complaint was either ignored or that they themselves had subsequently been identified as ‘troublemakers’.

This clearly demonstrates that there are issues with how employers deal with racism and discrimination at work, and reinforces the need for our technical guidance.

The guidance offers a legal explanation and practical examples of how to tackle and respond effectively to harassment, including:

- definition and examples of harassment and victimisation
- the effect of harassment in the workplace
- responsibilities as an employer
- how to prevent and respond to harassment.

Employers must also ensure that employees are aware of policies and processes relating to discrimination and harassment. A 2015 survey cited in the Runnymede Trust’s Scotland and Race Equality report found that 60% of people experiencing discrimination “did not report it to any kind of authority”.

What training and development opportunities should employers have to encourage a diverse workforce?
The Commission has published guidance on good equality practice in relation to equality policies, training and monitoring. This guidance explains that equality training should include:

- The law covering all the protected characteristics and what behaviour is and is not acceptable.
- The risk of ignoring or seeming to approve inappropriate behaviour and personal liability.
- How discrimination can affect the way an employer functions and the impact that generalisations, stereotypes, bias, inappropriate language in day-to-day operations can have on people’s chances of obtaining work, promotion, recognition and respect.
- Monitoring.
- The employer’s equality policy, if it has one, why it has been introduced and how it will be put into practice.

Commission research on the effectiveness of ‘unconscious bias’ training published in 2018 found a mixed picture. Although it can raise awareness of bias and even reduce implicit bias, it is unlikely to eliminate it and is not usually designed to deal with explicit bias. The evidence of behaviour change is limited, and there is a risk of a ‘back-firing’ effect.

In general, training should be participatory and empowering. Employees should leave with the competence and confidence to report discrimination and be able to enhance respect, diversity and inclusion within the organisation and in their own work.

Conclusion

Most employers recognise the value of diversity (77% report that it is a priority for them) and the impact an inclusive workforce can have on their business. However, progress is slow, despite the long-standing availability of significant resources and guidance to support employers. Commitment to race equality needs to be demonstrated through leadership, representation, participation and retention, and ultimately observed in more equal staff cohorts and inclusive workplace cultures.

Covid-19 represents a new and challenging economic – as well as public health – landscape and there is a risk that inequalities related to the virus exacerbate existing inequalities. Clear and demonstrable commitments to equality from the Scottish Government, public authorities and employers are more important now than ever – and the tools and guidance to support this are available.

Examples of good practice exist – and many are highlighted in our previous work – but there is a need to learn from the experience of mandatory gender pay gap reporting. We have previously published our recommendations for mandatory collection of data
and publication of action plans with respect to ethnicity pay gaps and we reiterate that call here.