

Women and Equalities Committee

Oral evidence: [Enforcing the Equalities Act: the law and the role of the Equality and Human Rights, HC 1470](#)

Wednesday 5 June 2019

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Members present: Mrs Maria Miller (Chair); Tonia Antoniazzi; Angela Crawley; Philip Davies; Stephanie Peacock; Jess Phillips.

Questions 572–653

Witnesses

[I](#): David Isaac, Chair, Equality and Human Rights Commission, Rebecca Hilsenrath, Chief Executive, Equality and Human Rights Commission, and Clare Collier, Legal Director, Equality and Human Rights Commission.

[II](#): Baroness Williams of Trafford, Minister of State for Equalities, and Charles Ramsden, Deputy Director, Government Equalities Office.

Written evidence from witnesses:

- [Equality and Human Rights Commission](#)
- [Government Equalities Office](#)

Examination of witnesses

Witnesses: David Isaac, Rebecca Hilsenrath and Clare Collier.

Q572 Chair: Good morning. Thank you for joining us. Apologies for starting a little late. This is our inquiry into the Equality Act 2010: the law and the role of the EHRC. We have been taking evidence on this inquiry since July 2018 and have received evidence from a wide range of individuals and organisations.

Today we want to talk to you as representatives of the Equality and Human Rights Commission. With the second panel, we will seek evidence from the Government about how they are meeting their responsibilities to address the problems with enforcement that this and other inquiries have identified. Before we go on to questions from colleagues, I will ask you to say your name and role in the organisation.

Clare Collier: Hello, I am Clare Collier, the director of legal.

David Isaac: I am David Isaac, the chair of the Equality and Human Rights Commission.

Rebecca Hilsenrath: I am Rebecca Hilsenrath, the chief executive.

Q573 Tonia Antoniazzi: How do you respond to the accusations that you have not made sufficient use of your unique enforcement powers?

David Isaac: I would say that we have increasingly made use of our legal enforcement powers. In the past three years we have doubled the way in which we have used our formal legal powers. We have done that against a backdrop of cuts, because we have had a reduction in our budget. Perhaps we will come on to discuss it this morning. We believe that where we have used our powers we have been much more impactful. We have listened to some of the comments you have made previously, Chair. We have also been following with great interest the statements from other witnesses.

The development and finalisation of our new strategic plan has given us the opportunity to make enforcement centre stage in relation to what we are now doing under that new strategic plan. We are about to have that laid before Parliament by the Minister for Women and Equalities.

That does a number of things. It makes enforcement of our powers our core aim. That means that we will be using our legal powers more. That is something that I personally and all of us are very keen that we should do.

We have a new legal enforcement policy. We also have a new team that is focused on legal enforcement, with dedicated resources. I would say that we have made huge progress in using our legal powers, but we will actually be using them even more. I think you will see even more change and impact.



Rebecca Hilsenrath: I obviously endorse what David said but I would follow up in terms of the impact that we see we are having. I think you can measure impact in lots of different ways: 83% of our strategic cases are successful. An example of that is the Pimlico Plumbers case, which had an impact across the gig economy and particularly for Gary Smith who was the person at the centre of that who needed protection as a disabled person.

We are also looking at the quantity of work that we are doing. We are starting to roll out legal support projects, which are a way of helping a critical mass of individuals against any one of our particular priority aims. The work we have done in this place in the past, particularly in disability and education, has seen 100% of people who we have helped being happy with the help they have received, and two thirds of them not being able to fund it elsewhere.

We obviously have impact in terms of the gender pay gap, where last year we had 100% compliance. We are also looking at broader societal impact. For example, with our Working Forward campaign, which has nearly 500 employer members and nearly 2 million employees, 40% of them have changed their flexible working practices as a result of working with us. We have a high media profile and we are confident that we are having an impact across the piece.

Q574 **Tonia Antoniazzi:** Specifically, since 2010 you have undertaken one assessment of compliance with the public sector equality duty, one formal investigation into suspected discrimination against staff or service users, and issued no compliance notices. Why are the numbers so low?

Rebecca Hilsenrath: There are a couple of ways of looking at that. First of all, in terms of a stat, while we completely acknowledge that we haven't been as effective in the past as we are now—in fact, we used to look at doing either an inquiry or an investigation at any one time, and they are normally around for two or three years—at the moment we have two concurrent investigations and three inquiries, nearly all of which are supposed to be published by the end of this year. That is an increase of 500% or maybe 1500%, in terms of the use of those formal powers.

David Isaac: Perhaps Clare would like to talk about some of the detail, but may I also add that we do a lot of what we call pre-enforcement, in relation to work that we do before we use our statutory powers—so, pre-statutory enforcement powers—where we write letters and threaten to take action? That is something historically that the commission hasn't really talked about, but we are doing a lot more of that. Sometimes that means that organisations or individuals put their hands up straight away, and sometimes we enter into formal agreement. We don't necessarily need to use the full range of our legal powers to drive change and to get compliance. Clare, you work on the frontline.

Clare Collier: On the numbers, in the region of 350 people came to us last year with an issue that they wanted us to look into and we did so. Most of those cases will have had some kind of contact with the—



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Obviously, in some cases there is nothing wrong; not every complaint we receive is substantiated. Where we think there is an issue, we would write to the organisation and perhaps enter into a to-and-fro correspondence or sometimes just send a single letter, to which we get a response that can be either, "I didn't know that we weren't supposed to do that. I didn't understand the law. Thank you for putting me straight; we won't do that again," or, "Oh yeah. Sorry. I didn't realise", which is less genuine but nevertheless they are holding their hands up and saying, "Yeah, we won't do it."

In most cases we reach agreement very quickly and easily, so there is no need to start an investigation, which would take up a lot more resource. That is something that we do a lot. The difference that David and Rebecca have hinted at is that what we are more often trying to do differently with those kinds of cases is to publicise them. In the past, there has been a tendency for that to happen behind closed doors and for us not to talk about it, and to reach an agreement with somebody that they won't do again whatever it was that they did or were alleged to have done. It was between us and them, a little bit. Now we are saying that we would like to talk about it so that other employers or service providers are aware that that is something that has happened and that we are drawing it to everyone's attention. The current approach is definitely making more of each individual case.

Q575 Tonia Antoniazzi: In contrast to the use of your unique enforcement powers, you have intervened in existing discrimination cases over 100 times. Given the burden of starting those cases on the individuals who do so, do you think that is the correct balance in the use of your enforcement powers?

David Isaac: May I respond in relation to one of the other things we have heard come up a number of times in this Committee, which is how it is important to shift the burden away from the individual? We are increasingly doing that, for example with the work we have done in relation to the workplace and sexual harassment, and the work that has led to us calling for a protocol in relation to workplace practice. Those things, plus the changes that we are calling for in relation to the public sector equality duty, will remove the burden that currently sits with the individual, which makes it quite difficult for them to bring individual cases. We will obviously continue to help where we can in relation to individuals, but before answering a detailed question we need to be much more nuanced about how we pull the various levers to get the changes in law, to get the attention that Clare is talking about, and to drive the practice. Our view, and this is perhaps a new view for the commission, is that that should not rest solely with the individual.

Clare Collier: I completely agree with your point, but we must not forget that sometimes individuals need redress for themselves as well. They want a remedy in their own case, so sometimes it will be appropriate to fund a case, or to intervene in a different way in an individual's case, so that that individual can obtain redress as well. It is about achieving a balance—not saying, "We only do this," or, "We only do that," but doing the right



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combination of both approaches so that we choose the right lever in the right case.

