

1<sup>ST</sup> APRIL 2020 – 30<sup>TH</sup> SEPTEMBER 2020

# Equality & Human Rights Commission Interim Report 2020



## Overview

The issues the EHRC is dealing with are becoming more profound each year. Our key priorities for the period have been (and will continue to be):

- the need to introduce local Ordinance protecting those in the private sphere from discrimination, sexual harassment and bullying and to promote equality access to work and leisure activities for the disabled;
- understanding and addressing the increasing disharmony between Saints and non-Saints;
- dealing with the past including the remnants of colonialism and the effects on Saint culture;
- the continued absence of an SHG strategy to reduce poverty.

The EHRC believes that Saints' relationship with UKG is strained due to lack of funding and the gaps that exist between the protection of rights

in the UK and those extended to St Helena. The failure of UKG to engage with the OTs over Brexit has not improved the perception that the people of St Helena, who are after all British citizens, are treated as second class citizens, if in deed they are considered at all. The implications for the protection of human rights and equality post-Brexit are substantial. The United Kingdom Government is committed to leaving the Charter of Fundamental Rights of the European Union, which incorporates and supplements the protections contained in the European Convention on Human Rights when dealing with European Union Law. Leaving the European Union will have implications, not only for protecting existing rights, but also for developing future rights. Many issues have progressed in the past because of the development of European Union law. For example, the decriminalisation of same-sex relationships and the outlawing of corporal punishment. While in other parts of the United Kingdom may

continue to advance following our withdrawal from the European Union, little confidence exists that St Helena will follow suit. The people of St Helena currently have the right to seek remedy through the European Courts an added protection which gives us a feeling of security and objective oversight.

The EHRC calls on SHG and our elected representatives to protect human rights no matter what UKG decides. This includes ensuring rights of individual redress and remedies before the courts.

The proposed changes to the Constitution are welcome However the EHRC is disappointed in the limited scope of those changes and the lack of input the EHRC is being allowed given that our democracy is fundamental to the protection of human rights on St Helena.

Covid-19 led to the involvement of the EHRC with the IEG Group and in particular reviewing the required legislation and policy and reviewing

the conditions at Bradley's Quarantine Centre.

# Our Work

In the first half of this year the Commission has continued to be very busy.

The Commission has had 66 new contacts in the first 6 months (see fig: 1) raising 77 themes. The majority of contacts have had their issue resolved or been referred to another agency for example the Public Solicitors Office. 17 have issues which potentially have human rights implications and were therefore assisted and followed up by the EHRC.

Enquiries have ranged from access to justice (causing a rise in the number of judicial complaints), domestic abuse and housing (see fig: 2). The highest number of complaints have been about the police/prison and Government Landlord Housing. The police complaints have been about

arrests and charges subsequently dropped, the retention of IT equipment and the unlawful detention. The Prison complaints are from past prisoners held between 2009 and the work commencing to upgrade the prison in 2018/19. No complaints were received from the prison in the period under review.

Worryingly we have had four complaints of bullying in the workplace all from SHG employees. These have been referred for grievance and/or to the Public Solicitor's Office. Other issues have included people who have been unable to access a qualified criminal lawyer, increases in the cost of living on the island have led to an increase in people looking for help with debts.

Work has commenced on our new web-site which will be launched on 10<sup>th</sup> December 2020.

The workload on the Commission has increased due to the complexity of the issues raised. Covid-19 has meant time has had to be taken from core

tasks to keep abreast of the latest human rights thinking and guidance.

We still have some clients whose cases have been with us for several years who now require our assistance to seek redress under the Constitution. (See fig: 3). This is difficult as the EHRC has repeatedly requested funding for such cases but it has not been forthcoming.

The Commission continues to be concerned about and lobby on the gaps in our legislation which leave the door open to human rights abuses:

- 🕒 Our legislation does not adequately protect the survivors of domestic abuse. What little we do have falls well short of the UN guidelines.
- 🕒 There is a lack of protection from sexual harassment and bullying in the private sector
- 🕒 There is no Equality Ordinance which is a failure to protect those in minority groups from discrimination in a non-governmental setting.

