



# Scotland Annual Report 2016/17

# About this publication

## What is the aim of this publication?

The Scotland Annual Report presents some of the notable achievements of the Equality and Human Rights Commission in Scotland in the past year. The 2016/17 report highlights the work undertaken by the Commission in Scotland on pregnancy and maternity discrimination, racial discrimination, legal case intervention and disability rights. This report also outlines the Commission's follow-up work after publication of 'Is Scotland Fairer?' in 2016, drawing on recent examples that are helping progress key equality and human rights challenges in Scotland across all areas of life including housing, economic growth, education and justice.

## Who is it for?

This report is intended for stakeholders, individuals and the public who are interested in the Commission's work in Scotland. The report will also inform the Scottish Government and Parliament of our activities.

## What is inside?

**Part 1** sets out the role of the Commission in Scotland in delivering Scottish-specific work and programmes on equality and human rights.

**Part 2** provides an overview of the outcomes that have been achieved in Scotland in the past year. It highlights the progress made in:

- Tackling pregnancy and maternity discrimination
- Protecting disabled people's rights
- Addressing racial inequality, and
- Dealing with hate crime

**Part 3** presents an overview of coverage that the Commission in Scotland has received across national and regional press, broadcast and online media.

**Part 4** looks at key areas which the Commission in Scotland will focus on in 2017/18.

## Why has the Commission produced this?

The Equality and Human Rights Commission promotes and enforces the laws that protect our rights to fairness, dignity and respect. As part of its duties, the Commission monitors and reports its progress on delivering its key strategic priorities set out in its annual **Business Plan**.

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# Contents

<b>Foreword</b>	<b>4</b>
<b>1. Who are we are and what we do</b>	<b>5</b>
1.1 Our role	5
1.2 The Scotland Team	5
1.3 The Board and our Scotland Committee	6
<b>2. Scotland highlights 2016/17</b>	<b>7</b>
2.1 'Is Scotland Fairer?'	9
2.2 Pregnancy and maternity discrimination	10
2.3 Monitoring the Public Sector Equality Duty	12
2.4 Social security	12
2.5 Scotland Committee	13
2.6 Our legal work	13
2.7 UN Committee on Rights of Persons with Disabilities	16
2.8 UN Committee on the Elimination of Racial Discrimination	17
2.9 Hate crime	17
<b>3. Communications</b>	<b>18</b>
<b>4. Looking to the future: 2017/18</b>	<b>19</b>
<b>Contacts</b>	<b>20</b>

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## Foreword from Scotland Commissioner

In the past year, the Equality and Human Rights Commission in Scotland has delivered an extensive programme of work with the sole objective of making Scotland a fairer place for all.

Our achievements have included successful legal interventions on key human rights concerns, our agenda-setting work to tackle pregnancy and maternity discrimination and our work to further 'Is Scotland Fairer?' in the areas of housing, economic growth, education and justice. We have engaged individuals and communities across Scotland, ensuring we represent and understand those issues that impact many people and prevent fair and equal access to opportunity and human rights.

We have undertaken this work with less resource, but have ensured through the implementation of a new model of working across the organisation, delivery of our aims and objectives has not been impacted. We also strengthened our focus and resource allocation in key areas such as our regulatory and enforcement work.

The Commission also relies on the expert guidance and contributions of the Scotland Committee and on the continuing hard work of the dedicated team in Scotland. On behalf of the entire Commission, we would like to thank them all for their efforts and I would also like to especially acknowledge the contributions of those Scotland Committee members who stepped down this year and my predecessor Kaliani Lyle.

We have an exciting and ambitious work plan for 2017/18 that we believe will support our continued ambition to make Scotland fairer. And we recognise this will only be achieved through our continued programme of partnership working with stakeholders, agencies and organisations who share our aims and vision for a fairer Scotland.

**Lesley Sawers**

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# 1. Who are we and what we do

The Equality and Human Rights Commission ('the Commission') is the National Equality Body for Scotland, England and Wales, working across the nine protected characteristics set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

We are an 'A' status National Human Rights Institution (NHRI) and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).