Rebecca Hilsenrath: I think it is helpful to add that we have been exploring a vast range of different ways of reaching greater numbers of people. I talked earlier about our legal support projects, which are really about driving compliance by creating more awareness that our priority aim areas under our strategic plan are regulated spaces.

Also, we are looking at establishing advice clinics where we are able to help the advice sector in the area of equality and human rights. We are running advice lines for people in that space as well. The combination of all that work is going to enable us to interact much more with individual casework and get far more referrals to us where we can have a strategic impact.

Q576 **Tonia Antoniazzi:** You have stated in the past that a significant number of your enforcement actions result in agreements with organisations. Roughly what proportion of those formal agreements have the potential for compliance notices if they are not implemented? Does that make sense?

Clare Collier: Do you mean what are the numbers, or how many of them comply?

Tonia Antoniazzi: Yes, both.

Clare Collier: In the last year, we entered nine formal statutory agreements, and in all cases the organisations that we entered agreements with complied with the terms of the agreement.

Rebecca Hilsenrath: We have never had a statutory agreement where there has not been agreement with the terms. In fact, only last month we had a meeting with the Metropolitan Police Service, with which we entered a formal agreement I think two years ago. We are still following up and making sure that the action plan is being complied with, and we are having that impact.

Q577 **Tonia Antoniazzi:** How do you know that they are all being complied with?

Clare Collier: We monitor what they are doing. We meet with them. We correspond with them. It depends, obviously, on the terms of the particular action plan and the particular agreement. Each action plan will have a timeframe attached to it, and during that timeframe we will monitor. Then we will keep an eye even beyond the end of the statutory period. As Rebecca said, it might be through having meetings, talking to senior staff or checking out what is happening on the ground, depending on what the terms of the agreement are.

David Isaac: To be absolutely clear, if there were a default we would not be cautious in pursuing the appropriate action to enforce that. Sometimes that means going to court.



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Q578 Angela Crawley: I want to come back to the point that you made earlier about measuring impact. You said that 83% of your cases were successful, which implies that 17% are not. Is there a preference for only taking cases that are successful? Obviously, from a legal perspective you want to win cases, but is there not an argument for having more test cases that may not be successful in the first instance but might start to bring about the societal change that you are trying to get at?

Rebecca Hilsenrath: Those strategic cases are cases that go to Court of Appeal and the Supreme Court. They are absolutely about deciding a point of law and clarifying a point of law. We count success in those cases where we are able to clarify the law, where a discriminatory policy is discontinued, or where we are able to produce public benefit by raising awareness generally.

There are lots of different ways of measuring impact, as I said earlier. Perhaps one that we should not forget is the fact that we are now seeing issues of really high national importance being brought to the commission to deal with. We have been asked to deal with an investigation into the Labour party. We have been asked to deal with an investigation into the BBC.

When we bring enforcement work—another example is the Premier League, and another is the gender pay gap enforcement—we see organisations doing all that they can to get away from the use of our enforcement powers. These are national organisations that have a big. Also, at an individual level, there is Jeremy Harris, whose daughter Bethany Harris has been isolated in an assessment treatment unit for two years. We have been able to reach out, help him, help his family, and do that through the use of our communications work. I was on BBC “Breakfast” with Jeremy Harris and able to talk to the country about what we are doing.

David Isaac: Could I just add that obviously we need to look at all the matters that are referred to us? We encourage MPs and it has been very helpful that MPs recently have been referring a lot of generic and systemic issues to us, and a number of you are able to visit our prioritisation group to see how we do it. Clearly we need to be mindful of how much resource we have and what is going to drive the best impact—if we can change and clarify the law, obviously we are keen to do that—but we also have to drive compliance. One of the things that I am really keen that people understand when they are critical of the commission is that we have a huge breadth of scope and areas that we have to cover, so we do need to be mindful of how we use our resources. We want to drive the most impact, but also you have been telling us—and we are now listening to that—that you want us to be focused, too. We don’t get it right all of the time, but I am confident that we are getting it right most of the time, and now we are driving even more impact on our reduced resources.

Q579 Philip Davies: How many times have you been in breach of the Equality Act at the EHRC?



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Rebecca Hilsenrath: We haven't had any breaches of the Equality Act recently, as far as I am aware. In the last couple of years we haven't even had so much as a grievance or a complaint. We have had employment tribunal cases, which have largely been about redundancy. There haven't been breaches of the Equality Act. Certainly, while I have been at the commission there have been no breaches.

Q580 **Philip Davies:** Since you have been at the commission there have been no breaches. You have been at the commission since 2014—is that right?

Rebecca Hilsenrath: Yes.

Q581 **Philip Davies:** And you are saying there have been no breaches?

Rebecca Hilsenrath: We have lost no equality tribunal cases in that time.

Philip Davies: Lost any equality—

Rebecca Hilsenrath: Sorry, employment tribunal cases.

Q582 **Philip Davies:** Yes, you haven't lost any cases, but when, David, you were saying that you want to make it as easy as possible for individuals to be able to pursue their things, you might not have lost any but you have forced people to go to employment tribunals in your time and then settled at the employment tribunal, haven't you?

Rebecca Hilsenrath: The employment tribunal cases that have taken place during that time have not been in relation to breaches of the Equality Act.

Q583 **Philip Davies:** Disability—is that not a breach of the Equality Act?

Rebecca Hilsenrath: There have been redundancy-based issues.

Q584 **Philip Davies:** This was about disability. You actually sent this to the Committee: "Complaints by staff for race, sex, or disability discrimination at the Commission". This isn't mine; this is information you sent to the Committee when we asked for it at previous evidence sessions. It is your stuff that you sent to the Committee under annex C, so you are the ones who highlighted these cases. This was disability discrimination, which is under the Equality Act: it went to an employment tribunal and was settled. That is not making it as easy as possible for people to pursue their complaint, is it—forcing them to go an employment tribunal before you actually acknowledge that something went wrong and settle the case?

David Isaac: Can I add to what Rebecca was saying, because I think it is really important that we see this in the context in which Rebecca set it out, which is that these were reorganisations to ensure that the commission was best placed to be able to meet its statutory obligations? I think it is correct, if that is the evidence that we have submitted previously, that, in the context of those reorganisations when employment tribunal claims have been made, various assertions in relation to breaches might have been made, but those assertions were within that context; and yes, you are right, those matters were resolved by agreement.



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Q585 Philip Davies: This wasn't redundancy. This was disability discrimination where somebody had to go to an employment tribunal and you settled at the employment tribunal. What I am saying is, you said earlier, David, that you are a big believer that you have got to make it as easy as possible for people and all the rest of it, and yet you, who are supposed to be at the vanguard of doing this, are making your own employees go to an employment tribunal before you will settle the case. That is not something that I would see as being the best practice organisation, is it?

David Isaac: I don't necessarily see the two as inconsistent.

Q586 Philip Davies: Really?

David Isaac: No, I don't, with the greatest of respect, because I think that obviously what we need to do is to make it as easy as possible for people to bring claims and to assert their rights in relation to the equality legislation, but equally, within the context of a reorganisation, even when it happens on our own turf, in that context sometimes people do make assertions in relation to particular challenges, including in relation to the Equality Act. I am confident that we treated those people well. We did not make it difficult for them to bring those claims, but we agreed, consensually, that they would not proceed with them.

Q587 Philip Davies: You clearly didn't treat them well, or else you would not have had to settle a claim for disability discrimination, would you?

