



## **Response to Government Equalities Office's consultation on the reform of the Equality & Human Rights Commission (EHRC)**

**June 2011**

### **Executive Summary**

The Equality Commission has a number of concerns in relation to the Government's proposed approach to reforming the EHRC. These are summarised below.

- We recognise that there have been deficiencies in some areas in relation to the performance of the EHRC to date, and that there is a need for all public bodies, including the EHRC, to ensure it operates in an effective and efficient manner. However, we consider that the Government's proposed approach in some areas is neither proportionate nor targeted at addressing the perceived risks or problems. We consider that some of the proposed changes could be achieved through different means; for example, through the adoption by the EHRC of a more focused strategic direction across its mandate, with effective controls and systems in place to ensure that services delivered provide value for money and meet the needs of stakeholders.
- We believe that it is critical that the Government safeguards the independence of the EHRC and ensures that it is granted sufficient powers and resources to fulfil its role as a national equality body mandated under EC Directives and as an UN-accredited National Human Rights Institution.
- It is important that the Government maintains and supports a strong and independent EHRC with effective enforcement and investigatory powers and sufficient resources. This support is particularly critical at this time in light of its role in promoting awareness of the rights and obligations under the Equality Act

2010. It is also essential that the EHRC has the resources and tools to protect those most at risk of discrimination at a time when jobs are being cut and services reduced. It is also important that any reduction in EHRC services do not impact most severely on those who are already at risk.

- We do not consider that the proposed remodelling of the EHRC's duties in Section 8 of the Equality Act 2006 is either necessary or appropriate.
- We are opposed to the proposed removal of the EHRC's good relations functions and powers. We are of the view that equality of opportunity and good relations are inextricably linked and interdependent. The proposed changes primarily limit the EHRC's remit to the promotion of good relations by public bodies. We are of the view that it is vital that the EHRC has both the duties and powers to undertake a range of proactive work with private/voluntary/community sector employers and service providers in order to promote good relations across a range of equality grounds.
- We believe that the EHRC's power to make provision for conciliation services in non-employment areas across the equality strands should be retained, subject to appropriate steps being taken to ensure that it is cost effective and represents value for money.
- We have concerns in relation to the proposed removal of the EHRC's role in providing an information and advice help line. Whilst recognising the different scale of the service required in Northern Ireland compared to Great Britain, our own experience has shown the benefits of operating a specialist equality information and advice help line.
- We are concerned at the Government's proposals to remove the separate funding stream for the EHRC for legal advice and advocacy in discrimination cases (except in relation to cases of strategic importance). We believe the proposal has the potential to significantly restrict the number of individuals who can access legal

advice and assistance at tribunals/courts in relation to their discrimination cases. We have set out a number of factors which distinguish discrimination cases from other cases eligible for civil legal aid, which in our view justifies further public funding for support.

- We recommend that the EHRC continues to provide advice in relation to disabled air passengers under the Air Transport EC Regulation.

**June 2011**

## PROFORMA FOR EHRC REFORM CONSULTATION RESPONSES

**The consultation closes on 15 June 2011.** Please let us have your response by that date.

When responding, it would be helpful if you could provide the following information.

Please fill in your name and address, or that of your organisation if relevant. You may withhold this information if you wish, but we will be unable to add your details to our database for future consultation exercises.

### Contact details:

Please supply details of who has completed this response.

Response completed by (name):

Position in organisation (if appropriate):

Name of organisation (if appropriate):

Address:

Contact phone number:

Contact e-mail address:

Date:

### Confidentiality

Under the Code of Practice on Open Government, any response will be made available to the public on request, unless respondents indicate that they wish their views to remain confidential. If you wish your response to remain confidential, please tick this box and say why. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

I would like my response to remain confidential (please tick if appropriate):

Please say why

In what capacity are you responding (please tick if appropriate)?

As an individual

On behalf of an organisation

As an employer

Other (please specify)

**Note:**

- In addition to the completed proforma, you can also send other supporting information if you so wish.

Completed forms should be e-mailed to the following address:-

[EHRC.reform@geo.gsi.gov.uk](mailto:EHRC.reform@geo.gsi.gov.uk)

If you are posting the form please send to:-

EHRC Reform Consultation Responses  
C/O Louise Sutton  
Government Equalities Office  
Zone G10, 9<sup>th</sup> Floor Eland House  
Bressenden Place  
London SW1E 5DU

Thank you for completing this response form.

