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##### Use of gender statistics in policymaking and policy monitoring

## Setting the policy agenda through measuring and reporting on equality and human rights

Note by Equality and Human Rights Commission, United Kingdom\*

### *Abstract*

The UK Equality and Human Rights Commission's measurement framework and approach to monitoring that underpins statutory reviews provide a sound structure and rich evidence base for identifying priorities for policymakers.

This paper describes how the 2018 review of equality and human rights in Britain, the most comprehensive to date, was carried out. How its recommendations for change have informed the Commission's own priorities for the next year, through the Business Plan for 2019-20 and will be used to set the agenda for future work with a wide range of people and organisations. Two examples link our work with policy developments in Britain.

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NOTE: The designations employed in this document do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

## I. Background

1. The Equality and Human Rights Commission's (the Commission's) purpose is to protect and promote equality and human rights in Great Britain, and it has been given a range of statutory powers and duties, which are set out in the Equality Acts 2006<sup>1</sup> and 2010.<sup>2</sup> As a UN National Human Rights Institution (NHRI) it operates in accordance with the Paris Principles.<sup>3</sup> It is also a National Equality Body (NEB).
2. The Commission has statutory obligations to monitor progress towards the aims in the Equality Acts and to assess the UK's compliance with the international human rights framework.

### A. Monitoring progress towards the aims in the Equality Acts

3. Under Section 12 of the Equality Act 2006, the Commission is required to monitor social outcomes from an equality and human rights perspective by developing indicators and reporting on progress. This duty is described in the legislation as follows:
  - (1) The Commission shall from time to time identify—
    - (a) changes in society that have occurred or are expected to occur and are relevant to the duties specified in sections 8 and 9,<sup>4</sup>
    - (b) results at which to aim for the purpose of encouraging and supporting changes in society that are consistent with those duties (“outcomes”), and
    - (c) factors by reference to which progress towards those results may be measured (“indicators”)
  - (2) In identifying outcomes and indicators the Commission shall—
    - (a) consult such persons having knowledge or experience relevant to the Commission's functions as the Commission thinks appropriate,
    - (b) consult such other persons as the Commission thinks appropriate,
    - (c) issue a general invitation to make representations, in a manner likely in the Commission's opinion to bring the invitation to the attention of as large a class of persons who may wish to make representations as is reasonably practicable, and
    - (d) take account of any representations made.
  - (3) The Commission shall from time to time monitor progress towards each identified outcome by reference to any relevant identified indicator.
  - (4) The Commission shall publish a report on progress towards the identified outcomes by reference to the identified indicators
    - (a) within the period of three years beginning with the date on which this section comes into force, and

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2006/3/contents>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>3</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

<sup>4</sup> Sections 8 and 9 relate to the promotion of equality and diversity and of human rights respectively.

(b) within each period of five years beginning with the date on which a report is published under this subsection.

(5) The Commission shall send each report to the Secretary of State, who shall lay a copy before Parliament.

## **B. Assessing compliance with the international human rights framework**

4. As a NHRI, one of the Commission's core tasks is to monitor the UK's compliance with the seven United Nations (UN) human rights treaties it has signed and ratified. By ratifying the treaties, the UK has pledged to make sure its domestic laws and policies comply with them. This means the Commission, Parliament and civil society can hold the Government accountable against the terms of the treaties. The UK is committed to ensuring everyone can enjoy the economic, social and cultural rights they contain over time (a process the UN calls 'progressive realisation').
5. Formal monitoring of the UK's treaty obligations is done by the relevant UN treaty body. The Commission supports this by examining the Government's performance across all the treaties and reporting to the UN in what are known as 'shadow reports'.

## **C. Outline of this paper**

6. Section II summarises the process for producing the Commission's statutory review, starting with our Measurement Framework which was described at the last meeting (Working Paper 28<sup>5</sup>). Section III then describes our priority aims for 2019/20, and Section IV provides two examples linking issues with policy developments.