David Isaac: We cannot go into the individual cases, but I would suggest that—

Q588 Philip Davies: It is a pretty lamentable record, isn't it? Since the Equality Act came into being, the EHRC—not always under your watch, I accept—has had a pretty lamentable record of discrimination cases, hasn't it? Sex, maternity—settled at an employment tribunal. Race—settled at an employment tribunal. Disability—informally resolved. Race—partially upheld. Employment tribunal "outcome unknown"—that is a bizarre one. Disability—partially upheld. Disability—settled. Sex discrimination—upheld. Disability discrimination—settled. Sex, equal pay—upheld. That is a pretty lamentable record for the organisation that is supposed to be going round the country and—

David Isaac: Rebecca can respond, but I think it is really important to say that many of the matters that you have just referred to are, as Rebecca said earlier on, very historical. On our watch, there were two reorganisations, which were introduced as a result of cuts and our endeavouring to streamline the organisation to be more impactful, as we have presented to the Committee historically.

We cannot legislate for how our staff respond to those particular situations, and unfortunately they do make assertions and have made assertions as part of the claims they have brought. But I take it very seriously. We have not done anything to make it difficult for those individuals to assert their claims. Many lawyers will know that in relation to those reorganisations many claims are asserted. I am not saying that



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they were not valid, but we take them very seriously and do our best to resolve them.

Q589 **Philip Davies:** But would you accept that if you are going to go around taking other people to task, you first have to raise your own game a bit in your own organisation, surely?

David Isaac: I am confident that we have raised our game and that those are historical matters. Rebecca, was there anything else?

Rebecca Hilsenrath: You have pretty much said what I was going to say. We do take it very seriously. In relation to all the matters that happened on mine and David's watch, we were scrupulous about going over the process and ensuring that fairness had been administered, including at an operational level, and obviously there were appeals to the board, which were considered very seriously. We were absolutely clear that we had to follow best practice.

Q590 **Jess Phillips:** You recently launched a formal investigation into unequal pay at the BBC. What made you choose to do that now, rather than earlier?

Rebecca Hilsenrath: We did it now because the matter was brought to us by BBC Women, initially, and—

Q591 **Chair:** When was it brought to you by BBC Women?

Clare Collier: We received evidence from BBC Women between August and October—October was when we finally received all the evidence. In fact, we went to them asking for the evidence.

Q592 **Philip Davies:** August—?

Clare Collier: Last year. In 2018, we got our first tranche of evidence; we went back for more. That came in October.

Q593 **Chair:** But you didn't actually move forward with any action until May 2019?

Clare Collier: We did move forward with action during that time, but we didn't launch a formal statutory investigation. So, during that period we were in protracted and detailed discussions with both the complainants and the BBC in relation to this matter. We progressed quite a long way with the BBC, in terms of understanding their processes and whether or not there was something that needed to be investigated using our formal statutory powers. And it was in May when we reached the point where we said, "Actually, this has to be a statutory investigation, because we need to use our power to compel evidence."

Q594 **Jess Phillips:** So, with regard to the statutory investigation—just so I can properly understand, because it sounds big—and this will certainly be the case, I am sure, in all of them, but in the case of the BBC, does the investigation have the power to invalidate people's non-disclosure agreements?



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Clare Collier: No.

Q595 **Jess Phillips:** So, if somebody is silenced, they couldn't give evidence to the investigation?

Clare Collier: Actually, that is still a matter on which we are seeking additional legal advice, because it is a really complicated crossover between our statutory powers—our powers to compel—and the arrangement. So it will depend on an individual case and what the terms are; that is my current understanding. That is something that we are still exploring.

Q596 **Jess Phillips:** So, if somebody has been silenced because they have had someone be racist or sexist to them, they have been paid less, and therefore—

Clare Collier: But I don't think that is going to matter in the case, because the evidence we are going to get is from the BBC's own records, so we will have the full details of the pay—the way the investigation works is that we look at what has happened and then analyse that, rather than looking at individual complaints.

Q597 **Jess Phillips:** Can you seize people's computers and things like that?

Clare Collier: We could, yes.

Q598 **Jess Phillips:** Do you ever do that? I want to get a sense of the teeth of this.

Clare Collier: We could seize computers. What happens is that we say, "We could seize your computers," and people send us the contents. If we had reason to suspect that they were not disclosing the true contents of the records, that is something that we could consider doing, but there's no—

Jess Phillips: Have you ever done that?

Clare Collier: Seized someone's computer? No.

Jess Phillips: Not you personally, but the EHRC.

Clare Collier: Not so far as I'm aware.

Jess Phillips: You have never seized somebody's computer.

David Isaac: We haven't because, as I understand it, the organisations that have been investigated have actually given us the evidence that we required to be able to do that. But to be clear—

Q599 **Jess Phillips:** If one of the BBC Women came forward to you in this case or if, in the case involving the Labour party even, somebody came forward to you and said, "I don't think that you've got the full picture," would you consider forcing people to give evidence, for example?

Clare Collier: Absolutely, yes.



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David Isaac: Yes, we would use the full range of our powers to do that. Can I just clarify one particular point on the timescale in terms of the BBC? Clare made the point, but I don't want it to be lost. We cannot actually compel evidence until such time as a formal investigation is launched. This is one of the areas where we would like to clarify the law, and perhaps a recommendation from this Committee would be helpful. It means that, prior to the formal investigation, we are completely dependent upon the good will of the individuals who are being threatened with the investigation. Some do co-operate. They are very fearful of being the subject of an investigation. But others either drag their feet or don't necessarily give us the information, which makes it harder, and it takes longer for us then to get to the stage where we can establish that the threshold has been met.

Q600 **Jess Phillips:** And they could destroy the evidence, of course, in that time.

David Isaac: They could indeed destroy the evidence, but we can't move as quickly as we would like and can't be as agile as we would like with our current powers.

Q601 **Jess Phillips:** Specifically on the BBC, the BBC Women, as you said, came forward in August 2018. Were they then consulted on the terms of reference for the formal investigation?

Clare Collier: Yes.

Q602 **Jess Phillips:** And do you agree terms of reference in the case of a statutory investigation? Is it by agreement with those who are complaining or—

Clare Collier: No—

Rebecca Hilsenrath: Sorry, no, not the BBC Women; the BBC—we consulted with the BBC.

Clare Collier: The statutory consultation is with the organisation about which you are going to investigate, so there's a statutory consultation with the BBC as to the terms of reference. We take their representations into account and then finalise the terms of reference. But the investigation itself is in the commission's own name, with the commission's enforcement powers; it's not on behalf of BBC Women.

Q603 **Jess Phillips:** So, essentially, it's a bit like the CPS.

Clare Collier: Yes.

Jess Phillips: A victim will come forward and they then—you're representing the state; you're not representing the victim.

Clare Collier: Exactly, although of course we take what they tell us into account. The evidence that they give us is very much the bedrock on which we base the—

Q604 **Jess Phillips:** Let's say I'm an equalities activist. Can you hear how this



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could sound to the ears of the oppressed? It's the BBC that get to have a say in the terms—you might not listen to their say, but they get to have a say in the terms of reference for the investigation into them, and the BBC Women in this case didn't. It doesn't sound cracking.

Clare Collier: It's Parliament that has made the rules in that way. That's the straightforward answer: it's a statutory exercise—

Jess Phillips: That's the rules.

Clare Collier: That's the rules.

David Isaac: But actually we have been in close contact with the BBC Women and continue to be in close contact with the BBC Women, and I am confident that they understand the nature of the way in which we operate. I think the analogy with the CPS is a good one, but also, they are fully aware of the terms of reference, aren't they?

Clare Collier: Absolutely.

Rebecca Hilsenrath: That's a very specific example in relation to a statutory investigation. We work very closely with stakeholders in terms of understanding what the problems are. For example, in relation to disability, we work with disabled people's organisations to identify problems. We then work with them and with people like the Independent Living Strategy Group to identify solutions in relation to independent living, and then we move that forward with them. So we are very closely integrated with our stakeholders in terms of the issues that they are dealing with.