Through our work with the public, private and voluntary sectors, the Scottish Government, and with individuals, we seek to ensure that our society is one in which everyone has the opportunity to achieve their full potential.

## 1.1 Our role

The Commission's statutory powers give us a range of tools to address the areas of work that we have prioritised. We aim to be:

A **catalyst for change**, using our statutory powers to explore systemic issues, gather evidence and develop possible solutions.

An **information provider**, helping people understand their rights and responsibilities and improve compliance with the law.

An **influencer**, through our legal expertise, research, insight and analysis, influencing public policy and informing debates.

An **evaluator**, monitoring the effectiveness of the laws on equality and human rights and measuring progress in society.

An **enforcer**, using our strategic enforcement powers to protect people against abuses of their rights and to clarify equality and human rights law.

## 1.2 The Scotland Team

There are 17 staff in the Scotland Directorate made up of Legal, Policy, Parliamentary, Research, Communications and Business Support. We work on a wide variety of issues important to the people of Scotland, as set out in our annual **Business Plan** and our three-year **Strategic Plan**. The Scotland Team are responsible for leading Scottish specific work and engaging with Scottish stakeholders as well as ensuring that national Britain-wide programmes are relevant to the needs of Scottish stakeholders and partners.

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## 1.3 The Board and our Scotland Committee

Our Board of Commissioners is responsible for the strategic direction and oversight of the Commission across Great Britain and includes the Scotland Commissioner, Lesley Sawers, who also chairs the Scotland Committee.

The Scotland Committee is a statutory decision-making committee and is responsible for ensuring the overall work of the Commission reflects the needs and priorities of the people of Scotland.

Following a great deal of discussion by Committee members of where to focus their resources, the Scotland Committee decided this year to focus on the experiences of people with learning disabilities in the Scottish criminal justice system and we have appointed research organisations to gain a better understanding of the main issues and challenges people with learning disabilities face when they are accused or convicted of crimes in Scotland.

This year, the Scotland Committee have evaluated the approach they will take and how work is selected for the Committee to focus on going forward. The Scotland Committee has a current complement of eight, made up of new and continuing members. Neelam Bakshi and Dr Donald Lyons completed their terms during the year and four new members were appointed: David Crichton, Naomi McAuliffe, Clare MacGillivray and Nicole Busby who joined Des McNulty, Colin Young, Lorraine Barrie and Emma Ritch.

The Scotland Committee led a number of stakeholder engagement events during 2016/17 promoting our 'Is Scotland Fairer?' publication and details of these events are included in this report.



## 2. Scotland highlights 2016/17

Our team work closely with colleagues in England and Wales on programmes spanning the public, private and third sectors, domestic and international human rights, and in using our legal powers. The Commission's work across Great Britain is detailed in our Annual Report and Accounts 2016-17.

This report highlights just some of the notable outcomes that have been delivered in Scotland in 2016/17:

- We held three roundtable discussions on topics raised in our '**Is Scotland Fairer?**' report, which reported on progress on equality and human rights.
  - Following our major research into the issue last year, the Scottish Government launched a Working Group on **pregnancy and maternity discrimination** which we were invited to sit on.
  - As well as **monitoring compliance with the Public Sector Equality Duty (PSED)**, we published a review of Scottish Ministers' progress in meeting their specific equality duty requirements in our 'Measuring Up? 5' publication and reported on the publication of equality outcomes and mainstreaming reports by a further 35 public bodies.
  - We started work with the Scottish Government on ensuring dignity and respect are at the heart of their new **social security** powers.
  - We successfully intervened in a case against the **Home Office** where a victim of domestic violence was being compelled to remain in an abusive relationship in order to avoid the risk of deportation, having no entitlement to public services.
  - We ensured **NHS Tayside** improved the ability of patients with additional communication requirements by reason of disability to fully access health care services as a result of our **legal agreement with them**.
  - We worked in partnership to compile a comprehensive UK-wide submission to the **UN Committee on the Rights of Persons with Disabilities** which included a report about **disability rights in Scotland**.
  - We have accepted an invitation to sit on the Scottish Government reference group into the effectiveness of **hate crime legislation in Scotland**. This follows a busy year of projects, advice and reports on the issues in Scotland following the outcomes of the EU referendum result.
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## During the year we responded to over 20 consultations

from the Scottish Government and Parliament. Further details on all of our consultation responses can be found on our Scotland Policy pages on the Commission's website.



