This response draws out key themes in existing research and analyses (my own and others’) to answer the questions below on which the Committee has sought evidence. My focus is on the work context, although several of my conclusions have wider resonance.

1. **WEC questions: How easy it is for people to understand and enforce their rights under the Equality Act & How well enforcement action under the Equality Act works as a mechanism for achieving wide-scale change**

   **(a) Understanding of the Equality Act 2010**

   Understanding among non-experts of the rights and obligations contained in the Equality Act 2010 is limited. This in itself undermines the capacity of the Act to achieve wide-scale change. If people and organizations do not know or understand what law requires of them, it is hard to see how they can comply with the letter of the legislation, let alone the spirit. In other words, increasing understanding of the Equality Act 2010 is crucial to improving compliance.

   **Implications for policy:** There is an urgent need for resources and energy to be put into accessible, wide-ranging communication that enhances organizations’ and individuals’ understanding of equality law, both as it affects work and more broadly. The complexity of the law undoubtedly makes clear communication challenging, but I argue that:
   - The emphasis should be on getting across the essentials of the legal framework;
   - It is possible to extract those essentials from the mass of relevant legislation and case law and to produce meaningful, digestible communications, provided there is collaboration between legal and communication specialists.

   **(b) Enforcement of the Equality Act 2010**

   Formal enforcement of the Equality Act 2010 by individuals is unusual (judged against the number of problems encountered at work) and it is highly burdensome for those who attempt it. The upshot is that the impact of UK equality law (and workplace

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1 See generally, for example, on the complexity of the law on bullying and harassment, L Barmes, *Bullying and Behavioural Conflict at Work: The Duality of Individual Rights* (2016, OUP) and specifically at pp 185 on my interview study of senior lawyers and managers that: ‘Overall about three quarters of the senior managers commented on the technicality and complexity of the law and about half described their own and other people’s uncertainty and mistakes regarding the interaction of legal requirements and HR practices.’ See also E Jordan, EP Thomas, JW Kitching and RA Blackburn, *Employer Perceptions and the Impact of Employment Regulation* (BIS, ERRS 123, March 2013), on which I commented at pp 52 ‘Those interviewed indicated that employment regulation had little effect on HR practices and that generally HR staff did what they saw as best for their businesses. Employment regulation was, however, viewed as necessary to ensuring that employees were treated fairly, with legal complexity appearing significantly to account for such negative attitudes as were expressed.’ Notably, perceptions of legal complexity came across as particularly problematic for smaller businesses in that study.

regulation more generally) is dramatically weakened by its heavy reliance on individual enforcement.

That argument is strongly supported by the UK’s robust evidence base about problems at work, how people respond to them and what then happens.\(^3\) That has established in relation to (non trivial) work problems that:

- around half of the considerable majority who try to do something (comprising a wide range of possible reactions, including talking to managers) do not achieve satisfactory outcomes. When added to the minority who do nothing, the net effect is that a large percentage of workplace problems faced by individuals are going unresolved and broader lessons unlearned.\(^4\) This pattern is bound largely to hold for situations to which equality law is relevant, which form a sizeable subset of non-trivial employment problems.
- even for the small minority who litigate, as well as the even smaller group who end up at a contested hearing, qualitative evidence shows them to face a damaging, alienating ordeal, with consistent reports of difficulty even where claimants win. Powerful evidence to this effect particularly comes from studies of claimants in discrimination cases.\(^5\)

Settlement practice is another important piece of the puzzle of individual enforcement of the Equality Act 2010 in relation to work. On the one hand, many of the relatively small number of situations in which someone begins court or tribunal proceedings are settled and, on the other, a large shadow of complaints are settled before proceedings are begun. Settlement agreements typically give a complainant money in return for abandoning their claim, at the same time almost certainly preventing enquiry into the wider implications that an individual’s experiences might have, including by imposing confidentiality obligations. Indeed, preventing recognition of larger scale problems in the background to an individual complaint may well be what organizations seek to achieve through settlement agreements.\(^6\)

The upshot of these observations is that overall the law is not reliably either producing solutions for individual working people and employers or bringing about systemic

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\(^3\) See for an overview and analysis of the different data sources and their findings Barmes (n 1), chapter 2.

\(^4\) Barmes (n 1), 28-37, 53-54 & 227-236.