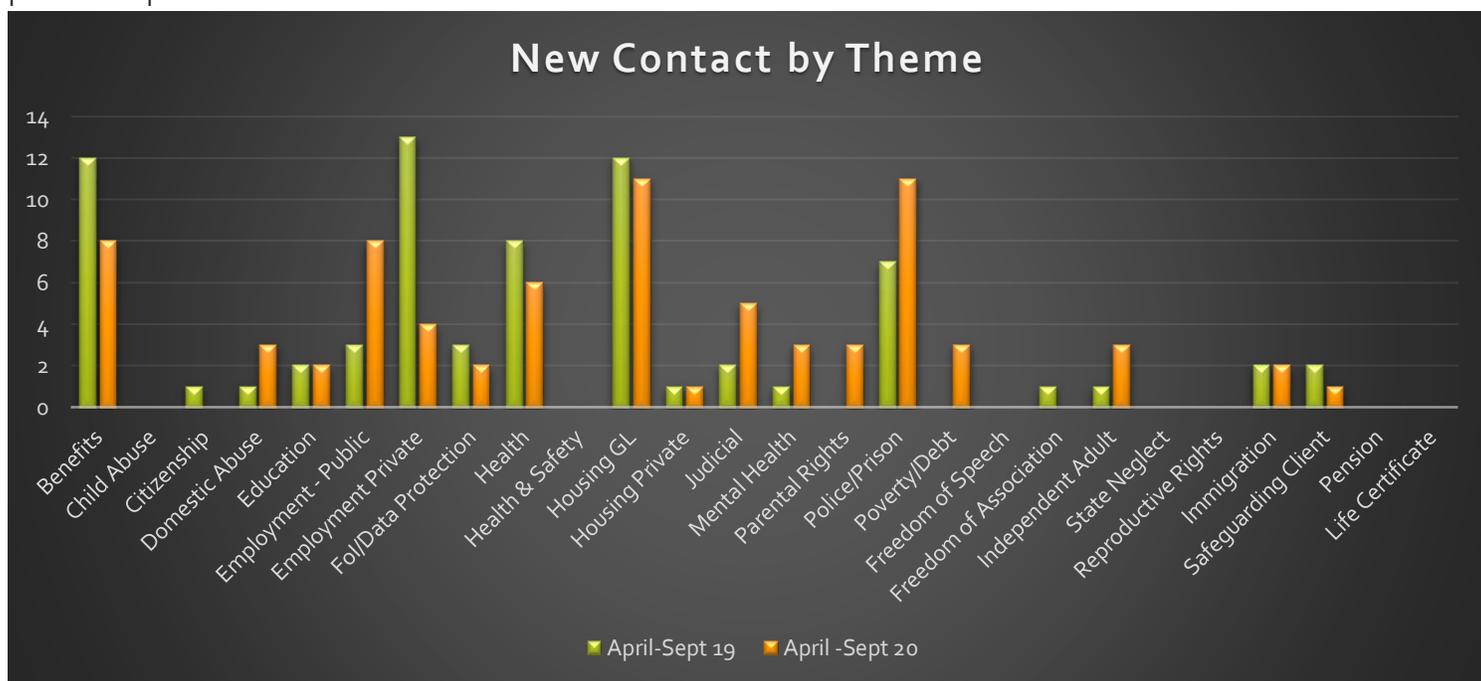
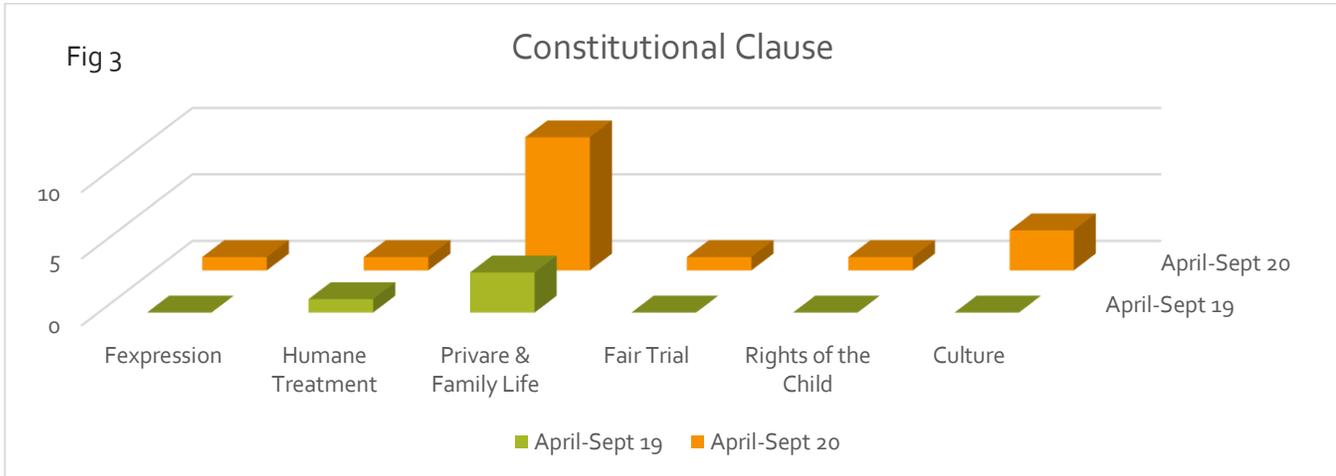


Fig 2



## Commitments v Achievements

**The Commission committed that this Strategic period our priorities would be:**

- 🕒 Embedding a human rights culture on St Helena
- 🕒 Improving workplace equality
- 🕒 Protecting human rights in closed environments
- 🕒 Advancing Freedom of Information and Data Protection on St Helena
- 🕒 Develop our knowledge skills and capacity to effectively deliver the above.