Our legal eBulletin provided over 900 subscribers with legal articles and updates.



## Following the Brexit vote,

we arranged events to address questions about what this might mean for equality and human rights.



We ran  
**four**



legal stakeholder 'Transfer of Expertise' (ToE) events attended by over 500 people on issues ranging from the rights of asylum seekers to pregnancy discrimination

## 2.1 'Is Scotland Fairer?'

In 2010, the Commission produced its first report on equality, 'How Fair is Britain?', with a separate report on human rights in 2012. 'Is Britain Fairer?' (2015) was the Commission's follow-up report on both equality and human rights.

In January 2016, we supplemented this report with 'Is Scotland Fairer?' the biggest ever study into progress on equality and human rights published in Scotland.

Based on the findings of the report, we outlined seven key equality and human rights challenges for improvement in Scotland in the coming years:

- **Improve the evidence** and the ability to assess how fair society is.
- Raise standards and close attainment gaps in **education**.
- Encourage fair recruitment, development and reward in **employment**.
- Support improved **living conditions** in cohesive societies.
- Encourage **democratic participation** and ensure access to justice.
- Ensure all people can access the **health** services they need.
- Tackle targeted **harassment and abuse** of people who share particular protected characteristics.

Following on from these findings, this year our Scotland Committee hosted a series of events to raise the profile of some of these issues and share research and learning. Feedback from stakeholders showed these seminars, listed below, were well-received and had a positive impact.

- **Scotland, without prejudice? (12 September 2016)**

This seminar brought together the latest thinking on prejudice and unlawful behaviour, hate crime and community cohesion. Speakers were Dr Duncan Morrow, Chair of the Independent Advisory Group on Hate Crime; Susan Reid of Scotcen, looking at the results of the Social Attitudes Survey Discrimination Module; and Verena Braehler, Head of Research at the Commission, discussing prejudice and unlawful behaviour and the levers for change.

- **Roma lives in Scotland (16 February 2017)**

Our 'Is Scotland Fairer?' report found little current evidence about the experiences of Roma people in Scotland. This event helped to fill this evidence gap, allowing us to understand the key issues Roma people in Scotland face today such as employment and housing. As well as hearing directly from the participants, we also heard from Marcela Adamova, a Roma activist who lived and worked in Glasgow for over 10 years.

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- **Delivering diversity in participation (28 February 2017)**

A key point in the Fairer Scotland Action Plan was around increasing participation – more opportunities for local people to play a part in decisions that affect them and greater involvement of service users in the design of services. This seminar was an opportunity to learn and share views and experiences to help make that aspiration a reality. Speakers included Angela O’Hagan from Glasgow Caledonian University on participatory budgeting, Bill Scott from Inclusion Scotland on how to increase the participation of disabled people, and Keith Lynch from People 1st talking about enabling participation of people with learning difficulties.