**EHRC's core functions**

**PROPOSAL ONE – Repealing the General Duty**

**Question 1: Do you agree that Section 3 should be repealed?**

Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

Section 3 sets out a general duty on the Equality and Human Rights Commission ('EHRC') to exercise its functions with a view to encouraging societal change<sup>1</sup>. Whilst recognising that there is value in setting out aspirations for a better society, and that there was much importance attached to this in the lead up to the Equality Act 2006, we do not consider there to be significant difficulties with the removal of this general duty

<sup>1</sup> For example, a society in which there is respect for human rights, the dignity and work of each individual, and each individual has an equal opportunity to participate in society, etc.

## PROPOSAL TWO – Amending the equalities duties at section 8 to clarify EHRC’s core equality functions

**Question 2: Do you agree that remodelling the duties at s.8 of the Equality Act 2006 to mirror the role and functions set out in para 1.9 of chapter 1 will help to focus EHRC on its core functions as an equality regulator? If not, what do you think EHRC’s core functions should be?**

Please place a cross in the appropriate box

Agree  Disagree  Unsure

Please explain why -

The Equality Commission recommends that the broadly defined duties in Section 8 are retained. It is of the view that if changes are required to clarify the EHRC’s core equality functions, then this can be achieved through changes in its strategic approach. Such an approach should be agreed with Government and steps taken to ensure that robust objectives and targets are set and underpinned by the necessary financial and other management controls and procedures.

We do not consider that remodelling the duties at Section 8 of the Equality Act 2006 is either necessary or the most appropriate vehicle for helping to focus the EHRC on its core function as an equality regulator. We are of the view that the proposed approach is neither proportionate to the risks identified nor sufficiently targeted at addressing the problem highlighted.

The Government will be aware that the duties in Section 8 are broadly similar to the current general duties of the Equality Commission, which, in turn, are similar to those of the former equality bodies in Great Britain; albeit with a number of differences across the various anti-discrimination laws in Northern Ireland.

The Equality Commission has seen the benefits of adopting a strategic approach to combating discrimination and promoting equality of opportunity across a wide range of equality grounds. It believes that this strategic approach, together with clear objectives and targets, has enabled it to effectively fulfil its broadly defined mandate as set out in the



Northern Ireland equality legislation.<sup>2</sup>

We are also of the view that the general duties in Section 8, such as promoting equality of opportunity, working towards the elimination of unlawful discrimination and harassment, are consistent with the EHRC's role in promoting and enforcing the public sector equality duties.

We note that Section 11 of the Equality Act 2006 places a duty on the EHRC to monitor the effectiveness of the equality and human rights enactments. The duty contained in Section 11 (as opposed to Section 8), appears to be mirrored in the proposed new core duties of the EHRC; i.e. helping the Government to evaluate and monitor the effectiveness of the Equality Act 2010. The Government has only referred to amending Section 8 of the Equality Act 2006. It has not indicated that it proposes to amend Section 11 of the Equality Act 2006.

In addition, we note that there is no reference in the proposed core functions of the EHRC in paragraph 1.9 to 'promoting understanding of the importance of equality and diversity'; a duty currently set out in Section 8. We further note that a similar duty exists in relation to the promotion of human rights in Section 9, (i.e. to promote understanding of the importance of human rights), though the Government is not intending to amend this duty.

It is not clear why the Government considers that it should remain a key duty of the EHRC to promote understanding of the importance of human rights, whilst removing the EHRC's duty to promote understanding of the importance of equality and diversity. We would, therefore, query the necessity of removing this duty from the EHRC.

