



# HOUSES OF PARLIAMENT

## Joint Committee on Human Rights

Oral evidence: [Black people, racism and human rights](#), HC 559

Monday 20 July 2020

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Members present: Ms Harriet Harman (Chair); Ms Karen Buck; Joanna Cherry; Lord Dubs; Mrs Pauline Latham; Baroness Ludford; Baroness Massey of Darwen; Dean Russell; Lord Singh of Wimbledon; Lord Trimble.

Questions 22-28

Witnesses

**II: David Isaac**, Chair, Equality and Human Rights Commission;  
**Rebecca Hilsenrath**, CEO, Equality and Human Rights Commission.

## Examination of witnesses

David Isaac and Rebecca Hilsenrath.

**Chair:** I turn to our next panel who are giving evidence to us: the chairman of the Equality and Human Rights Commission, David Isaac, and its chief executive, Rebecca Hilsenrath.

Q22 **Ms Karen Buck:** As an introductory question, I want to ask you about your approach to this. Has the reaction to the killing of George Floyd in this country and the campaigning that has been unleashed around Black Lives Matter surprised you? If so, why and how?

**David Isaac:** Yes, surprised and disappointed. We at the commission and those who have been working on inequality issues over many decades know that Black Lives Matter has existed for some time, but George Floyd's death actually threw things into sharp focus, together with the discussion of the disparities that we have just been hearing about which the commission has long been identified. They have been particularly drawn into focus because of Covid-19.

For me, what has happened is that the conversation has been widened to not just those who are directly impacted and those who are allies but those out in the wider society who I think have realised now more than ever come up that we are all connected to each other. Covid and George Floyd's death have brought about a real opportunity to move the discussion forward, to talk about real actions, to secure the data, which Professor Dunkley-Bent talked about earlier, to secure action and to stop talking about it. I believe this is our moment.

**Ms Karen Buck:** It is, but I ask, because one of the things that people have got most distressed about is that there has been review after review after review. There has been the work that you have done in the past, the Lammy review and the inequalities report that Theresa May commissioned, none of which has been acted on. Given your central role in all this, does that not suggest that in some way your organisation has not been driving this forward as much as it should have been?

**David Isaac:** I do not agree that we as an organisation have not been doing what we are required by statute to do. I will hand over to Rebecca in a second, but I am on record as saying that it is very disappointing that the Government have not acted on the various recommendations that have been made. In 2017, we produced the most extensive review of the inequality of race outcomes, and

suggested to government that there should be a coherent race strategy. We are not in government; obviously we are an NHRI and an equality and human rights body.

**Ms Karen Buck:** I should make it clear that I am not blaming you for the substance of government, of course.

**David Isaac:** We work hard to lobby and influence government, to hold them to account and to use the powers. I would quite like to talk about the various things that we have been able to do in this space. We, like others, are anxious to make sure that we make progress and stop talking about the issues, because now, as I said earlier, is the time to move the dial. Rebecca, could I hand over to you?

**Ms Karen Buck:** Before you hand over to Rebecca, could you talk us through the specific actions that you have taken or flagged with government, particularly since your 2017 report?

**David Isaac:** Rebecca, shall I hand over to you?

**Rebecca Hilsenrath:** Very happily. Thank you for inviting me today. On the issue, which we entirely agree with and endorse—that there have been a large number of reviews and recommendations that have sadly not seen action—David and I will reply separately on other things that the commission has done over those years, but, as you say, there have been a number of reviews: Lammy on criminal justice, Angiolini on deaths in custody, McGregor-Smith on race in the workplace, and Williams on Windrush.

As David said, we produced a road map to race equality four years ago that was very clear about the need for a joined-up strategy across government across the areas of health, housing, employment, education and criminal justice. We have repeatedly, at every opportunity, called for that road map to be implemented and acted on, because we believe that there is a need for a long-term co-ordinated strategy in order for a difference to be made.

The race disparity audit that was set up as a result of that road map has adapted. Our measurement framework has worked closely with us and we think it has done a very good job on data gathering. Again, though, we have asked for action. We have played quite a vital role in scrutinising the Government's implementation of those reviews. While it has not led to action, we were part of the HMPPS expert panel on challenging progress against the Lammy recommendations. We worked with the Government to work with the Williams review on Windrush, and we

are now undertaking our own Section 31 assessment in relation to that. We advised Parliament throughout.