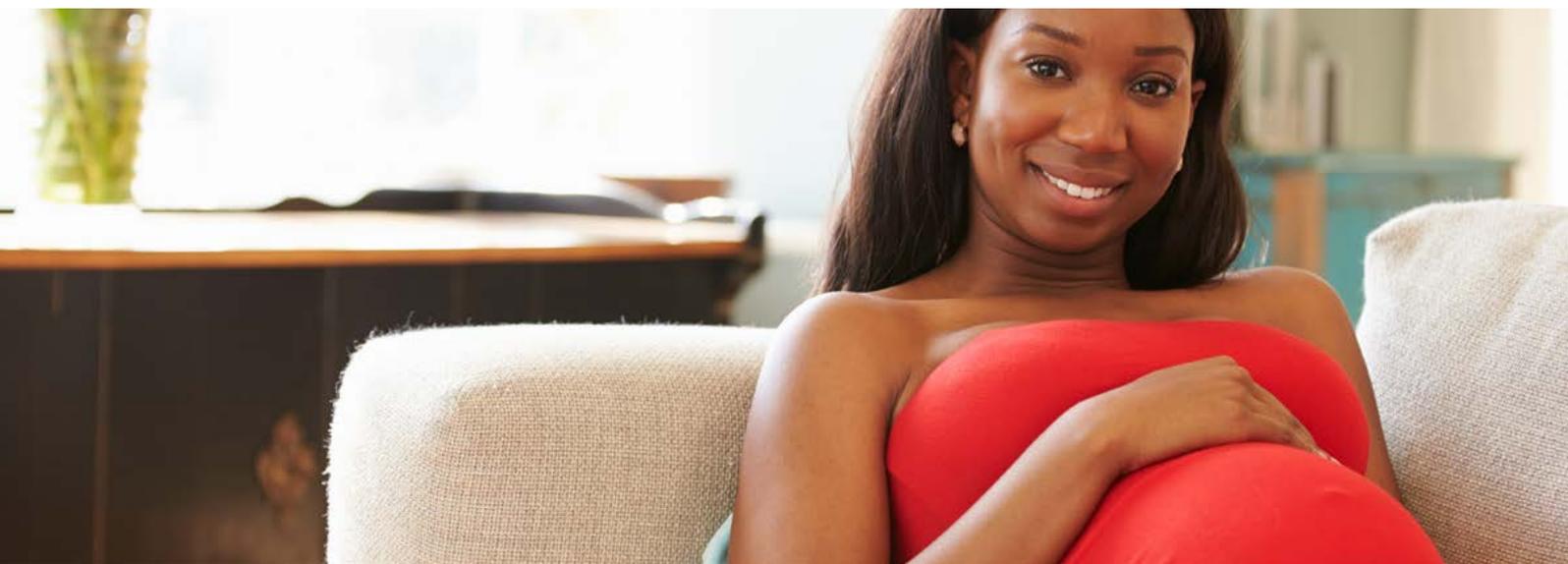
## 2.2 Pregnancy and maternity discrimination

Our March 2016 research into pregnancy and maternity discrimination in Scotland suggested that around three-quarters of pregnant women and new mothers in Scotland – the equivalent of over 30,000 women – experience negative or potentially discriminatory treatment at work each year. We then published wide-ranging proposals for change, including ending the practice of women being asked whether they intend to have children in job interviews.

Following this research, the Commission in Scotland worked extensively with the Scottish Government, which resulted in the Scottish Government’s commitment to improve the working conditions of pregnant women and those on maternity leave.

In the past year, we have worked to tackle pregnancy and maternity discrimination and disadvantage in the workplace, drawing on our research that sets out the scale and nature of the challenges facing pregnant women and new mothers. We spoke at several employer events during the year to promote our tools and resources, and with partners in the third sector to promote the ‘Power to the Bump’ campaign, a social media campaign aimed at young mothers under 25.

We joined the Scottish Government’s Working Group on Pregnancy and Maternity whose remit includes developing governance; reviewing and enhancing guidelines; ensuring employers, in particularly small to medium-sized businesses, have more access to advice; and strengthening the advice pregnant women receive through the NHS.



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of pregnant women  
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## 2.3 Monitoring the Public Sector Equality Duty

The PSED, as set out in the Equality Act 2010, requires listed public authorities, in the exercise of their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and other prohibited conduct
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not, and
- foster good relations between people who share a protected characteristic and those who do not.

In Scotland, most listed authorities covered by the PSED are subject to specific duties which were introduced in May 2012 and cover a four-year reporting cycle. The purpose of the specific duties is to help those authorities comply with the PSED.

The Commission has been working since the introduction of the specific duties to ensure compliance and monitor their effectiveness.