Q605 **Jess Phillips:** When do you think we can expect to have enforcement action, if there is going to be such action, from the formal investigation?

Clare Collier: Sorry, for the—

Jess Phillips: For the BBC specifically—sorry.

Clare Collier: We are currently working to a timeline on the BBC that will enable us to finalise a draft report this year; then there is another statutory process at that point, where you give the organisation that you have investigated a period of time—28 days—to respond, and then obviously you finalise the report and so on.

Q606 **Jess Phillips:** So they have 28 days to respond, and then you will monitor going forward.

Clare Collier: They have 28 days to respond to the draft report, then their representations are taken into account, then the report is finalised. Thereafter—

Q607 **Jess Phillips:** So they can, at that stage, not agree.

Clare Collier: They can make representations that we would then have to take into account. They can say—



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Q608 **Jess Phillips:** It seems incredibly stacked in favour of the person who has potentially done something wrong. I understand that it has to be fair, but—

Clare Collier: It is a process created in the statute that we are working to.

David Isaac: We did not devise these rules; we work to them. We have made representations about how they might be improved.

Q609 **Jess Phillips:** Finally, your recent announcement of the possible enforcement action against those who have failed to publish their gender pay gap information has come much more quickly than the announcement on the BBC, which took more than a year from the evidence of unequal pay being all over the place. Why were you able to act more quickly on this?

Rebecca Hilsenrath: I think they are quite different things. The interesting thing for us about the gender pay gap regulations is that it is what we call a rather binary issue—you either publish or you do not publish—so it is quite easy to understand whether somebody is in breach of the law. Most areas of the Equality Act involve quite a nuanced judgment about what is going on. We have called for fines in relation to the gender pay gap regulations. We think we have effectively enforced them, but the truth of the matter is, if all we had to do was turn around and say, “You have not published—here’s a fine,” we could use more resource doing other stuff elsewhere, instead of having to undertake formal statutory investigations. That is the difference in the timescale.

Q610 **Jess Phillips:** If those companies continue to fail to publish their data, when can we expect to see compliance notices served?

Rebecca Hilsenrath: I believe that we are now looking at the final 10 companies that have not published. We are going to be undertaking statutory investigations against them imminently.

David Isaac: The general point in relation to the use of all our powers is that we are seeking to accelerate the use of our powers where we can. These are complex issues, where we need to be proportionate in relation to the use of our powers. We are also very mindful that, even though people want us to use our enforcement powers more, and that is certainly the executive and the board, we have to ensure that we are not inappropriately intervening so that we are acting ultra vires or we will be judicially reviewed. We share some of the impatience that you are questioning, or sharing with us, about the speed with which we can act, but actually we are determined to be more agile, move faster and drive outcomes, which goes back to Rebecca’s point about how we publicise the work that we do more than we have ever done before.

Q611 **Jess Phillips:** Before you decide to make a statutory investigation, as you have said, you try to have a to and fro beforehand. In the cases where you launch a statutory investigation, as with the BBC, are we to assume that the BBC felt that there was no problem?



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Clare Collier: I cannot really go into the detail of precisely what happened, but we reached a point where we felt that a statutory investigation would be appropriate.

Rebecca Hilsenrath: To add to that, this is an activity and an enforcement power that we carry out across a whole range of issues. Two that come to mind where we have been very involved recently are, first, with the National AIDS Trust, which came to us because they were concerned about a number of social care organisations that were still asking pre-appointment health questionnaires of people, and secondly, in relation to discriminatory adverts and people asking for UK passports before employment. In both cases, we have written to a total of about 50 organisations across both of those areas, threatening section 20 investigations. In almost all cases, we are looking at section 23 formal agreements or they have instantly complied. As Clare said, it has very much been about understanding that they were not appreciating the force of the law.

David Isaac: On the main point, most people who are the subject of our threatening letters seek to push back and claim that they are not behaving in a way that is unlawful, and that is why we need to look at the evidence.

Q612 **Stephanie Peacock:** In answer to the first question, you mentioned that you have published a revised enforcement policy for consultation. What changes do you expect the new policy to make in practice?

Clare Collier: Essentially, the main difference is that it makes it easier for us to get to the point where we exercise our statutory powers. The previous policy had a more handholding approach. The new policy assumes that to use a statutory power you had to be at the last resort. In the new draft policy we say we do not necessarily need to get to a point where we really think there is no other choice. We want to make it easier for us to make the decision that we can take enforcement action when we think it is appropriate to do so and when the threshold is met. The policy talks about the things that we would naturally take into account: whether we are going to achieve impact, and whether the issue is sufficiently serious and those kinds of things.

Rebecca Hilsenrath: In addition, the policy looks at some of the things that we talked about earlier in terms of other ways of reaching greater numbers of people: running advice clinics where we will work across our priority aims, and giving advice on specialist areas to the advice sector, citizens advice bureaux and law centres and so on.

Q613 **Stephanie Peacock:** What changes have you made to the commission's approach to using its enforcement powers as a result of your strategic plan?

Rebecca Hilsenrath: Again, we spoke a little about this earlier, which probably means we are talking too much. In brief, it is important to say that—I think David said this earlier—our strategic plan has priority aims that were specifically chosen because they were areas in which we thought we could use our enforcement powers more effectively. In addition, going



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forward, in relation to each of those priority aims, we are going to look at building legal support projects, which is about building a critical mass of cases—50 to 100 cases—in each of those priority aims. That will have a couple of effects. Partly it will be about driving a greater quantity of cases through, making it more of a regulated space, and raising awareness so that it is a place where people know the EHRC is active and the law has to be complied with. But it is also a two-way street, because it will bubble up more intelligence to us and we will understand more about what is going on on the ground in those areas.

Q614 Stephanie Peacock: Finally, a question for David. I know that in answer to Jess's question you touched on this, but it is three years since you stated that you wanted to make the commission a more muscular regulator. The formal investigation against the BBC appears to be the first full use of the commission's unique enforcement powers. Have you got anything else to add about why the commission has not acted more quickly in using its enforcement powers?

David Isaac: There are a number of parts to that question. It is important to say, in relation to the last question, that the legal enforcement policy was something that we inherited, and we have now changed that. In relation to the use of our powers, investigation powers are just one part of the use of our powers. Even though we now have two investigations, we have threatened another investigation recently, and so we are ramping up the number of investigations. Obviously, as Rebecca mentioned, that is the power we will use in relation to those who default on gender pay gap reporting. But there is a whole range of other powers that we use, which are unique to the commission, and I am confident we will use those. Those are in the 50% that I mentioned at the beginning.

There has been a 50% increase overall in the last three years on my watch. As I said earlier, that does not even include the pre-statutory enforcement threatening letters and all of those issues that I think are driving change as well. We are not yet as muscular as I would like us to be, but I think we are more muscular than we were. The new infrastructure that we have put in place, and the new policy and the new teams, will see that we are much more muscular than we have ever been. All of those are very keen that we drive change, clarify the law and ensure maximum compliance.

Rebecca Hilsenrath: It is probably also important to add that we are very much standing on four squares with every other regulator, where there will always be a mixture of using the carrot and stick approach both in terms of what will be effective in yielding societal change and also what is proportionate and cost-effective. We have used our powers much more. We have had much more impact. It is the combination of our powers that gives us the biggest effect. One example is sexual harassment. We carried out some research to shine a light on the problem. We took a lot of individual cases. We used our enforcement powers under our investigation and informal agreement powers. We also made recommendations to change the law. We became a voice advocating across the media on this. Our voice was so powerful that, in the international space, CEDAW pretty



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much copied our recommendations word for word. In fact, we worked very closely with you in that space. I mean, we have issued guidance for employers, and we are drafting guidance in terms of sexual harassment and also NDAs. It is how we see the interplay between all of those things that we think will have the biggest effect. In fact, that is very much what the tailored review said, in terms of what it saw our enforcement role as being.