We gave evidence to the Home Affairs Select Committee on Angiolini. We have repeatedly called for the implementation of McGregor-Smith on work, because work is a big focus for us. The truth of the matter is that we think that we often have a good dialogue with the Government. An example is PAVA spray, where we have achieved really good conversation with the MoJ and set out our concerns. We believe that they understand our worries about rolling it out without proper safeguards. Nevertheless, these things have gone forward. Ultimately, as you kindly said, we are not the Government, and we have done our absolute best to get it to that stage.

It is also important to say that one of our roles as an NHRI is to produce shadow reports on the Government's performance against CERD. That has been delayed this year because of Covid. We have been pushing the Government to set a date for their report so that we can follow it up with a shadow report, and we have been pushing them to resource it properly and engage with civil society. We can do all that up to the brink of the Government actually implementing the recommendations, but that is where our powers stop.

**Ms Karen Buck:** I do not know whether this question is best answered by you or by David, but what is your analysis of why there has not only been so little progress in these last few years—let us say, since the road map—but in some important areas, highlighted by Windrush on the one hand and by a widening of disparities in the criminal justice on the other, we have actually gone backwards?

**Rebecca Hilsenrath:** The immediate and obvious answer, without wanting to sound too self-reflective, is the point I have just made: that the issues that lie at the heart of racial disparities in this country are very interconnected. That is why our road map draws across those five key areas of health, housing, employment, education and criminal justice. We think that until we see a joined-up approach across government we will not see much significant progress, because picking them off singly will be of limited help. We need to see a single department with leadership, accountability and responsibility for driving change across all those five areas.

**Ms Karen Buck:** That is a fair answer, but it strikes me as being more germane to the equalities agenda than to the human rights dimension. Can the progress on tackling some human rights elements, such as those that were highlighted by Windrush, be

continued in a way in which it has not yet been and in a way in which a wide and interconnected equalities agenda possibly cannot be?

**David Isaac:** I would say that this is a leadership issue, because all the points that you have raised, whether in relation to international treaty monitoring or acting on recommendations, sit with the Government. We can do our best to hold them to account, which brings me back to the work that we can do using our legal powers.

We can threaten judicial review proceedings, and we have made a number of important steps forward with the DWP and the MoJ. We can use the stick and the carrot, and we are currently doing both. In answer to your question about human rights, our powers to enforce human rights are much more limited under the Equality Act. One of the things that we would really like to do if there were an opportunity to increase our powers is to have powers to take action and take direct steps in relation to human rights issues in the UK.

**Chair:** You mentioned a number of reviews that have pointed to racial disparity and that need public policy to address them: the Lammy review, the Angiolini review and Wendy Williams review. Do you think there is anything to the view that when a row brews up, the Government are called to take action, they set up an inquiry or a review fronted by someone with great credibility and commanding great respect, and then, when the report comes out some time after the row has subsided, it just gets swept under the carpet, and there is a rather nasty sense that these reviews, which are undertaken by excellent people in good faith, are used by the Government as a way of avoiding taking action to redress legitimate grievances?

**David Isaac:** Perhaps I may respond in the first instance. Sadly, I think that is the case. That is why I made the point about this being a leadership issue. Many of these reviews are undertaken in good faith, and many of the recommendations are very sound and not very problematic. This is not a comment just about this Government; sadly, many other Governments whom the EHRC has dealt with have adopted a very similar approach. We know that sometimes very short-term thinking prevails. Interestingly, we have seen a greater appreciation of long-term issues in the smaller nations, such as Scotland and Wales. If some of those approaches were applied to Westminster, dare I say it, some of those recommendations might well have been actioned.

Q23 **Baroness Ludford:** I will come back to powers in my second

question. First, I would like to ask about the commission's breadth of responsibilities. Since you were merged, you have had responsibility for eliminating prejudice against all groups with protected characteristics. You replaced three commissions, each of which had a separate focus on a protected characteristic, including racial equality, which is relevant to our inquiry. Do you think that each strand, each of which perhaps has different problems, gets enough visibility, and indeed action, now that you have that across-the-board focus?

**David Isaac:** Rebecca, I shall lead on that as we discussed earlier. The answer to that is yes, but I am keen to take a step back, because the situation that exists now, compared to what existed when the legacy commissions were set up in the 1970s, is quite different. By that, I mean that there has been progress but clearly not enough, which is why we are having today's discussion.

