CWU Response to Women and Equalities Committee Inquiry into the Enforcement of the Equality Act: the law and the role of the EHRC

Introduction

1. The Communication Workers Union (CWU) is the largest union in the communications sector in the UK, representing approximately 192,000 members in the postal, telecoms, financial services and related industries.

2. The CWU welcomes the opportunity to contribute to the Committee’s inquiry into enforcement of the Equality Act: the law and the role of the Equality and Human Rights Commission (EHRC). We believe there are substantial barriers to effective enforcement of the Equality Act 2010. These include a severe lack of funding for the EHRC, weaknesses in the tribunal system and restrictions on trade union rights.

3. The failure to properly enforce the Act is a major contributory factor to discrimination against minority groups and the rise of inequality across a range of indicators which continues to damage our society and hold back our economy. The CWU is calling for sufficient funding and resources for the EHRC to carry out its role and enforce the law effectively. We also wish to see a stronger, more effective employment tribunal system, and greater freedoms for trade unions to help workers enforce their rights under the Act.

The scale of inequality and discrimination in the UK

4. Inequality and discrimination represent a major problem in the UK, affecting all groups with protected characteristics under the Equality Act 2010. The nation’s failure to tackle these issues demonstrates that the enforcement mechanisms under the Equality Act are not fit for purpose and not capable of delivering wide scale change.

Discrimination and inequality affecting female workers

5. Despite progress over recent decades, women remain at a disadvantage in the workplace. In March 2018, Investors in People found that 80% of women believed that discrimination was taking place in their workplace and that two-thirds of young female workers had experienced discrimination first hand.¹

6. This research corroborates the TUC’s 2016 analysis, which found that over half of women had experienced sexual harassment at work, including two-thirds of young women. Moreover, a

third of women have been on the receiving end of unwelcome sexual jokes, a quarter have experienced unwanted touching, and a fifth have suffered unwanted sexual advances.²

7. The depth of discrimination was revealed through the 2018 gender pay audit, which showed that 78% of companies paid their male staff more than their female staff, while just 14% of the firms that reported had a pay gap in favour of women. The audit also revealed that there are no sectors where women are better paid than men, reflecting the fact that this is a general issue rather than one that is confined to specific industries.

Discrimination and inequality affecting BME groups

8. Vast inequality continues to exist for black and minority ethnic groups in the workplace. They are disproportionately affected by low pay and job insecurity, obstacles to career progression and bullying/harassment compared with their white colleagues.

9. According to research conducted by the TUC in 2017, more than a third of BME workers have been bullied, abused or singled out at work. One in five reported that they had been denied training or a promotion.³ Research conducted by the Guardian and Operation Black Vote found that just 3.5% of business leaders were BME, compared with 12.9% in the general population.⁴

10. These barriers are even worse along gender lines, with less than a quarter of BME positions of power occupied by women. Furthermore, the TUC suggests that BME women experience particular discrimination. Two in five (41%) wanted to leave their jobs because of bullying and harassment, but could not afford to.⁵ BME women also face a substantial pay gap. The Fawcett Society revealed in 2017 that Black African women have seen little to no progress since the 1990s in closing the gender pay gap with White British men, with a full-time pay gap of 21.4% in the 1990s and 19.6% today. Meanwhile, Pakistani and Bangladeshi women experience the largest gender pay gap at 26.2%.⁶

Discrimination and inequality affecting LGBT workers

11. There have been gradual improvements in lesbian, gay, bisexual and transgender (LGBT) rights in recent years, along with a growing visibility of LGBT communities. However, LGBT people continue to face serious problems of prejudice, discrimination, bullying and harassment both in the workplace and in wider society.

12. A survey of 5,000 LGBT workers across Britain commissioned by Stonewall this year reported that almost one in five staff (18%) have been the target of negative comments or conduct