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<sup>2</sup> A report by Equinet on the *Strategic Role of Equality Bodies* has highlighted the importance of equality bodies adopting a strategic approach, as well recognising the strategic approach adopted by the Equality Commission for Northern Ireland. *Strategic Role of Equality Bodies*, Equinet, 2009, available at [www.equineteurope.org](http://www.equineteurope.org)

**Question 3: Do you agree with our proposal to amend the section 12 duty so that it:**

**a) specifies the aims and outcomes which EHRC is required to monitor progress against; and**

**b) requires a report every five rather than three years, to tie into the Parliamentary cycle and enable reports to capture meaningful change over time?**

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Please place a cross in the appropriate box

Agree	<input checked="" type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
	3(b) √		3(a) √		

Please explain why -

**Question 3(a)**

The Government is proposing to specify in Section 12 the aims and outcomes which the EHRC is to monitor progress against. It has indicated that this will be consistent with the EHRC's equality and human rights measurement frameworks.

Under the current Section 12, it is the responsibility of the EHRC to identify changes in society, desired outcomes for society and the indicators by reference to which progress can be measured, having consulted widely on which of these should be priorities for it to monitor.

The Government has only indicated that it will specify aims and outcomes which the EHRC is required to monitor progress against. It is not clear whether it is proposed that the current duty on the EHRC to identify indicators will continue or whether this duty will be assumed by the Government. We therefore recommend that the Government clarifies who it proposes will have responsibility for identifying indicators.

In pursuance of its duty under Section 12, we note that in October 2010 the EHRC, after widespread engagement with stakeholders, produced its first Triennial Review report, '*How Fair is Britain*'; which provided a comprehensive overview of the evidence of inequalities in Great Britain, as well as identifying the significant challenges which are most urgently

in need of resolution.<sup>3</sup> This was an important contribution to our understanding of inequalities and the EHRC was rightly commended for its work.

The EHRC has therefore shown the ability to effectively meet its current duties under Section 12. It is important that the Government in proposing to amend the duties in Section 12, does not undermine public confidence in the ability of the EHRC to take forward this key role, undermine wider international confidence in the EHRC as an effective equality body or unnecessarily limit its independence.

If Section 12 is amended to place a duty on the Government to specify aims and outcomes, it is important that there is also a duty to consult with the EHRC and other key stakeholders in the development of those aims and outcomes. It is also important that indicators and outcomes are reviewed over time in order to ensure their continued relevance and to ensure that they reflect key equality and human rights outcomes.

### **Question 3(b)**

We support the proposal that the EHRC publishes a report on progress every five years rather than three years, in order to tie into the Parliamentary cycle and to enable reports to capture meaningful change over time.

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<sup>3</sup> *Triennial Review report, 'How Fair is Britain'*, EHRC, Oct 2010, [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

## PROPOSAL THREE – Supporting the EHRC to enhance its focus on human rights

**Question 4: Do you agree that the proposals to focus the Commission on its core functions, as well as the measures set out in Chapter 3 to increase the Commission’s accountability for the its performance, will help the Commission fulfil its human rights remit? If not, what further changes do you suggest?**

Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

We do not consider that there is a need to change the legislative framework which sets out the general duties of the EHRC in terms of equality (as set out in Section 8) in order to ensure that the EHRC fulfils its human rights remit.

We recognise the concerns raised by the Joint Committee on Human Rights in March 2010 that the EHRC, at that stage, was not fulfilling the human rights mandate set out in the Equality Act 2006. The report, however, recognised that the EHRC was taking steps to approach its responsibilities for human rights matters on a more systematic basis than hitherto. It also recognised that the EHRC could not possibly have been expected to transform the way in which public services were delivered within the first two or three years of its existence.<sup>4</sup>

We note that the Joint Committee on Human Rights set out a series of recommendations for the EHRC in order to ensure a greater focus on human rights matters; for example, redrafting its human rights strategy so that it was more focused and included timescales, milestones and indicators of success. The Joint Committee on Human Rights’ recommendations focused on changing the strategic direction of the EHRC work on human rights, rather than recommending legislative changes to its overall powers and duties.

We are of the view that changes to the EHRC’s strategic approach to the fulfilment of its human rights remit, rather than to its legislative powers and duties, are sufficient to secure a greater focus on its human rights work.

<sup>4</sup> *Equality and Human Rights Commission, 13<sup>th</sup> Report of session 2009/10*, Joint Committee on Human Rights, March 2010, [www.publications.parliament.uk](http://www.publications.parliament.uk).

Whilst recognising the concerns raised in relation to the need for the EHRC to fulfil its human rights remit, it is important to recognise the close links between the work of the EHRC on equality and good relations and on the promotion of human rights.