## **II. The Commission's 2018 review of equality and human rights in Britain**

7. In order to fulfil the duty in Section 12 of the Equality Act 2006 (see paragraph 3. above), the Commission has been developing a Measurement Framework since it was set up in 2007. Previous papers have described the various stages, starting with statistical measures of equality in the Equality Measurement Framework in 2008 and ending with the unified Measurement Framework<sup>6</sup> published in October 2017, in time for the Commission's tenth anniversary.

## **D. The Commission's Measurement Framework**

8. The 2017 Measurement Framework brought the measurement of equality and human rights together for the first time in a more coherent way. The ten domains we had previously used were reduced to six: Education, Work, Living standards, Health, Justice and personal security, and Participation. These reflect the things or areas in life that are important to people and enable them to flourish.

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<sup>5</sup> <https://www.unece.org/stats/documents/2017.11.gender.html>

<sup>6</sup> <https://www.equalityhumanrights.com/en/publication-download/measurement-framework-equality-and-human-rights>

9. Key issues within those domains were identified and form the 'indicators'. These are intended to capture and define the underlying concept that we are trying to measure and a rationale is given for each of them. There are three core indicators and up to two supplementary indicators per domain. For example, the Work domain has three core indicators: Employment, Earnings and Occupational segregation; and one supplementary indicator: Forced labour and trafficking.
10. For each indicator, the evidence needed to measure progress is identified. This is based on the 'structure / process / outcome' approach from the human rights indicator framework developed by the Office of the United Nations High Commissioner for Human Rights and also draws on the capability approach adopted by our initial frameworks for measuring equality.
11. Almost all the indicators include statistical measures which have been chosen for monitoring purposes as representative of what is happening in that issue. These measures do not attempt to provide a complete picture of inequalities within the topic, but an indication of the relative experiences of different groups which can be followed over time. For example, the measure for the Employment indicator are: employment and unemployment rates, and the percentage in insecure jobs.
12. Please see Working Paper 28 from the Gender Statistics Work Session held in Belgrade, Serbia in December 2017 for further details.

## **E. Evidence gathering**

13. Each review starts with gathering the evidence identified by the Measurement Framework. With 48 different measures to populate, some drawing on three or more sources, the challenge was to timetable the statistical analysis so as to use the most up-to-date evidence, but also to produce a set of data tables by early in 2018. As far as possible, data were obtained for 2010/11, 2013/14 and 2016/17. However, not all data had been collected over that period of time, had discontinuities in the series or were not published in time for inclusion. In some cases 2016/17 data were not released until Spring 2018.
14. The analysis followed the previous review in including:
  - breakdowns by protected characteristics (including age, sex, disability, ethnic group, marriage / civil partnership, religion, sexual orientation) and socioeconomic group,
  - cross-sectional analysis for each year
  - change over time.
15. Developments in the analysis for the 2018 review have been to include:
  - intersectional analysis to show where there were interactions between protected characteristics
  - regional analysis within England for a separate 'Is England Fairer?' report
16. In parallel with the statistical analysis, a cross-Commission team for each domain worked on gathering other evidence for each of the 19 indicators included in the 2018 review. Representatives from legal, policy and research contributed evidence on:
  - Structures: the UK's commitments to equality and human rights, for example, as shown in primary legislation and significant case law
  - Processes: actions that have an impact on equality and human rights, such as new policies, strategies, action plans, regulations and their evaluation
  - Outcomes: the different experiences of groups shown by: results from quantitative and

qualitative studies, social surveys, administrative data, or the concerns expressed by regulators, inspectorates, human rights monitoring bodies or NGOs.