In August 2016 we published our first assessment of the progress of Scottish Ministers towards meeting their own specific duty under the Equality Act Scottish regulations. The report assessed progress to date to identify strengths and weakness in the Scottish Government's approach and to identify areas which may require additional work.

A further 'Measuring Up' report was issued in November 2016 which focused on bodies who were 'newly listed' for the Equality Duty. These are organisations which have come into being since the introduction of the duty in 2012. The 'Measuring Up 6' report focused on progress made by Integration Joint Boards, College Boards and some new Executive Agencies.

## 2.4 Social security

2016 saw the devolution of new social security powers to the Scottish Parliament. The Scottish Government has committed to a Scottish social security system based on the principles of fairness, dignity and respect.

Following a decision by the Scotland Committee, in partnership with the Scottish Human Rights Commission, we have been working with the Scottish Government to bring their commitment to life and give their aspirations clear practical grounding. We commissioned academic research as a contribution to the debate, focusing on examples of good practice from other countries. This will be published in July 2017.

We also agreed to share our expertise on cumulative impact assessment to ensure the Scottish Government's decisions take account of the full picture and the overall impact of various social security policies on people's lives.

We will continue to work with the Scottish Government and the Scottish Human Rights Commission in this important area in the coming months.

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## 2.5 Scotland Committee

The Scotland Committee led on a piece of research into the experiences of people with learning disabilities in the Scottish criminal justice system. The aim of this research was to gain a better understanding of the main issues and challenges people with learning disabilities face when they are accused or convicted of crimes in Scotland.

The views of 38 individuals were collected through in-depth interviews. People with learning disabilities, criminal justice agencies, and professionals and support agencies all participated. Findings from the interviews highlighted that little progress has been made in recent years to address the challenges that accused/convicted people with learning disabilities may face. The current system appears to be stacked against people with learning disabilities from the outset, with challenges and disadvantage prevalent throughout the system.

The Commission will be publishing the key findings and recommendations from this research in the summer of 2017.

## 2.6 Our legal work

The focus of our legal work is to ensure people with protected characteristics are protected from discrimination as well as helping organisations meet their responsibilities. We do this by providing advice and guidance, publishing information and undertaking research. When these methods are ineffective, we also have a range of enforcement powers.

These powers are set out in the Equality Act 2006. There are a number of different approaches we can take, depending on the particular circumstances. They range from guidance and assistance to investigations and court action. We use our strategic enforcement policy to decide which powers can best be used to tackle particular problems.

Some of our notable work in 2016/17 included:

- **Home Office (A v SSHD)**

The Commission intervened in the case of A v Secretary of State for the Home Department. This case, a Judicial Review taken in the Court of Session, successfully challenged a Home Office policy on a domestic violence concession.

The decision means that spouses of refugees who leave their relationship because of domestic violence, are now protected and will receive support for a period of three months while their application for Indefinite Leave to Remain is considered.

This has the effect of preventing a victim of domestic violence from being compelled to remain in an abusive relationship in order to avoid the risk of deportation and having no entitlement to public services.

The Home Office applied for permission to appeal the decision, but this was refused.

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- **Section 23 Agreements**

Section 23 of the Equality Act 2006 enables the Commission to enter into an agreement with an organisation to prevent a potentially unlawful act.

- **NHS Tayside**

The s.23 agreement between NHS Tayside and the Commission came to a successful conclusion on 6 October 2016. The aim of the Agreement was to ensure that every NHS Tayside patient with additional communication requirements by reason of disability receives the same level of health care service as a non-disabled patient. This includes the provision of reasonable adjustments such as British Sign Language (BSL) interpreters, as and when required.

Under the agreement NHS Tayside set themselves outcomes to help improve the experience of deaf and hard of hearing patients. The review period in the agreement lasted for 24 months. During this time, NHS Tayside worked to improve their practice in this area and provided the Commission with quarterly reports on progress made.

## Other work

- **Promoting our legal powers**

The Scotland legal team undertook a programme of work to raise awareness of the Commission's legal powers, enforcement work and achievements with legal stakeholders. We spoke to a wide group of advisors and organisations, to explain how we could help them in their work and strengthened relationships with them in the process.