David Isaac: Can I just add one quick extra point that puts what Rebecca was saying into context? We are focusing this morning on enforcement, but it is really important that we do not forget all the other statutory obligations that we have under the Equality Act. We have to produce “Is Britain Fairer?” We are a national human rights institution, and we have to report to the UN, and we are monitoring—as Rebecca says—our international treaty obligations. We have to report to Parliament and do all the reporting work that we do, which I think has resulted in some very important recommendations that Government and parliamentarians have used, including yourselves.

Enforcement is a major part of what we do—I want to be absolutely clear about that—but it is not the only part. I want to take this opportunity, in relation to the spending review coming up, to argue that if we had more financial resource then we could do even more enforcement, but we cannot neglect the other issues, because we would be in breach of our other duties. We need to balance that. Like other regulators, we use the stick and the carrot, but I think we are using the stick more than ever.

Q615 **Angela Crawley:** My question specifically is about what your current strategy is for working with other regulators, ombudsmen and the inspectorates, and specifically what you saw as their role, and the forum that you have provided for that.

Rebecca Hilsenrath: Thank you for asking that, because their role is very important to us. We have been working with the regulators, inspectorates and ombudsmen for years. We call them RIOs—I’m prepared to go on using that term, because it takes less time.

We have a RIO forum, which is not an actual meeting as such; it is simply a collective noun that we apply to the people who we work with, and we do in fact meet them all together. We met them last in December to discuss the consultation over the statutory plan, but in fact the majority of our work with them is issues-based, and therefore tends to be bilateral. We have different ways of working with them. By way of an example, we have worked with the Care Quality Commission to help train their inspectors; we have worked with Ofsted to look at their inspection framework; and we have worked with the Office of Rail and Road to produce guidance.

Going forward—we are very excited and positive about this—because under our strategic plan we have very much prioritised listening to this Committee, among others, we have five priority aims. We are going to be working with the RIO forum on those five aims, which will enable us to

deepen those relationships to a much richer place by identifying the key RIO stakeholders, in order to be able to use a complementary pattern of our powers and theirs to have effect.

By way of an example, one of our priority aims is transport. We are going to be working with the Office of Rail and Road in that space. We have already been talking to them about a more structured approach to regulation in relation to equality and human rights for the motion to have regulation of the train operating companies. We have produced guidance to help them look at accessible travel plans; we are looking at co-branding guidance for reasonable adjustments in that space. We have attended stakeholder forums they have helpfully put together for us to be able to talk to the people they work with, also working with the Transport Focus accessibility forum on the same basis. That is just one priority aim, and we are going to be duplicating that across the others. We regard it as an absolutely critical part of the way we work.

Q616 Angela Crawley: Are there any enforcement organisations that should be within the forum and aren't that you would like to work with more? Specifically, are there any matters regarding the regulation of the Equality Act that you think others—whether it's the ombudsman or whoever—should be stepping up and taking on more responsibility for? Is there anything you would like people to do, basically?

Rebecca Hilsenrath: There are two or three answers to that. First, we are just two months into our strategic plan, so a lot of the work that we are going to be doing at the moment is identifying the key stakeholders we want to work with in the RIO space there, and that will be ongoing work. Another example is in the work space, where we are working with people like the Bar Standards Board, the Financial Conduct Authority, the Charity Commission and a whole range of others.

While it is in my mind, it is probably worth just mentioning that quite apart from our RIO forum, we are connected across the piece to other public sector authorities. I am the chair of the Association of Chief Executives, so I am in constant contact across other arm's length bodies. In fact, not Clare but Elizabeth Prochaska, our permanent legal director, will talk to the Public Chairs' Forum, which is the chairs of all the arm's length bodies, about sexual harassment in the workspace going forward. We have quite a reach in that space.

One recommendation that we have asked to be taken forward is on whether the public sector equality duty could be more effective going forward. Our proposal is that, instead of the broadly process-orientated way it works at the moment, in terms of carrying out equality impact assessments, we want to look at it much more in terms of outcomes. We want Ministers to look at whether Britain is fairer and at the key inequalities in each sector, and to set an equality objective on the basis of those for the organisations in their sectors. We then want the public authorities in those sectors to comply, or to explain why they cannot use that equality objective for their area, such as if there is some sort of local reason why they should not.



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Coming on to the question you asked, we want RIOs to have a far more active engagement with the audit and the progress of the outcomes under those action plans that we are asking the authorities in each sector to publish. That will be much less of a process thing, and is obviously in addition to the RIOs' public sector equality duties. We hope to be able to work with them in that space, to have a far more targeted impact on what is going on.

Q617 Angela Crawley: Are there any examples, based on what you just said, of the EHRC taking action against another enforcement body for failing to comply with their duties, under either the Equality Act or the public sector equality duty?

Rebecca Hilsenrath: We have undertaken a section 31 assessment of the Treasury in relation to the spending review 2010. We have threatened, or have looked into, hundreds of such assessments, but we have only found it necessary to go in to carry out one formal one. We have regularly used it in litigation, where I think it has gone both ways. For example, while I have been chief executive, or certainly chief legal officer, we intervened in a case involving a local authority that had a local council tax rebate where you had to be a resident for two years to be eligible. We said that was unlawful, because it discriminates against refugees and refugees from domestic violence situations, who will not have been there for that long. That case was won, and the policy was found unlawful and was changed, which is a very good result.

Equally, the Bracking case, in relation to the independent living fund, was won on the basis that the closure of the independent living fund had not been carried out on the basis of a due impact assessment. All that happened was that the Government went away and carried out an impact assessment and then closed it anyway. This comes back to what I was saying earlier about the difference between a process-focused and outcomes-focused approach.

David Isaac: We obviously seek to work with as many stakeholders as possible across all areas, whether in relation to the RIO forum or more generally. However, to be an effective regulator and to drive compliance, we have to be prepared—I am confident that we are—to investigate and use the full range of our powers, even in relation to our partners.

Q618 Angela Crawley: On a point of clarification, do you see the EHRC's role as ensuring enforcement, and that enforcement bodies understand their roles and responsibilities? Or do you see the onus—I think you mentioned that you think they should follow the "fairer Britain" report—as being on the individual enforcement bodies, such as the ombudsman and others, to have those powers? Do you think they should have those powers, or that you should be able to oversee them and call them to account?

David Isaac: I think it is a matrix of different responsibilities, isn't it? We want to work with them to drive policy and to get their support, but equally, when it comes to investigating what happens within their own organisations, we have to be able—without fear or favour, even if they are



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our partners—to investigate what they are doing and whether they are behaving unlawfully.

Rebecca Hilsenrath: In fact, although we cannot talk about it at the moment, we are contemplating enforcement action against one of the RIOs. However, David is absolutely right: it is a complex way of working. One of the key things about what I was talking about, in terms of reform of the public sector equality duty, is that it is a way of working with RIOs that sits outside our strategic plan, which is focused on those priority aims. If the PSED were reformed in the way we are suggesting, it is about amplifying the impact of “Is Britain Fairer?” and being able to work with the RIO forum and broader stakeholders across a far wider range of inequalities.

Q619 **Chair:** Before we close, this is directly related to your role and your powers of compliance: on 16 October last year, you wrote to the House of Commons to say that the House of Commons may not be in compliance with the law when it comes to the way it treats its staff, particularly with regard to historical allegations of bullying. You asked for details about how the House of Commons is implementing Dame Laura Cox’s report. You also said that the EHRC could investigate the House of Commons following the revelations in the Cox report and you could issue a compliance notice. Where is that?