## **F. Is Britain Fairer? 2018**

17. This evidence was then pulled together into a set of reports separately covering Britain, Scotland and Wales.<sup>7</sup> Please note that, at the time of writing, these are pre-publication drafts which we hope will be laid before Parliament in April/May. A report for England, which includes regional data, will also be released at the same time.
18. The format of the main report for Britain includes chapters for each of the six domains in our Measurement Framework. Each chapter reports on key policy and legal developments in the domain as a whole since the previous review and key outcomes for each indicator within the domain, including write-up of differences and changes in the statistical measures.
19. Key findings for each domain are then drawn together into a concluding chapter. This identifies four significant findings:
  - Increases in employment, narrowing of educational attainment gaps and increases in political participation
  - Pressure on living standards as a result of Government policies on social security and taxation, particularly for disabled people, women and some ethnic minorities
  - Poorer outcomes for some groups, such as disabled people not experiencing the progress seen for other groups
  - A reversal of earlier improvements in justice and personal security, with access to justice and fair representation limited by Government policies, deterioration in conditions of detention and an increase in identity-based violence
20. Gaps in the data were also identified, in particular data on lesbian, gay, bisexual and trans people (LGBT), religion or belief and pregnancy and maternity. Evidence was also limited on experiences of bullying and harassment across protected characteristics other than sex.
21. Finally the report presents recommendations for action in each domain as well as to strengthen the legal framework protecting equality and human rights and to fill gaps in evidence.
22. Supplements for Scotland and Wales provide similar information for those countries, while the forthcoming England supplement will report on four domains and present regional-level data for selected measures in each domain.

## **III. Influencing the Commission's future work**

23. Following each statutory review, the Commission produces and consults on strategic priorities for the next three years. Note that while these reviews are required to take place at least every five years, they are being carried out every three years in order to feed into and inform our Strategic Plans. Recommendations from the 2018 review have fed into the 2019/22 Strategic Plan, however as this is yet to be published the following is based on our Business Plan for 2019/20.<sup>8</sup>

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<sup>7</sup> <https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2018>

<sup>8</sup> <https://www.equalityhumanrights.com/en/publication-download/business-plan-2019-2020>

24. Taking forward recommendations from ‘Is Britain Fairer? 2018’, three strategic goals have been identified for 2019/20, under which there are five priority aims, plus a core aim to strengthen the legal framework and close evidence gaps.
25. The first strategic goal is: To ensure that people’s life chances aren’t held back by barriers in their way. This includes:
  - People in Britain have equal access to the labour market and are treated fairly at work, covering gender, ethnicity and disability pay gaps, and workplace sexual harassment
  - Public transport supports the economic and social inclusion of disabled people and older people, covering casework and creating links with industry bodies so as to understand better the landscape and opportunities to achieve change in this new area of strategic focus
26. The second strategic goal is: To make sure we have strong foundations on which to build a more equal and rights-respecting society
  - People can access redress when they are wronged and have a fair trial in the criminal justice system, covering making recommendations for changes to legal aid, improving data on discrimination cases, improving the treatment of disabled people in the criminal justice system and improving access to justice for women and girls who have survived violence
  - The education system promotes good relations with others and respect for equality and human rights, covering discriminatory exclusions, promoting equality, good relations and human rights in the curriculum, and improving the handling of racial harassment in universities
27. The third strategic goal is: To protect the rights of people in the most vulnerable situations
  - Rules and practice governing entry into, exit from and treatment in institutions respect equality and human rights standards, covering immigration detention and detention in relation to mental health and mental capacity
28. Finally the core aim is: Strong equality and human rights laws protect people and data shows what is happening to people in practice. This includes:
  - Strengthening the duties of public bodies under the Public Sector Equality Duty
  - Addressing any diminution of equality and human rights protections in key legislation as we leave the EU
  - Addressing data gaps and influencing the 2021 Censuses
  - Strengthening compliance with international human rights standards

## IV. Linking our review and planning cycle to policy developments

29. The previous sections have outlined the Commission’s three-year review and planning cycle. The remainder of the paper describes two examples linking this to the development of policy in Britain. These concentrate on two sex equality issues: the gender pay gap and sexual harassment. However it should be noted that the Commission’s priorities also cover pay gaps and harassment linked to other protected characteristics.