\(^6\) See Barmes (n 1), 205-207, 210-212 & 220-221 and specifically at 221 on my qualitative interview study: ‘A repeated theme… was of unpleasant behaviour being intrinsic to high workplace attainment…. There were also accounts of routine practices in hierarchical workplaces of using settlement to “buy off” complaints that, against the odds, were made: “My experience of that case, and of other cases in the financial sector, is that there’s a big part of private industry, well paid private industry in the City, that just buys their way out of problems. It probably applies to City law firms as well. In those environments, if they have a square peg in a round hole they pay an awful lot of money to get rid of the square peg. They see it as a cost of business. There is absolutely no chance of those employers changing the way they do things. That is the way they are going to do business and payouts are a cost of ensuring that. SL3 (solicitor, employee side)” This might, of course, lead to someone whose individual labour and equality rights were breached receiving money, but the importance of this observation is that it shows how settlement practice… can systematically be designed to allow problematic organizational practices to continue.’
change, albeit that there will be variable impacts in different kinds of workplaces. Perhaps the starkest evidence I gathered of wider learning opportunities being missed concerned the limited impact of judgments in the rare cases that litigation reached that point: ‘About one half of the senior lawyers observed that employers simply do not accept adverse findings by tribunals and courts, while a sizable number saw any impact as constrained and as ignoring the wider implications of particular cases.’

The transferability of these findings and analysis to non-work situations needs further investigation. Even so, there are many reasons to anticipate that reliance on individual enforcement is even more problematic outside the work sphere where people are even less likely to be in a position to litigate.

**Implications for policy:** There is an urgent need to stop relying primarily on individual enforcement to fulfil the goals of equality legislation. Effective enforcement of the law means going beyond individual disputes, formal action and public enforcement bodies. Instead there should be an ongoing programme of activity across the full range of government, public bodies and beyond, conceived as a rolling, continuous programme of implementation and enforcement of the letter and spirit of the Equality Act 2010.

My suggestion above for better communication in fact exemplifies this conclusion. Spreading understanding of the essence of the Equality Act 2010 would produce a significant implementation and enforcement effect, systematically promoting compliance in ways that formal measures struggle to achieve. Yet public bodies like the EHRC cannot do this work alone. Rather the communication challenge needs to be taken up across government and society, including through measures that steer and catalyze action in the private sector.

2. **WEC questions:** How effective and accessible tribunals and other legal means of redress under the Equality Act are, and what changes would improve those processes

& How effective current remedies for findings of discrimination are in achieving change, and what alternative or additional penalties should be available;

My answers above outline problems with the effectiveness and accessibility of the courts and ETs and with the effectiveness of current remedies. I would add that:
(a) The highest priority should be reducing reliance on individual enforcement. Nothing much will change if reform effort is directed merely at tweaking the existing, highly individualized, court and ET-based enforcement model.
(b) Where changes are made to ET and court procedure etc, however, they should be directed at:
- widening participation in litigation and reducing the burden on individuals, for example by enabling class and representative actions and otherwise extending the involvement of third parties such as trade unions, NGOs and public bodies (like the EHRC).

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7 Barmes (n 1), chapter 9 and pp 253-256.
8 Barmes (n 1), 207.
It is worth in this context noticing the innovative action that is being taken in all sorts of places to address injustice at work (and more broadly). Initiatives by newspapers, social movements, trade unions (some newly established), online activist platforms, social media campaigns and indeed Parliamentary Select Committees, are all striking. There is a real opportunity to build on these developments to improve implementation and enforcement of the Equality Act 2010 (and other regulation). Equally, there is a real risk of ignoring them. The dangers of neglecting disaffection, distrust and disillusion about how we are governed (in the broadest sense) are becoming painfully clear from the current political, social and economic travails in the UK, echoing to some degree upheaval elsewhere.

- requiring more active engagement from employers, for example through remedial orders that require organizational change (of which comparative examples are available, notably from the US and from Australian conciliation processes).

This is also an area where there is scope further to build on existing UK experience of the public duties, in particular by crafting more imaginative, participative formal enforcement and remedial possibilities to bring new life to seeking compliance with the Equality Act 2010.9

3. WEC question: Whether there are other models of enforcement, in the UK or other countries, which could be a more effective means of achieving widespread compliance with the Equality Act 2010, either overall or in specific sectors.

My answer above to some extent responds to this. An additional area where there is room for further investigation concerns the place of positive action measures in equality law. Law reform possibilities that ought at least to be considered are:

(a) Creating more legislative obligations to take positive action where it is established that proportionate positive steps are warranted to address an area of inequality;
(b) And/or to empower ETs, courts and potentially other bodies (like the EHRC) to make (or at least to initiate) positive action remedial orders in like circumstances.

This idea has arisen from current work in progress (with Saphié Ashtiany and Kate Malleson) about the voluntary positive action provisions in the Equality Act 2010 (ss 158 & 159). As such I am at an early stage of thinking through the possibilities with colleagues, while noting that this is another topic on which there is scope to learn from comparison, for example with the US.

October 2018

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9 On these two suggestions, see for further discussion at Barmes (n 1), 261-265.