Rebecca Hilsenrath: Could we write to you about that, Chair?

Q620 **Chair:** Given that you have come to the House of Commons today, and that you felt compelled to write to the House of Commons about the fact that they might be breaking the law, particularly with regard to the bullying of staff, I would hope that that would be quite near the top of your agenda, yet you don’t seem to know what the status of it is. Was it just a letter you wrote for effect?

David Isaac: I am confident, Chair, that it is something that—

Q621 **Chair:** It came from your head of legal, who unfortunately is on maternity leave, I think.

Clare Collier: I am very happy to write to you about that. We can go back.

Q622 **Chair:** It should be at the top of your agenda. You are coming to the House of Commons. If the House of Commons cannot get it right—if, as we have heard from Mr Davies, you are not always getting it right—how can we expect other people to take this issue seriously and to take your powers seriously if you do not follow through? I would like to have a response today, please, on what you have done following that letter of seven months ago, which threatened action against the House of Commons for bullying of staff.

David Isaac: Obviously, we will furnish you with the information by the close of play today. I am confident that we take these matters very seriously; I am sorry that we cannot actually give you the information here, because none of us was personally involved, but I am fully mindful



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of the point you make about the importance that the House of Commons has as an exemplar, and we will get back to you. I am confident that this is something that will be under active investigation.

- Q623 **Chair:** Can I also impress on you the importance of transparency? To be copied in on letters is not enough; we need to know what you are doing in terms of follow-through. These are important issues, not only for us as parliamentarians, but for us as people who work within an organisation that has been accused of not being in compliance with the law. Thank you. That is the end of our first panel.

Examination of witnesses

Witnesses: Baroness Williams and Charles Ramsden.

Chair: Thank you very much to the Minister, Baroness Williams, and her official, Charles Ramsden from GEO, for coming forward today to give evidence. Jess is going to ask our first question.

- Q624 **Jess Phillips:** The main way the rights in the Equality Act are enforced is by individuals taking legal action, as we have just been hearing. This is different from some other rights, for example the minimum wage, which is enforced by HMRC and does not depend on individuals taking legal action themselves. Why does the Equality Act rely on individual actions of enforcement, especially when, by the very nature of the Equalities Act, we are talking about people who are already discriminated against and are in a particular group that we would consider marginalised?

Baroness Williams: You talked about the minimum wage; it is important to recognise from the outset that the laws around the minimum wage are specific laws for a specific purpose. Any inspection of how an employer is carrying them out would ensure that they were complying with the specific rule of the law.

Discrimination, on the other hand, is a kind of preventive measure. It is far broader, and in some cases is actually quite subjective. I caught David earlier saying that we are trying to shift away from the burden being on the individual where we can. Obviously, the gender pay gap was one such example. Same-sex marriage was another example of how individuals now no longer have to come forward and say that someone is in breach of the equality act. In the example that you talked about, Jess, they are slightly different situations. The ultimate point is that something gets to a tribunal or court through the process of, say, the EASS or ACAS, but most cases do not get to court; they are resolved beforehand.

- Q625 **Jess Phillips:** It still all very much relies on the individual, unlike other cases, even health and safety. If you were to make a complaint to the Health and Safety Executive and say, "There's a difficulty in this area", the Health and Safety Executive would not then rely on the individual seeing an entire case through before they told those people not to have vats of acid rotating in the air, or whatever it is. It seems that it is only in



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cases involving equalities that it is the individual who has to push through for the regulator to take action.

Charles Ramsden: The Committee has been looking at the Sir David Metcalf areas, which, as the Minister said, for the most part involve some pretty specific requirements on employers to take a particular action or demonstrate that they are complying with a particular set of regulations. If you look at employment law more generally, you have something like unfair dismissal. Unfair dismissal is more back into the subjective and preventive area. For unfair dismissal, the essential rules are the same as for discrimination. I am not sure it would be quite right to say that equality and anti-discrimination are unique. There is perhaps a split between different parts of employment law.

Baroness Williams: Could I add something to that? Thanks, Charles. Clearly, you do not want someone who, as you say, might be very vulnerable to have to go through quite a rigorous process in order to have redress for the inequality they have suffered. That is why ACAS and the EASS, as early interveners, can prevent people from having to go through that process. It could be quite a distressing time for them.

Q626 **Jess Phillips:** Do you agree that the Equality Act 2010 should be having a greater impact on achieving wider social change to help prevent discrimination from happening in the first place?

Baroness Williams: You can probably see that the Equality Act has engendered some social change. In the last 10 years, quite a significant social change has arisen. I mentioned same-sex marriage. Certainly, social change has been forthcoming, and I think the Equality Act has helped that. There are some cases. I will not go through the entire list, but if you want the whole list I can bore you with them.

Let me take a few examples from different areas. *Paulley v. FirstGroup*—obviously, Mr Paulley is quite a prolific disability rights campaigner—ended up with public transport having to make provision for disabled people. *Seldon v. Clarkson Wright and Jakes* was around age discrimination, and that—

Jess Phillips: I agree with you, and I know the cases that you are—

Baroness Williams: Shall I stop?

Q627 **Jess Phillips:** No, I could sit and listen to people who have beaten people who discriminated against them all day long. It is my favourite thing, but when I talk about the wider social change, both those cases would have taken a huge amount out of the complainants—we all take our hats off to them, and during this inquiry we have had them in front of us. A gay rights activist I spoke to just this morning said, “Why does the gender pay gap still exist?” In the last 10 years, as you have rightly pointed out, the vast change in society and culture in the gay rights space is notable. Why is it that women are still not being paid enough? In each of those cases that you have identified—I still think that there are bus companies and transport companies massively discriminating against disabled



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people. Why is it not creating bigger social change?

Baroness Williams: You are right about that, but the vast majority—

Jess Phillips: I am certainly right.

Baroness Williams: I have seen examples of it, but in the vast majority of cases—I get on trains, too; sometimes I stand on trains—public transport has had to respond, and there has been a general shift, but I cannot disagree with you about women and equality.

I was a leader of a local authority back in 2004 when we were trying to address equal pay, which is entirely different from the gender pay gap. In your last session, you were talking to the EHRC about the BBC. I was staggered that the BBC was not paying—if that comes to pass; obviously that is an ongoing case and we cannot comment too much on it, but I am staggered in this day and age. We have an ethnicity pay gap as well, but there is no doubt that women are still not able to play their equal role in the workplace.

Q628 **Jess Phillips:** I am sure everyone in this room and most common, decent, good thinking people would agree with us. In light of that, when the director of the labour market enforcement strategy explicitly includes the need to have a system-wide impact and to proactively spur change in compliance more widely, what can the Government do to shift it?

Baroness Williams: We are consulting on that aspect of things and a single enforcement body. One thing I would say is that it is difficult to prescribe in each and every case. I am pleased that equality law is wider than that, so that we do not have gaps in the system. We are consulting on it.

Q629 **Chair:** I was quite interested when I read the workplace strategy that there was no mention at all of discrimination. David Metcalf had not consulted at all with the Equality and Human Rights Commission on the production of his strategy or on the single market enforcement body that is going to be set up. There was nothing within that referring to discrimination. Do the Government not think that that is an important part?

Baroness Williams: Well, the Government do think that—

Chair: Why did they not say anything about it within the strategy or the workplace plan? David Metcalf when he came in front of us was clear that he had not considered it at all.

Baroness Williams: I think we have to ensure that equalities and enforcement feature prominently. We are committed to consult, and I will take on board what you say.