### G. Example 1 – The gender pay gap

30. The gender pay gap has long been a topic of discussion and has been measured in Britain since at least the early 1970s. That was when the New Earnings Survey (now renamed the Annual Survey of Hours and Earnings) started collecting data on employees’ earnings. The Equal Pay Act 1970 also came into effect in 1975 and the Equal Opportunities Commission was set up in December of the same year, providing legislation to tackle pay and an organisation with equal pay within its remit.
31. In 2015, while overall the gender gap in pay rates had narrowed, the Commission’s statutory review reported the following regarding pay gaps:  
“all age groups below the age of 55 experienced significant reductions in average hourly pay [adjusted for inflation], with the biggest declines in the younger age groups; there were persistent gender pay gaps among graduates; employment and earnings premiums for training and qualifications among graduates were higher for men than for women; some ethnic minorities and disabled people experienced greater declines in average pay”
32. New regulations came into force in 2017 requiring listed public sector employers and large private / voluntary sector employers respectively to publish prescribed information on their gender pay gap each year. At the deadlines in 2018, around 10,000 employers had published the required information, with 78% reporting a gender pay gap in favour of men. All relevant employers had reported by July 2018.
33. Key findings in ‘Is Britain Fairer? 2018’<sup>9</sup> again saw the gender pay gap decreasing, although still around 19% overall. Our recommendations included that all jobs should be open to flexible and part-time working from day one.
34. This year sees the second year of gender pay gap reporting by employers. During 2019/20,<sup>10</sup> the Commission will be enforcing the Gender Pay Gap Regulations, by monitoring the publication of gender pay gap data by employers and challenging those that seem implausible. We will also be encouraging employers to publish action plans.
35. Relating to pay gaps more widely, the Commission will continue to work with Government departments and teams to influence policy and legislation and promote action to tackle the roots causes of gender, ethnicity and disability pay gaps.

<sup>9</sup> <https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2018>

<sup>10</sup> <https://www.equalityhumanrights.com/en/publication-download/business-plan-2019-2020>

## H. Example 2 – Sexual harassment at work

36. Another topic that has been in the news is sexual harassment at work. The #MeToo movement and tribunal cases in the UK have brought new attention to this longstanding issue.
37. In 2017, the Commission launched a call for evidence from employers and individuals in connection with sexual harassment in the workplace.<sup>11</sup> Our recommendations highlighted the need to eliminate workplace sexual harassment through transforming workplace cultures, promoting transparency and strengthening legal protections. These included: introducing a mandatory duty on employers to take reasonable steps to protect workers from harassment at work, a code of practice specifying what employers should do to prevent and respond to sexual harassment and for the UK Government to collect data on the prevalence and nature of sexual harassment at work.
38. In 2018 the Women and Equalities Select Committee drew on our report in carrying out an inquiry into sexual harassment at work,<sup>12</sup> which resulted in a list of recommendations being made to the Government. These included support for a mandatory duty, code of practice and data collection. In the report they quoted statistics from a BBC-commissioned survey, since there are no up-to-date official statistics on this topic.
39. This topic was highlighted as a ‘serious challenge’ in the Commission’s review in October 2018, which combined with other inequalities limits women’s choices and opportunities.<sup>13</sup>
40. In December 2018, the UK Government announced a package of 12 measures to tackle sexual harassment at work.<sup>14</sup> Of these, the Commission has been given responsibility for developing a statutory code of practice on preventing and responding to sexual harassment at work, work which is included in our 2019/20 Business Plan.<sup>15</sup>
41. Alongside this, we will be working with the Government Equalities Office on awareness raising and on collecting data on the prevalence of sexual harassment at work. We will also be responding to a Government consultation on: non-disclosure agreements, how to strengthen and clarify the laws in relation to third party harassment, and the evidence base for introducing a new legal duty on employers to prevent sexual harassment in the workplace

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<sup>11</sup> <https://www.equalityhumanrights.com/en/sexual-harassment-workplace>

<sup>12</sup> <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2017/sexual-harassment-workplace-17-19/>

<sup>13</sup> <https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2018>

<sup>14</sup> <https://www.gov.uk/government/news/government-announces-new-code-of-practice-to-tackle-sexual-harassment-at-work>

<sup>15</sup> <https://www.equalityhumanrights.com/en/publication-download/business-plan-2019-2020>