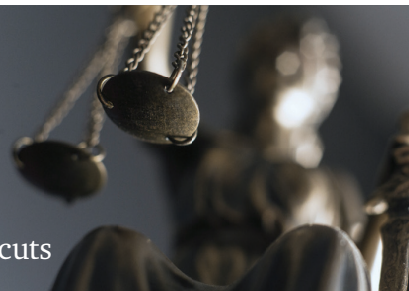


# Out of balance: what has happened to equality law?

Is the Equality & Human Rights Commission no longer fit for purpose? Geoffrey Bindman examines its death by a thousand cuts



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Equality law is an essential component of social justice, but its enforcement in Britain needs committed support by the government, as well as adequate resources and constant review. The inadequacy of current arrangements has become increasingly obvious, highlighted by popular campaigns such as Black Lives Matter and #MeToo, by the disparate impact of the COVID pandemic on ethnic minorities, and—not least—by the evidence of heavy-handed policing of black people both in Britain and the US. The response of the government has been disappointing. The recent report of its Commission on Race and Ethnic Disparities has met with widespread criticism. Like other recent government-sponsored inquiries, it lacks objectivity and expertise. The Equality and Human Rights Commission (EHRC), which in 2006 replaced the Commission for Racial Equality (CRE), the Equal Opportunities Commission, and the Disability Rights Commission, has been sadly ineffective.

Individuals may seek redress in courts and employment tribunals for unlawful discrimination. The EHRC can provide representation or financial support and can initiate or intervene in proceedings on its own initiative. It also has a broad supervisory responsibility for promoting good practice in relation to equality and diversity. It can carry out investigations, inquiries and assessments. 'Investigations' are reserved for cases where unlawful discrimination, harassment or victimisation is suspected. If, after an investigation, a finding of unlawful conduct is made, an 'unlawful act notice' can be issued—following which, if not complied with, proceedings may be taken.

The performance of the EHRC has been severely criticised by the Joint Parliamentary Committee on Human Rights in its report 'Black people, racism, and human rights' published in November 2020. The government is primarily to blame. It has cut the funding of the EHRC dramatically. The CRE alone in its final year—2006—had a budget of £90m. The current budget of the EHRC, with its much wider brief, is £17.1m.

The joint committee also criticised the selection by the government of EHRC membership. In recent years, appointments

to the Commission have lacked diversity. Some of those appointed lack relevant experience and have expressed views incompatible with the Commission's purposes. Until near the end of 2020, there was a long period when the Commission had no ethnic minority members. The balance was redressed only in December 2020 when the minister for women and equalities Liz Truss MP announced the appointment of a new chair, Baroness Falkner, and four other new members, two of whom, including the new chair, are of ethnic minority background.

Baroness Falkner's predecessor as chair, David Isaac, a City solicitor, after his retirement severely criticised Ms Truss and the government ('EHRC undermined by pressure to support No 10 agenda, says ex-chair', *The Guardian*, 18 January 2021). He challenged the government's switch in its equality priorities away from gender and race to 'a focus on white working-class people and the north of England and the levelling up agenda.' Of the new appointments, he said: '[Truss] doesn't say "they are going to do my bidding", but it's pretty implicit in what she's saying that they are people who are supportive of her approach to equalities.'

Mr Isaac correctly says that 'an independent regulator shouldn't be in a position where the government of the day can actually influence the appointments of that body to support a particular ideology.'

Mr Isaac's criticisms provide some explanation for the deficiencies exposed by the joint committee, but his own leadership is not above reproach. Why, for example, did the EHRC fail to challenge the Home Office's 'hostile environment' which led to the persecution of the so-called Windrush generation? The joint committee commented mildly: 'It might be reasonably argued that the EHRC as the body with statutory responsibility for protecting human rights, including for Black people and reducing inequalities, including racial equality, should be taking a lead in this regard.' By contrast, the former CRE was prepared to assert its independence. In 1980 it investigated the Home Office's immigration policy, overcoming Home Office resistance by defeating them in a High Court challenge. The joint committee in its recent report

records David Lammy MP saying: 'I want to say loudly that it has turned out to be a mistake to get rid of the Commission for Racial Equality... there is a widespread view that, unfortunately, the EHRC has not been able to do what the old CRE was able to do.' The joint committee also cites Lord Woolley (a former EHRC commissioner) in support. He told the joint committee: 'It has been death by a thousand cuts, and it is a shadow of itself. It is almost frightened of its own shadow, frankly, and as a result there is little or no enforcement.'

This damning verdict is verified by the statistics, which show a continuing fall in the number of cases assisted and in the number of inquiries and investigations. In 2007–9, 64 cases were assisted and four inquiries were launched. In 2012 and 2013, only six cases were assisted and no inquiries were launched. In December 2019, Mr Isaac issued an account of 'what we achieved in 2019'. He said 'much of our work this year has focused on addressing flaws in the legal system'. An inquiry carried out by the Commission into legal aid found that very few victims of discrimination were represented in courts or tribunals. Yet Mr Isaac's review also asserted 'our legal powers make us a unique organisation. We have increasingly used these to protect the rights of individuals and to challenge policies or practices that cause disadvantage'. Sadly, the evidence is to the contrary. Over its lifetime the EHRC has produced a large number of research reports, but they have attracted little attention or implementation.

In the whole of its history the EHRC has launched only two investigations alleging unlawful conduct. Its investigation into the Metropolitan Police in 2017 found no illegality. Its recent investigation into antisemitism in the Labour Party made two findings of unlawful harassment and two of indirect discrimination out of 70 cases examined. The basis of this ill-judged investigation and its findings has been strongly contested, including in the publication *How the EHRC got it so wrong: Antisemitism and the Labour Party* (Verso Books, May 2021).

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