Q630 **Chair:** It does not fill us with a great deal of confidence that the GEO has much clout in BEIS if there is no mention of equalities or discrimination within the BEIS strategy.



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Baroness Williams: Equality and discrimination should underline absolutely—they should be the baseline for everything we do. Maybe we should have explicitly mentioned it, but I think it is quite important that they underline everything that we do, both as a Government and through business. It is almost a given, but maybe we should have explicitly mentioned it.

Chair: I think when we questioned David Metcalf it was not that it was so implicit that it was not in need of mention. He did not know what the public sector equality duty was.

Q631 **Jess Phillips:** It was quite surprising that he was not aware at all.

We have had witnesses in who have come and talked to us about their experience of taking cases through. Each and every one of them came up with suggestions of how this could be better for them. What are the Government doing to reduce the burden on individuals when they decide to take a case? What are you doing to make it simpler for a disabled person who cannot get into a coffee shop because there is a step, even though they should just be able to provide a £25 ramp off eBay?

Baroness Williams: That is a very good point in terms of access to buildings. When local authorities are planning, or private sector companies are planning their built environment for example, that should be explicit within their planning. As I said earlier, in terms of reducing the burden on people, we are moving much more towards a proactive stance of shifting the burden away from people. In the first instance, their first port of call should be a simple one and should not have to end up at a tribunal or in court.

Charles Ramsden: I would add to that that the Government have made an announcement for the commencement of section 36 of the Equality Act, which is the duty to provide reasonable adjustments in the common parts of rented property.

Q632 **Jess Phillips:** With respect, that was just an example I gave because it was one of the examples we have heard. What I want to know is what the Government are doing to reduce what is an onerous task for a person to take that case—not just the clarifying of the law and doing inquiries and making the law clearer on whether people should have to have reasonable adjustments, but the process that they have to go through. What are the Government doing to make that simpler for people?

Baroness Williams: I would just reiterate, it should be a basic part of planning in the built environment. People should not have to insist that something is retrofitted.

Q633 **Jess Phillips:** I am talking about the legal environment for the person, rather than the case in hand. It is entirely my fault for being unclear. What are we doing so that it is simple for the individual who wants to make a claim against someone? Do you think it is simple for a person to do that?



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Charles Ramsden: It will not be that simple in terms of taking a claim that then becomes a legal case through to a court.

Q634 **Jess Phillips:** So you are saying that that would not be simple.

Charles Ramsden: That is not going to be a particularly simple process.

Q635 **Jess Phillips:** Do you think that the Government should do something to make that simpler?

Charles Ramsden: I was going to say that we try to avoid that situation, and I think all parties agree that that should not be the norm. Prevention should be the starting point. Where prevention has not happened, the Equality Advisory Support Service deals with about 35,000 contacts a year. Nearly 70% of those are disability related.

Q636 **Jess Phillips:** So you think that there should be proactive preventive measures.

Baroness Williams: Yes. To go back to disabled access, in many new buildings, they are built into the planning.

Charles Ramsden: I was just going to add that in around 1,200 cases a year, the EASS intervenes in some way with the service provider to try to conciliate on the particular issue.

Jess Phillips: Brilliant. I agree. Proactive.

Q637 **Angela Crawley:** Turning to your role with the public sector equality duty and its predecessors on race, equality and disability, it was meant to shift the burden of tackling discrimination away from the individual and on to the organisation, yet we still see evidence of discrimination in public sector organisations. There are quite obvious apparent systemic issues of unequal pay in the BBC. What are the Government actually doing to ensure that the Government Departments and public bodies, for which they are responsible, comply with Equality Act?

Baroness Williams: We have talked about the BBC and clearly the EHRC is taking that up. The Labour party did a review of discrimination law, which said: "The duty should not lead any public authority to feel it needs to take any action which might be disproportionate to the benefits the action would deliver."

Importantly, the PSED, when the idea was to ensure that a public authority did not slide into systemic discriminatory practice or institutional discrimination, is deliberately a broad duty. That will be different in the case of different organisations. Some things might be of higher priority than others, so I think it is important to keep it broad.

Q638 **Angela Crawley:** Okay, but my point is that the Government has been made aware of these serious systemic inequality issues in the BBC. If that is one sector, which is accountable to the Government, that has these problems, is it not possible that there are many other sectors, such as the Ombudsman, the Health and Safety Executive? There could hypothetically be any number of other organisations where there are the



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same grave systemic abuses of public sector equality duty. Why is the Government not doing more to make that work? Why does it not seem to be working?

Baroness Williams: The Equal Pay Act has been law since 1970. I was very surprised to become the leader of a local authority that had not settled its equal pay disputes. That was back in 2004. We did settle our equal pay disputes. As we see there, the EHRC is now taking action with the BBC.

It is an ongoing issue but certain things have become expected within the working environment. I give the example of my daughter who works for a firm because she felt that their whole approach to equality was very good. We are getting people of my daughter's age now expecting equality within the workplace and promoting things such as LGBT equality. Ethnicity equality is something that we are already talking about but will follow very soon, in terms of the pressure being stepped up on that.

Charles Ramsden: The Committee is obviously concerned—it has made that explicit—about the burden on the individual. As far as the public sector equality duty is concerned, it is a really wide duty that covers every public authority and all its functions.

Although we do work with Departments with their equality objectives and PSED inter-departmental groups and such like, to some extent the PSED puts the burden on the organisation. The organisation has to come up to scratch; otherwise people can judicially review it for failing to have had regard to the duty in all kinds of different decisions and actions.

Baroness Williams: Yes, and due regard covers that. If you start to specify across various different strands, there could be situations where employers would argue that it was not specified. It is quite important to have that broader due regard.

Q639 **Angela Crawley:** Perhaps you could then comment on why the Government did not agree to this Committee's recommendation that public bodies should be under a specific duty to protect their employees from sexual harassment, where not doing so could be in breach of the public sector equality duty?

Baroness Williams: I am sorry—could you repeat that last bit?

Q640 **Angela Crawley:** Why did the Government not agree to our recommendation that public bodies should be under a specific duty to protect their employees from sexual harassment, and where not doing so could be a breach of the public sector equality duty?

Baroness Williams: But employers should always take action if their employees are the subject of sexual harassment.

Angela Crawley: Okay.

Q641 **Chair:** They don't. They allow them to cover it up with contracts.



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Baroness Williams: Well, NDAs. That work is still ongoing, but I was always very clear that NDAs were generally used for commercial and competitive processes. They are not and cannot be used to cover up sexual harassment.

Q642 **Chair:** Do you think that should stop?

Baroness Williams: Absolutely it should stop.

Chair: I hope you say the same thing when we issue our report.

Baroness Williams: I have said it at the Dispatch Box. In fact, I understand—Charles will correct me if I am wrong—that if you get someone to sign an NDA for the purpose of shutting them up, if they are sexually harassed, that NDA is null and void.

Charles Ramsden: The Government will be consulting on proposals for making NDAs more watertight in terms of ensuring that they do not create problems for individuals being required to keep silent or break the law, as you know.

Baroness Williams: They are a good thing, if used properly. But to abuse them, to ensure that people keep quiet, is an absolute abuse of them.

Q643 **Chair:** Shall we move on a bit in our questioning? Many people have told us that they find it almost impossible to challenge discrimination using the courts or employment tribunals. That has come across loud and clear in two inquiries that we have done now. Why have the Government decided not to include the handling of discrimination claims in their review of courts and tribunals? Does the review address the concerns about the failures to make reasonable adjustments to remove the barriers faced by disabled people who are seeking to use the courts and tribunals?

Baroness Williams: At this point, forgive me, but I am not a Ministry of Justice Minister. I am Home Office Minister and Equalities Minister.