When the EHRC was set up, it was acknowledged that progress had been made but that it was set up to be a strategic organisation, to take a strategic view across all the protected characteristics and to address human rights. That has resulted in us being enormously broad and having to take important strategic decisions about what to enforce. Sadly, our funding, which you might come back to later, has been significantly cut, and our powers and the scope of our activities have been reduced. Over the weekend I read the 2006 annual report by the Commission for Racial Equality. It had a budget of £90 million just for race issues; we have a budget of £17.1 million for all the work that we are required to do. So by dint of our funding and the reduction in our scope we have to be much more strategic.

However, I believe that by taking an approach that looks at workplaces, education, health and other areas—an intersectional approach—we are driving change. When I read the report from the CRE, I felt pleased that we were both carrying on its good work and making good progress, albeit with limited resources and a strategic approach. Clearly, if we had more money we would do a lot more, but we are limited. However, I believe that we are impactful.

**Rebecca Hilsenrath:** Obviously I agree with what David has said. It is perhaps important to emphasise that in the work that we do we look across the protected characteristics. They are very much embedded in what we do, so we have expert protected characteristic leads and expert protected characteristic networks that we work with. To add to David's previous comment about the Government's approach, it is very much about encouraging the Government to work with race stakeholders and to listen.

To add to David's answer about how we work across all the protected characteristics and with the human rights remit, it might be helpful to give a couple of examples. The Domestic Abuse Bill, which I know that you, Chair, have been involved with, is an example of intersectional work. Obviously we were coming to it from the gender place but very much looking at how that impacted on disabled women and on ethnic minority women, who are a particular target for domestic abuse.

In doing so, we worked very hard on our stakeholder relationships across specific NGO groups and specialist stakeholders and sectors. We identified specific and overlapping needs, and we were really successful in improving core protection for survivors. We go on to the Lords stage with a consensus on the Government taking consultation with the Domestic Abuse Commissioner but also on the need for better protection for migrants, which has been a key part of our work on the Bill and speaks to that intersectionality, which helps in the race space.

One other example is our work on pay gaps. For the last couple of years we have been enforcing the gender pay gap regulations, but we have built on that to call for mandatory pay gap reporting on both disability and ethnicity. We draw on our expertise in the gender space to look at the ethnicity issue, and in that space we have nuanced our work to say that it is not just about pay in that space; we are very keen that whatever is done in the ethnicity pay gap space also looks at recruitment, retention and progression. We are able to offer that sort of cross-protected-characteristic expertise, challenge and scrutiny.

**Q24** **Baroness Ludford:** Do you think you have the necessary duties, powers and structures to be able to act as an effective enforcer for black people's human rights? David said not only that he wants more powers but that some have been cut. Could you elucidate on what has been cut and where you would want it to be not only restored but enlarged—as well as your budget, obviously?

**David Isaac:** On additional powers, we heard from the earlier witness about the public sector equality duty in answer to one of your colleagues' questions. We think it is an important power, but we would like it to be more effective so that targets could be set, consistent with the line of questioning early on.

One reason why we are bringing our Section 31 investigation against the Home Office for the hostile environment, as Rebecca mentioned, is to determine how we can make the public sector equality duty more effective. We would like the power to fine in relation to gender pay gap reporting, for example. We believe that

there are a number of easy quick wins that would allow us to be much more effective.

In relation to the things that have been cut that I referred to, the CRE had the ability to provide assistance to individuals who were keen to bring claims. That was taken out of scope and removed from us, and it is now run by the Government on an outsourced basis. It is one of a number of things that the CRE was able to do for people who were keen to seek redress that we can no longer do.

**Rebecca Hilsenrath:** David is absolutely right to identify the helpline as something that we no longer have a sufficiently close connection to to have an optimal position for identifying data for us to take litigation forward. However, we do a lot of strategic litigation specifically in relation to race work. In the last five years, almost one in five of the cases that we have taken either wholly or partly addressed issues of race.

I shall mention a few of them. A key case on adoption resulted in the Government writing to every director of children's services in the country referring to our case, which was called Manders, and advising people not to turn down anyone on the basis of race or, frankly, any other protected characteristic. I could also mention the recent right-to-rent case, the injunction that we won against the landlord Fergus Wilson, who was refusing to rent out properties to people from particular ethnic minorities. Then there were the two cases that we took on people's rights to wear their hair however they liked, both at work and in school.

We have also undertaken a lot of work outside the courts, such as our inquiry into racial harassment at universities, which received wide coverage last year and resulted in the Minister saying that he wanted to scrutinise the powers of the Office for Students in relation to that topic and writing to every university in the country, and our submissions on the Grenfell inquiry. I could keep going.

It is important to say that while we have lost powers and we would like them restored, and as David said there are other powers that would help us to work more effectively, we are quite proud of our record in this space.