This work helped us identify two particular areas which we intend to consider in more detail in the year ahead: improving equal representation in politics; and concerns around the increased use of guardianship orders. We will consider whether we can use our unique powers to achieve positive change in these areas.

Another example of using our legal powers is a recently launched inquiry into housing provision for disabled people. We have started to explore the experiences of people in Scotland and will build on this work throughout 2017.

- **Equinet**

Equinet, the European Network of Equality Bodies, brings together 46 organisations from 34 European countries, which are empowered to counteract discrimination as national equality bodies across a range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation. The Commission is a member of Equinet.

This year the Scotland legal team contributed to an Equinet Discussion paper on discrimination on the grounds of race and ethnic origin. The paper discusses key legal issues and challenges in fighting discrimination on the ground of race and ethnic origin. It is available online: <http://www.equineteurope.org/Equinet-publishes-discussion-paper-on-Fighting-Discrimination-on-the-Ground-of>

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## Transfer of Expertise

- **eBulletin**

Our legal eBulletin provided over 900 subscribers with regular legal articles and updates. We covered subjects such as the new regulations to make taxis more accessible to wheelchair users and the recent European decisions relating to the wearing of face veils.

## Events

Our asylum event brought together specialist lawyers and key stakeholders to discuss the rights of asylum seekers and refugees, identifying areas of particular concern where legal action might be taken. An information-sharing network was created following the event which fed into Commission work on refugee journeys.

We worked with Family Friendly Working Scotland and the Scottish Employment Rights Network to provide training on the issues raised in our pregnancy and maternity discrimination research findings and recommendations.

Following the Brexit vote, we arranged events to address questions about what this might mean for equality and human rights. At the first event, in partnership with JUSTICE Scotland, senior advocates and legal academics led a discussion focusing on migrant workers. The second looked from a legal perspective at the potential impact on equality and human rights and on the constitution, and set out the Commission's position. A film of the event is available on our website: <https://www.equalityhumanrights.com/en/legal-work-scotland/legal-work-scotland/equality-law-training-scotland>

Other events included training for Scottish Trades Union Congress equality representatives; a disability discrimination event and our highly regarded annual Discrimination Law conference.

## Publications

- **Equality Act Handbook**

The Scotland legal team updated and reprinted our 'Equality Act 2010 Handbook for Advisors' to reflect recent changes to the Act. The handbook covers the definition of the nine protected characteristics and an overview of different forms of conduct prohibited under the Act. It then looks at how the Act applies in different contexts of services and public functions, premises, employment and education, and discusses the Public Sector Equality Duty. It is available online at: <https://www.equalityhumanrights.com/en/publication-download/equality-act-2010-handbook-advisors>

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## 2.7 UN Committee on Rights of Persons with Disabilities (CRPD)

We worked jointly with the Scottish Human Rights Commission, the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland to produce a comprehensive UK-wide submission to the UN Committee on the Rights of Persons with Disabilities. This included a report about disability rights in Scotland. Our submission helped to inform the Committee's List of Issues for the UK, which is part of the Committee's review of how the UK is promoting and protecting disabled people's human rights. The Committee's examination of the UK will take place in Geneva in the autumn of 2017.

We were pleased to be able to provide funding and support to Inclusion Scotland to ensure disabled people could participate in the UN Convention on the Rights of Persons with Disabilities treaty monitoring process. As part of this project, Inclusion Scotland set up a steering group of seven other disabled people's organisations and coordinated the gathering of evidence about disabled people's experiences and views, writing the Scotland civil society report and co-writing the UK report. We also provided funding to enable Scottish disabled representatives to go to Geneva to give evidence directly to the Committee.



## 2.8 UN Committee on the Elimination of Racial Discrimination

We provided Scottish input to the Commission's Shadow Report to the 2016 UK Examination by the Committee of the United Nations Convention on the Elimination of all forms of Racial Discrimination (CERD Committee). The UK reports every two years on how the rights in the Convention are being implemented here. The Committee examined the report and set out its concerns and recommendations to the UK Governments in the form of 'concluding observations'.