Q644 **Chair:** The Committee asked for a Ministry of Justice Minister and the Ministry of Justice declined to send one. Unfortunately, we do expect you to answer, because you are answering on behalf of the whole Government. We take a pretty dim view of the fact that one of your colleagues has refused to come here.

Baroness Williams: I am just saying to you that I am not a Ministry of Justice Minister, but I will of course—

Chair: But you do speak collectively for the Government.

Baroness Williams: I will do that, but forgive me if I refer a bit too much to my notes. Apparently HMCTS will be addressing the process around discrimination claims through its reform of the employment tribunal service, which apparently commences this year.

Jess Phillips: So they are going to do that.

Baroness Williams: Yes.

Charles Ramsden: You asked about reasonable adjustments, as well.

Q645 **Chair:** That is right. But I think the Government have decided not to include the handling of discrimination claims in their review of courts and tribunals. Has that changed? Are they now including it?

Charles Ramsden: We simply have a note that says that the courts and tribunals service will be addressing process around discrimination claims through reform of the employment tribunal service.

Baroness Williams: Do you mind if I write further to you on that?

Q646 **Jess Phillips:** It sounds as if you are saying that in the general review of employment tribunals, obviously something about discrimination claims will come up, because some discrimination claims go to the employment tribunal. We are asking why there is not a specific focus—in the review of court and tribunal processes that is ongoing—on people trying to take discrimination cases through, because they are not all taken through the tribunal system; they are also taken in civil court, and county and private court.

Baroness Williams: May I just clarify that? If I gave you an answer, it would be off the top of my head.

Chair: Just for clarity—it might help your response—the then Justice Minister Lucy Frazer said, in evidence to our Committee, that the review would not look at how we deal with complex and potentially sensitive matters of discrimination in courts. If you are saying that it now is, that is a little confusing for us, and probably underlines the fact that an MoJ Minister should have been here today, given that we are so clearly talking about issues to do with the courts. It was not that we had not given enough notice.

Baroness Williams: Can I just say, Chair, that obviously I do not have the clout to make the MoJ come here. I apologise if you are getting lesser answers from me.

Chair: If you could write back to us, that would be incredibly helpful.

Baroness Williams: Yes, of course we will.

Q647 **Chair:** The other area that we wanted to touch on with regard to the MoJ was to do with legal aid, which is obviously integral to our inquiry. We are finding it slightly awkward that we do not have a Minister in front of us to give us any response, but according to legal aid statistics the number of people receiving legal aid, especially legal representation for discrimination claims, appears to be extremely low; yet our evidence shows that levels of discrimination are very high. How are you making people aware of their right to legal aid in discrimination cases?

Baroness Williams: Obviously, legal aid is available for discrimination, harassment and a third element.

Charles Ramsden: Victimisation.

Baroness Williams: Victimisation. We are reviewing legal aid levels as well. I think it was back in February that we launched a campaign to improve awareness of how people can access legal support, including legal aid.

Charles Ramsden: The removal of the telephone gateway and restitution of face-to-face advice is another aspect of Government action on that.

Q648 **Chair:** On that point, the Government have committed to removing the telephone gateway by spring next year. Is that still on track?

Charles Ramsden: It is my understanding that spring 2020 is the target.

Q649 **Chair:** How will people access legal aid once the gateway has been removed?

Baroness Williams: We are reinstating the face-to-face facility.

Q650 **Chair:** Okay. Do you think that that will resolve the problem that we have of a very low number of people seeking legal aid in this area? Is there any evidence—

Baroness Williams: I think the combination of all the things that I have talked about will hopefully resolve it to a certain extent.

Charles Ramsden: Yes. The review of the threshold levels for means-tested provision, the removal of the telephone gateway and improvements to accessibility of courts all seem to be coming together as a group of measures.

Q651 **Chair:** A final question—I am so sorry that we are running over. We are very curious about why some enforcement bodies appear to understand their obligations under the Equality Act and others don't, and whether that could be solved by placing specific obligations to secure compliance with the Equality Act on all mainstream enforcement bodies. Is that something that you have looked at?

Baroness Williams: Certainly the GEO has issued guidance on caste, I think.

Charles Ramsden: We have also issued guidance on—

Baroness Williams: Dress codes.

Charles Ramsden: Well, and the public sector equality duty. To be honest, I agree that the Committee's current inquiry—you referred to the labour market enforcement side—has been a bit of an eye-opener in terms, as you say, Chair, of the very disparate understanding of equality issues across regulators, from possibly Ofsted at one end of the scale, to a number of other bodies towards the other end.

We have a cross-Government working group that looks at PSED best practice and developments. We are now thinking of involvement of



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regulators specifically, not just sector sponsor Departments, in doing that. That is something that we would want to take forward.

Q652 **Chair:** So, given the problems that we have explored today—in both our evidence sessions—about the problems of the Equality Act creating the sort of cultural change we need on issues of discrimination, do you think there is a strong argument to be made for including the enforcement of the Equality Act under the remit of your new single enforcement body? Do you think that might be something that Government should consider?

Baroness Williams: Obviously, the consultation is ongoing. I guess Government will come to a view on that. I do not think it is that simple a choice, and I would not like to see a body that did not have equality and anti-discrimination at its heart.

Q653 **Chair:** But if you are setting up a new single enforcement body to enforce employment rights, and we have in this country more than 50,000 women a year who feel they have no choice but to leave their jobs because they are pregnant, should not that enforcement body be wanting to look at some of these issues where the law affects women in the workplace who are pregnant, as well as some of the really important issues that I know were in the mind's eye of BEIS when they dreamt up the idea of a single enforcement body? I cannot remember off the top of my head what was in their mind's eye, but why would pregnant women who are being forced to leave their jobs not be as important as anything else that that body was dealing with?

Baroness Williams: Pregnant women, breastfeeding women and postnatal women—I think it is awful, the way that some of them feel that actually they have got no choice but to leave their work. You encompass both an employment issue and an equality issue in what you are talking about, which is probably why you asked the question that you did.

Charles Ramsden: In this hearing, we have discussed issues about injustice, unfairness and discrimination against individuals, which is the bedrock of equality law from where it all started, back in the middle of the last century. We have also discussed duties that apply to all employers, and possibly all service providers. There is, I think, an extent to which equality law is possibly developing a second dimension beyond the individual and the individual case, with equal pay as a kind of crossover area which involves both. There may be an extent to which a single enforcement body is more able to get to grips with bulk compliance by employers with what might be termed the newer-style equalities law—not necessarily with discrimination against an individual. I suppose another possibility is whether there would be any scope for areas of compliance that are simply beyond the EHRC altogether, such as employers who do not comply with tribunal rulings. It is then back on the individual to try and ensure that they do so. That is an interesting area.

Baroness Williams: There has been a bit of shift, because there is quite a short period of time in which a pregnant woman or, indeed, a mother on maternity leave, can bring a case. It is very, very short, and I know that



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three months after having a baby I was lucky to get out of my pyjamas, never mind bring a case if I wanted to. So there has been a bit of a shift in terms of tribunals giving a bit of leeway.

Charles Ramsden: And the Government are due to consult on time limits for discrimination cases on the back of existing problems.

Chair: I will just close by saying that it would really help us if you could write to us on how you might see the single enforcement body interacting with the EHRC in these areas, because it was clear from the evidence that we had that no thought—not very little thought, but no thought at all—had been given to that. I think the Committee would really benefit from understanding whether that was just an oversight, or whether it was a strategy.

Can I just close by thanking both of you for being here? Huge apologies for overrunning, both to our witnesses and to members of the Committee. I will now have to call the meeting to a close. Thank you very much.