² Sexual harassment at work is violence against women – let’s put a stop to it, TUC, 8th March 2018, accessed at: https://www.tuc.org.uk/blogs/sexual-harassment-work-violence-against-women-%E2%80%93-lets-put-stop-it
³ 1 in 3 British BME workers have been bullied, abused or singled out for unfair treatment, finds TUC poll, TUC, 13th September 2017, accessed at: https://www.tuc.org.uk/news/1-3-british-bme-workers-have-been-bullied-abused-or-singled-out-unfair-treatment-finds-tuc-poll
⁴ Interview: Employees on workplace racism, Guardian, 26 September 2017, accessed at: https://www.theguardian.com/inequality/2017/sep/26/employees-on-workplace-racism-under-representation-bame
⁵ TUC poll, ibid, 13th September 2017
⁶ Many minority women feel left behind by pay gap progress, Fawcett Society, 6 March 2017, accessed at: https://www.fawcettsociety.org.uk/news/minority-ethnic-women-left-behind-pay-gap-progress
from work colleagues in the last year because they are LGBT. One in eight lesbian, gay and bi people (12%) would not feel confident reporting any homophobic or biphobic bullying to their employer. The likelihood of facing harassment and discrimination in the workplace is even greater for BME, trans or disabled LGBT workers.\(^7\)

13. The Equality Act 2010 is designed to protect LGBT people from discrimination and victimisation at work, but the evidence shows that it is failing in this objective.

**Discrimination and inequality affecting disabled workers**

14. Unemployment, underemployment and low pay are rife among disabled workers. Fewer than half of disabled adults across the UK are currently in employment (47.6%), compared with almost 80% of non-disabled adults. This gap has grown since 2010/11.\(^8\)

15. The disability pay gap is persistent and widening. In 2015-16 there was a gap in median hourly earnings: disabled people earned £9.85 compared with £11.41 for non-disabled people. Disabled young people (age 16-24) and disabled women had the lowest median hourly earnings.\(^9\)

16. On top of this, disabled people have been disproportionately hit by government austerity, with cuts of £30 per week to Employment Support Allowance introduced last year.\(^10\) Consequently disabled people struggle more than most to meet the basic costs of living, and over 18% of disabled adults are afflicted by food poverty compared with 7.5% of non disabled people.\(^11\)

17. In 2016 the House of Lords Select Committee on the Equality Act 2010 and Disability reported that the Government was failing in its duty of care to disabled people in the workplace and across society at large and that practice in all areas required improvement.

**Age discrimination**

18. Prejudice, unconscious bias and casual ageism in the workplace are a serious and growing challenge. We agree with the Women and Equalities Select Committee’s recent conclusion that the Government is “failing to enforce the law” on age discrimination.\(^12\) The Committee’s finding that more than a million people aged over 50 are being locked out of the workplace is

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\(^9\) Equality and Human Rights Commission, ibid, April 2017


a major concern. We consider that the employer-led nature of the Government’s approach is inadequate, and far more needs to be done to tackle age bias and create an age-friendly workplace culture.

**Enforcement under the Equality Act 2010**

19. The CWU believes that enforcement action under the Equality Act is not working effectively due to a range of factors. These include a severely inadequate level of funding and resources for the EHRC; weaknesses in the tribunal system; and restrictions on trade union rights.

**The powers, funding and effectiveness of the Equality and Human Rights Commission**

20. The Equality and Human Rights Commission has a significant range of powers which are set out in the Equality Act 2006. They include investigations, unlawful action notices, applications to court, legal assistance and judicial review. However, the Government has failed to adequately resource the EHRC to enable the commission to make effective use of these powers.

21. The 2012 decision to strip the Commission of its duty to promote a society with equal opportunity for all and a 50% reduction in its staffing and funding set the tone for Government policy towards the organisation. By 2020 the Equality and Human Rights Commission’s budget will be reduced to £17.4m, down from £62m in 2010. This represents a decline of more than 75% and will see the total workforce fall by a further 10% - almost two-thirds in a decade.

22. These radical reductions in funding and resource make it impossible for the EHRC to carry out its role effectively and properly enforce the provisions of the Act. They also come at a time when the Commission is taking on a major new statutory responsibility with regards to gender pay gap reporting. The Commission operates to the full capacity of its limited financial resources, reporting that it was on course to spend around 98 per cent of its overall budget and 100 per cent of its legal work budget in the last financial year. It has been forced to ask the Government for additional resources for its work on gender pay gap reporting.