Q25 **Lord Singh of Wimbledon:** I have just been learning to what extent your budget and your powers have been cut compared to the CRE. What difference could it make if those powers were restored to some extent? What are the things that you would do? At the moment, you say that you do not have the ability to advise people on human rights. Could you also tell me something about

the determinants of inequality that you would like to tackle?

**David Isaac:** In relation to an increase in budget, to give you a specific example we have launched our inquiry into race issues arising from Covid-19 and we will focus specifically on work. Had we more budget, we could look at more areas, the sort of things that have been identified as inequality of outcomes coming out of earlier questions, whether in relation to education or the health sector.

On human rights powers, we only have the power to litigate and intervene on the basis of equalities issues, although where the human rights aspects overlap we can refer to those issues. Let us take the example of care homes. Some of the major issues regarding the failure to use PPE relate the right to life, which the Chair referred to right at the top of the meeting, but that is something that we do not currently have the power to action. That is one of a number of areas where, had we wider powers, we would be able to make a much more significant impact. Rebecca, can I hand over to you for any other examples?

**Rebecca Hilsenrath:** Willingly. I very much endorse what David has just said. I would mention a couple of other things. We have obviously struggled recently with the difficulty accessing justice for individual complaints. We are a strategic regulator, so we only take on cases that are about clarifying the law and driving systematic change.

However, in an effort to drive regulated space to create more of a centre of gravity of cases in one particular area, we started to look at running legal support projects in very specific places to support priority objectives. Last year, for example, we ran one on transport, which enabled us to take first-instance cases, as you say to raise awareness among duty bearers that this was a regulated space. In this instance, that might help us to drive up more casework by working with race NGOs in the current climate. That is the kind of thing where our resources really limit what we are able to do.

I will mention one other area where we have started to be more active, which is looking at regional disparities across England, identifying the gaps that we all want to address in what is generally called the “building back” agenda or the “levelling up” agenda, where we are very keen to work with the PSED in particular and with other levers that are open to us to help local authorities and devolved Administrations to identify where measures can be taken to address some of those gaps, particularly in the protected characteristics—race, gender and disability in particular. How much

we can do in that space is limited by our resource, and the more we have, the more we can do.

Q26 **Dean Russell:** Just a quick question, and forgive me if I have got this wrong, but am I correct in thinking that none of the commissioners in the EHRC are from a black background or a black community?

**David Isaac:** Not from a black community background, but we had two BAME commissioners, one who resigned because of work commitments and one who continues in post.

**Dean Russell:** From what I have seen, the group as a whole is primarily white. Is that right?

**David Isaac:** At commissioner level we represent a wide range of protected characteristics. In terms of ethnicity, a number of us represent different ethnic backgrounds, but in terms of skin colour, yes, we are predominantly white. That is not necessarily the case for our workforce.

**Dean Russell:** No, I understand that. I assume that, especially in the light of the Black Lives Matter movement, you are looking at that to make sure that there is proper representation at the very top.

**David Isaac:** It is probably worth clarifying that if it were in our gift—this is certainly something that I as chair have made recommendations to the Secretary of State about—we are keen to have a more diverse group of commissioners. We are a strange creation as an arm’s-length body: we hold the Government to account and on one level we are independent, but we do not appoint our own commissioners or our chief executive.

The answer is that, to the extent that we can influence outcomes, we have submitted to the Secretary of State names of people who are more diverse. Currently that is not the case, but a recruitment process is ongoing. We would hope, and this is our request to the Secretary of State, to be more genuinely representative at commissioner level of the protected characteristics that we seek to advance.

**Chair:** Do I take that to mean that you think the Government should appoint a black commissioner to the Equality and Human Rights Commission because currently there is no black commissioner on the Equality and Human Rights Commission?

**David Isaac:** Yes. That would be a correct assumption.

**Dean Russell:** Especially in light of recent events generally, have you written explicitly to the Government to request that? Am I correct in assuming that from what you have just said?

**David Isaac:** As I mentioned, a procurement process is going on. We have expressed a desire for greater diversity among our commissioners. I am not involved in that process, but I believe that having black representation has been a particular request by the Government Equalities Office and by my colleagues.

Q27 **Chair:** Thank you. I have another question. This issue is not of your making, but I would like your views on it. You and Rebecca have both spoken about cross-departmental work and intersectional work, but there is also the issue of identity and singular focus. When people march in the streets, they do not actually march shouting for intersectionality; they call for black lives to matter or for women's rights to be respected.