This would be on top of our day to day work:

- 🕒 Dealing with Contacts from the public (see above)
- 🕒 Communication and work with SHG Directorates, Public Solicitor etc.
- 🕒 Shadow report preparation
- 🕒 Half year & Annual reports to Elected Members
- 🕒 Quarterly, Period 5 and Annual report to Finance
- 🕒 Annual Audit and PAC
- 🕒 Working with the relevant directorates to highlight issues
- 🕒 Provision of information to elected members, SHG and the public
- 🕒 Developing and maintaining policies, management systems and internal communications.
- 🕒 Personal training and development

**In the first half of this year the Commission has achieved or is on track to achieving many of those commitments however due to a lack of funding we will be unable to:**

- 🕒 Develop a Youth Forum to give children and young people a voice in matters that affect them and increase their participation in decision making.
- 🕒 Run the Outreach Roadshow – Visits to the various districts, schools, CCC, Cape Villa etc. To gather information/statistics and to provide information and assistance to the general public.
- 🕒 Carry out any detailed investigations or inquiries that require a Commissioner’s time.

**What we have achieved:**

- 🕒 The Framework Document between the EHRC & SHG has been agreed and signed.
- 🕒 The EHRC has supplied advice and information to the IEG Group on Covid 19.

- 🕒 Equality Legislation - this legislation has been presented to Social & Community Development Committee but there has been no progress since.
- 🕒 Figures have been collected for the purposes of monitoring Gender issues and Convention reporting.
- 🕒 The EHRC submitted the Financial Statements to the Audit Service.
- 🕒 Regularly met with the Public Solicitors office, Police and the Social & Community Development Committee
- 🕒 Delivered our Annual Report
- 🕒 Research on various topics has been carried out for various elected members and officials.
- 🕒 Written and approved two new internal policies and reviewed others.
- 🕒 The EHRC is currently running within its budget.
- 🕒 The EHRC has started issuing a monthly newsletter to interested stakeholders and the public.



## Strengthening equality protections

The people of St Helena are not properly protected from discrimination. The Constitution prevents discrimination by the state on 13 protected Characteristics. There is little protection in the private sphere, where one can only seek remedy under local Ordinance or English law that has been applied here through the English Law Application Ordinance 2005. The only protection is the Race Relations Ordinance 1997.

The resulting disparity between those operating in the private sphere and those in the public sector causes the EHRC concern in that it creates a two tier society. This is particularly apparent in the huge difference in employment rights between SHG employees who have up to 30 day's holiday per year, maternity, paternity and adoption leave, up to 6 month's sick pay and pensions and those in the Private Sector who have 5 days' holiday, 5 days' sick and no maternity or paternity leave. Adverts for a male person to fulfil a vacancy still appear in local media.

The Convention on the rights of Persons with Disabilities (CRPD) has not been extended to St Helena and while the Constitution prohibits discrimination on the basis of disability there is no legal protection or basis for positive action to promote access for those with disabilities to work or leisure activities. Nor to protect persons with disabilities from indirect disability-based discrimination and discrimination through association.

The EHRC has partnered with the Disabled Person's Aid Society and SHAPE to produce a detailed proposal for legislation to address these matters to the Social & Community Development Committee (SCDC). These proposals were rejected by the SCDC on advice from the Attorney General's Chambers that such legislation was unnecessary as we have the Constitution and that amendments to all relevant existing Ordinance would be better. Other territories disagree: Bermuda and several other Overseas Territories have a Constitution and a Human Rights or Equality Act.

In Northern Ireland, discrimination is prohibited by a number of laws and regulations, resulting in a complex framework. Three UN treaty bodies have raised concerns that their law does not provide for a single legislative instrument to consolidate, clarify and enhance existing equality protections.<sup>1</sup>

**The EHRC recommends that the SCDC prioritise the introduction of a single Ordinance that will protect and extend the right to equal treatment as detailed in the Constitution to transactions in the private sector**