23. We are also concerned that the EHRC’s powers are not always suitable. For example, its powers for enforcing the Gender Pay Gap Information Regulations 2017 are too cumbersome to provide swift, effective enforcement. The EHRC has said that enforcing compliance sits outside its remit, and that the initial enforcement of gender pay regulations would be through engagement with employers rather than sanctions. Meanwhile, legal experts have

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16 Maria Miller attacks ‘toothless’ equality regulator on gender pay, Financial Times, 24th February 2018, accessed at: https://www.ft.com/content/4f7186b6-17d8-11e8-9376-4a6390adbb44
17 Financial Times, ibid, 24th February 2018
warned that a change in the law is required before employers can be punished for not reporting their gender pay gap data.\textsuperscript{18} We believe the Equality Act should be amended to confirm the EHRC’s role in enforcing the Regulations. We also believe the EHRC’s powers should be strengthened on this issue. This could include new powers to fine employers directly for failing to comply with gender pay gap reporting, rather than referring cases to the courts.

\textbf{Tribunals and other means of legal redress under the Equality Act}

\textbf{24.} The introduction of Employment Tribunal fees in July 2013 created a significant barrier to justice for those wishing to enforce their rights at work, including under the Equality Act. We therefore welcomed the Supreme Court’s ruling last year that employment tribunal fees were unlawful, and that the Government must repay up to £32m to claimants.

\textbf{25.} However, the Government does not plan to compensate the thousands of people who would have brought employment tribunal cases between 2013 and 2017 if fees had not been in place. We believe there should be retrospective action by government to ensure access to justice for all those for whom fees were a barrier to bringing a case to tribunal during that period.

\textbf{26.} We also believe that a wholesale reevaluation of the tribunal system and sentencing is required. This should include a reinstatement of the power (removed under the Deregulation Act 2015) for employment tribunals to make recommendations in relation to the wider workforce when dealing with discrimination claims. This would encourage far reaching changes to workplace culture. Presently when individuals bring a successful claim against their employer, there is no obligation on the employer to apply the terms of the judgment to any of its other workers. The current system therefore fails to serve as a mechanism for achieving widespread change.

\textbf{27.} We also believe that employment tribunal awards are too low to act as an effective deterrent against discrimination in the workplace. For example, the median award for a claim of sex discrimination in 2016/17 was £8,381. Given the significant investment in bringing a tribunal claim in terms of cost and time, not to mention the emotional stress and risk to an individual’s future employment, the low level of awards means individuals are considerably less likely to pursue a potential claim. We believe awards of compensation as a result of successful discrimination claims need to be substantially higher to encourage a better culture of compliance with the Equality Act.

\textbf{28.} Furthermore, it is clear that the time limit of three months is too short to bring maternity discrimination cases. As the ‘Pregnant Then Screwed’ campaign group has noted, this arbitrary deadline falls at a time when a woman is at her most vulnerable: women will be time poor and potentially lacking in both confidence and energy.\textsuperscript{19} Starting tribunal

\footnotesize{\textsuperscript{18}Doubts raised on whether UK gender pay sanctions are enforceable, Financial Times, 2\textsuperscript{nd} January 2018, accessed at: \url{https://www.ft.com/content/ed34624a-eca6-11e7-8713-513b1d7ca85a}

\textsuperscript{19}Extending the 3 month time limit, Pregnant then Screwed, accessed on 4\textsuperscript{th} October 2018 at: \url{http://pregnantthenscrewed.com/extending-the-3-month-time-limit/}}
proceedings may also have a profoundly negative impact on the relationship between mother and baby, interrupting a vital bonding period.

29. Finally, the system of enforcement of tribunal awards is not fit for purpose, with around 35% of successful claimants not receiving their compensation. We believe the HMRC should have the power to recover unpaid awards and to issue penalties to employers who fail to pay. We are also concerned that there are no formalised sanctions against those employers who regularly face employment tribunals. We believe that where there are repeated cases of malpractice, the penalties faced should be uplifted. In addition, we consider that information concerning successful employment tribunals should be made publicly available through a searchable database in order to expose employers who use discriminatory practices and breach the Equality Act.

The role of trade unions in ensuring compliance with the Equality Act 2010

30. Trade unions play a crucial role in protecting workers rights and improving compliance with the law, including the Equality Act. The CWU calls on the Government to recognise the importance of trade unions and collective bargaining in achieving these goals. Strong trade unions can negotiate effective policies and procedures to tackle workplace discrimination and they can raise awareness to help ensure respect for equalities legislation.

31. Trade union rights in the UK are among the most restrictive in the world and have come under attack most recently through the Trade Union Act 2016. The CWU is calling for a repeal of the Trade Union Act and a set of positive rights to promote and extend collective bargaining. This should include a right of access for unions into workplaces to help ensure people are protected against inequality and discrimination at work and can enforce their legal rights, including under the Equality Act.

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