Among these, the CERD Committee recommended that 'Scottish Government should ensure that there is a national policy on racist incident reporting to ensure that there are consistent policies on prevention, action, monitoring, assessment, evaluation, staff training and enforcement to effectively challenge institutional racism and support minority ethnic children in Scotland's educational establishments.'

Our then Scotland Director, Alastair Pringle, represented the Commission at the CERD examination in Geneva and used the opportunity to reiterate the Commission's call on Scottish Government to make the consistent recording of identity-based bullying incidents a statutory requirement for Education Authorities.

Our report 'Healing a Divided Britain' was the biggest ever review into race inequality in Great Britain. In calling for a more comprehensive UK approach, it referred to the 'Race Equality Framework for Scotland 2016-2030' which sets out the Scottish Government's approach to promoting race equality and tackling racism and inequality. The Framework encourages more effective use of the Scottish-specific Public Sector Equality Duties, the use of more robust data on ethnicity, and a stronger ethnic minority voluntary sector.

## 2.9 Hate crime

During Hate Crime Awareness Week, Police Scotland highlighted the training delivered by the Equality Network as part of the LGBTI Hate Crime project which the Commission funded. This training enabled the establishment of a new network of LGBTI Liaison Officers, providing support to their colleagues on LGBTI hate crime issues.

We provided advice to the Scottish Government to inform their response to the recommendations of the Independent Advisory Group on Hate Crime, chaired by Dr Duncan Morrow.

Scottish Ministers have invited Lord Bracadale to conduct an independent review on the effectiveness of hate crime legislation in Scotland and our new Head of Scotland will represent the Commission on the reference group to provide expert advice, scrutiny and challenge to the review, which is expected to report in January 2018.