As well as your lost resources, something else that was lost was a specific commission for racial equality that actually championed race issues and an Equal Opportunities Commission that specifically championed women's rights. I know that was not your decision, but do you not think that something has been lost by having one body that looks at everything, with the danger that nothing is visible? You justifiably take a great deal of pride in your work, but it is impossible for people to see that being championed on their own behalf.

**David Isaac:** I think you are right, Chair, that when people march in the streets they are usually not marching for intersectional issues, although one of my reflections as chair is that the underlying socioeconomic issues that impact on all projected characteristics are something that we must not lose sight of.

The point that I was not able to make earlier was about the implementation of Part 1 of the Equality Act, because I think that is incredibly important. Covid-19 shines a light on the socioeconomic issues of people with protected characteristics, whether they are old people, disabled people or black people.

I would be anxious not to unravel the good work that the EHRC has done in the last four years. There is a role for a strategic litigator and regulator. It would be better if we had more resources within the ambit of the EHRC to deal adequately with the kind of points that you are raising in relation to particular protected characteristics. My point is that it could be done under the current umbrella without dismantling the EHRC. Therefore it is about advocacy, with all sorts of commissioners representing all sorts of

characteristics and with proper budgets. Rebecca, I do not know if you would agree.

**Rebecca Hilsenrath:** I agree. David is rightly proud of the progress which the commission has made under his leadership. I do not think that either he or I would say that the commission achieved effectively and perfectly from day one, but over the last four years in particular we have gone through two major change programmes, both of which have been anchored to the idea of identifying impact and ensuring that we use our theory of change to have evaluated and measured impacts across what we do.

In that light, we have a very professional team. We have identified different functions across the organisation that have led to ensuring that compliance, enforcement or whatever has led to greatest effect, and that includes a professional comms team. So we are very well placed to do that advocacy.

How we engage with our stakeholders is very important, which is a point that I made earlier, and that goes to the point about branding. Again, I think that is a place where we can and will do better in working with race groups, both across the peace and in relation to particular projects.

In that light, there is real value in bringing people together. When we talk to our strategic reference group across all protected characteristics, and in relation to very specific work that we do with our convening-role hat on, it is about encouraging people to see where their common challenges lie. While I think you are right to identify that need for people to think, "Somebody is standing up for me", it is also important that we bring people together and that we do not become a more polarised and segregated society.

Q28 **Lord Dubs:** We have talked a lot about how the powers of the commission could be improved, how you could be given more resources and so on. That is fine, but what do you think needs to be done to ensure that the protection of black people's human rights is given greater priority by the Government?

**David Isaac:** We need parliamentarians to continue to hold the Government to account. We at the commission and other NHRIs must play our role. For example, we had a meeting this morning with the NHRIs from Northern Ireland and Scotland. We need to appeal to everyone who has been shocked by what has happened during Covid and the inequality of outcomes that it has revealed. That means that individuals need to hold MPs to account and raise that as an issue. This may sound naive, but only when this becomes a ballot box issue will we really make the Government

take it seriously.

**Rebecca Hilsenrath:** I agree. It would be interesting to see what Covid looks like when looking back in 50 years' time. I think lots of human rights textbooks will be written about what has happened this year in this country and across the world.

One of the things that we have seen happen is our mandate being writ large in newspaper headlines every day. We have also seen a real underlining of the human rights principles, often, sadly, because they have not been followed.

All these things done properly—the idea that interference with rights should be proportionate and measured, rooted in science and in law; the idea that we should not have blanket applications of rules but that people should look at things on a case-by-case basis; that we should not fast-track new innovation but instead look at evaluation and collection of data—protect black lives and other lives, but in many cases we have not seen that happen.

I hope that we as a society can learn the lessons of that, and that what has happened in the last few months—and, sadly, probably in the months to come—will provide a different narrative for human rights and how much they matter to communities across the country. We hope that that will lead to good.

There is an opportunity here for people to understand better how they can help. We have made a number of recommendations to different Select Committee inquiries, obviously including this one, across a whole range of issues that have come up in this particular space. I will not bore you by going through all of them, but they range from releasing people from immigration detention, where there was real fear of them becoming infected by Covid, through to the issue of people with no recourse to public funds, which prohibited data sharing for migrants. All these things have come up through the pandemic and through this crisis, and my hope is that that will draw attention to the issues and help people to come together to look at them differently.

**Chair:** Thank you very much to our two witnesses. That concludes our public evidence session in the context of this Black Lives Matter inquiry. Thank you.