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## 3. Communications

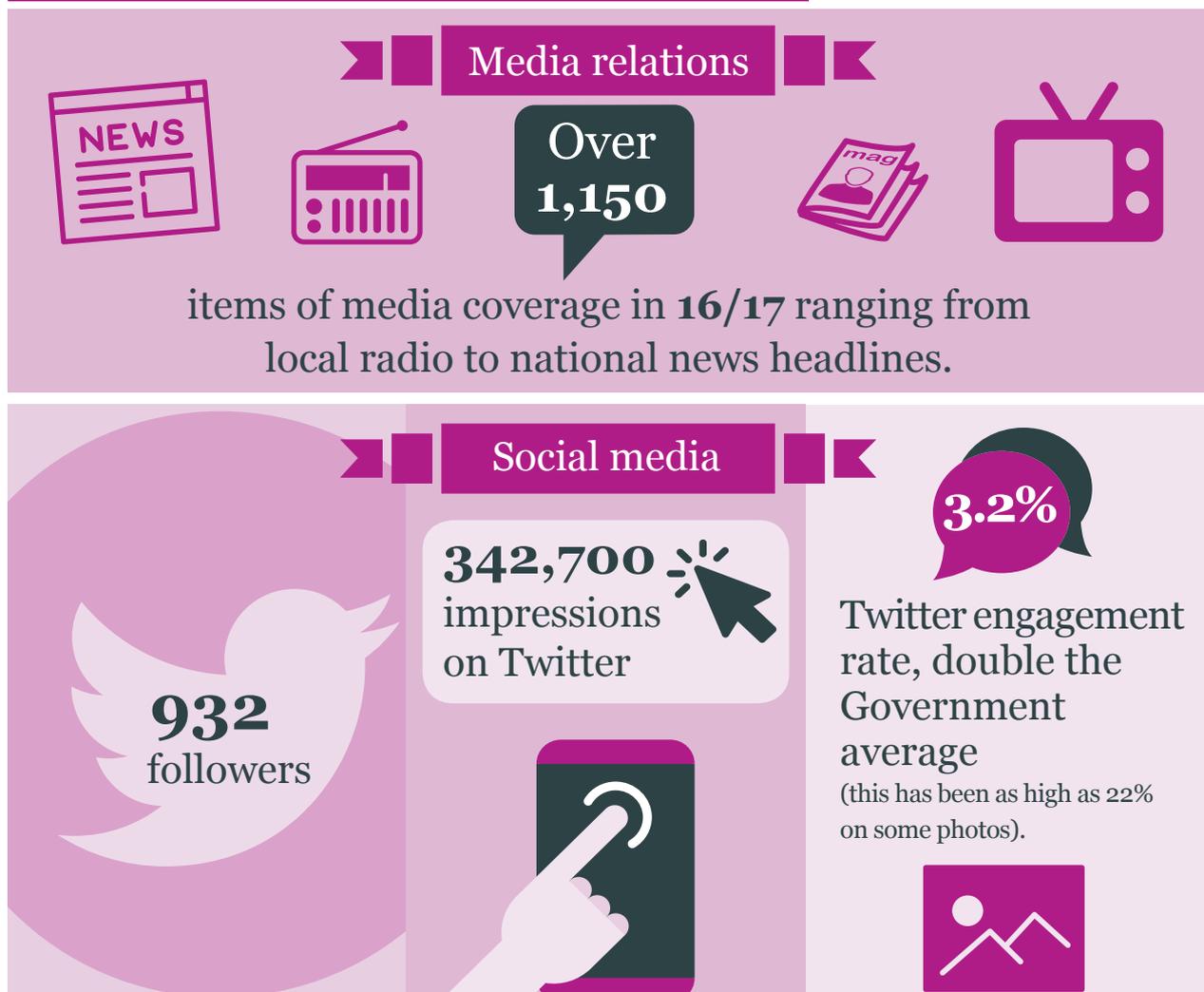
### Media relations

We have increased our media coverage and impact in the past year through a more confident, streamlined and proactive approach to media relations. The Commission in Scotland has appeared in more than **1,150** news items across national and regional press, broadcast and online media (GB Commission wide figure of **6,838**).

### Social media

We have set up a separate Scottish Twitter account in the last year and are focused on engagement and reach. We have 932 followers made up of a wide range of stakeholders, journalists, politicians and members of the public and hope to see a continued growth in line with the 26% annual follower increase currently seen by the main Commission Twitter account.

### Communications impact highlights



## 4. Looking to the future: 2017/18

**Over the next year the Scotland Committee will be focused on a number of areas of work. These include:**

- 1 Influencing work around embedding equality and human rights in Scotland's new social security powers.
- 2 Stakeholder engagement around 'Is Scotland Fairer?' in preparation for the publication of the Commission's next Triennial Review in 2018.
- 3 Work to help our understanding of the reasons for a significant increase in the use of Guardianship Orders.
- 4 Influencing policy around Investment and Equality, specifically City Deals, and ensuring full engagement is carried out to properly understand the real challenges facing communities in poorer areas.

**The Scotland Directorate has a full programme of work including:**

- Working with the Scottish Government and local authorities with the aim of reducing identity-based bullying.
  - The Commission are also planning work to assess the effectiveness of the specific Public Sector Equality Duties.
  - We will continue to build upon our Transfer of Expertise programme and will become increasingly more proactive in seeking legal cases.
  - The Commission will deliver a Britain-wide housing inquiry led from Scotland and working with many Scottish stakeholders and community groups.
  - We will also take forward work on increasing political participation; creating conditions which will enable increased diverse political representation including in relation to young people, women, disabled people, LGBT people and people from ethnic minorities.
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## Contacts

Please contact the Scotland Team for further information about other Commission reports, or visit our **website**.

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For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website **www.equalityadvisoryservice.com**

Telephone **0808 800 0082**

Textphone **0808 800 0084**

Hours **09:00 to 19:00 (Monday to Friday)**

**10:00 to 14:00 (Saturday)**

Post **FREEPOST Equality Advisory Support Service Helpline FPN6521**

Questions and comments regarding this publication may be addressed to:

**correspondence@equalityhumanrights.com.**

The Commission welcomes your feedback.

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