We note, for example, that the Joint Committee on Human Rights has made it clear that 'the right to equality of treatment and the enjoyment of other rights without discrimination is a fundamental human right'. It was of the view that there was much in common between the work required for the promotion of equality and that required for the promotion and protection of human rights; whilst recognising that there were also some differences between equality and human rights.<sup>5</sup>

We therefore consider that the work undertaken by the EHRC to promote equality and good relations can support the EHRC's work on the promotion of human rights.

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<sup>5</sup> *The Case for a Human Rights Commission*, 6<sup>th</sup> Report, Joint Committee on Human Rights, March 2003, [www.publications.parliament.uk](http://www.publications.parliament.uk)

## PROPOSAL FOUR – Removing the Commission’s good relations duty (section 10)

**Question 5: Do you agree that we should remove the Commission’s good relations function, and the associated power at section 19? If not, why not?**

Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

The Equality Commission does not support the proposed removal of the EHRC’s good relations functions and powers. We are of the view that equality of opportunity and good relations are inextricably linked and interdependent and have consistently stated that ‘good relations cannot be delivered without equality also being delivered’.

We consider that a distinct duty on the EHRC to promote good relations across a range of equality grounds is consistent with its work on promoting equality. The Equality Commission has also recommended the extension of its own good relations duty under the race relations legislation to a wider range of equality grounds.<sup>6</sup>

We recognise that there are opportunities for the EHRC through its role in advising and enforcing a new public sector equality duty which covers fostering good relations, to undertake proactive work in this area. However, this will primarily limit the EHRC’s remit to the promotion of good relations by public bodies. The EHRC would have no remit to promote good relations generally across a range of equality grounds amongst private and voluntary sector organisations (both in terms of employment and service delivery).

A wider good relations duty which extends beyond ensuring public sector compliance with its equality duty would, for example, enable the EHRC to undertake a range of proactive work with private/voluntary community sector employers and service providers aimed at promoting good relations across a range of equality grounds; actions such as issuing guidance, conducting campaigns, undertaking research, entering into

<sup>6</sup> ECNI Response to OFMdFM consultation on a Single Equality Bill for NI, 2004, [www.equalityni.org](http://www.equalityni.org).

partnership working, sharing good practice, providing support and helping to build capacity within those sectors.

Having the remit to undertake this work is critical in light of the key role played by private sector employers, trade unions, churches and other faith-based organisations, and voluntary and community sector organisations in helping to build relationships between different communities and tackle prejudice.

The contribution of these organisations and bodies to the promotion of good relations in Northern Ireland is clearly recognised in the cross-departmental strategies and action plans on good relations and racial equality; as well as in the performance indicators developed to reflect the state of good relations in Northern Ireland and to monitor change over time.<sup>7</sup> For example, one priority area identified in these strategies and action plans is the development of shared workplaces across all sectors aimed at promoting good relations in the workplace.

In addition, the Equality Commission has, for example, pursuant to its good relations duty under the race relations legislation, run initiatives to promote good race relations across all sectors; such as Anti-Racist Workplace Weeks (now expanded as Race Equality Month), Traveller Focus Weeks and the campaigns “Equality for All” and “What Colours Your Judgement?”.

In light of the importance of building strong cohesive communities and tackling prejudice, it is essential that the EHRC is equipped with the necessary duties and powers to promote good relations so that it can engage proactively and effectively across **all** sectors.

We recognise that the Government has concerns about the value for money to date of some of the good relations work undertaken by the EHRC, particularly as regards its strategic grants programme. It is essential that the EHRC, through the adoption of a strategic approach to its work on promoting good relations, ensures that steps are taken to address any identified deficiencies in its grant programme in order to deliver value for money and achieve tangible outcomes for the groups covered by the good relations duty.

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<sup>7</sup> See for example, *A Shared Future: Policy and Strategic Framework for Good Relations in Northern Ireland*, March 2005, and *Racial Equality Strategy*, July 2005, and associated Triennial Action plan OFMdfM, and Good Relations Indicators Baseline Reports, as well as the draft *Programme for Cohesion, Sharing and Integration* [www.ofmdfmi.gov.uk](http://www.ofmdfmi.gov.uk)

Moreover, in assessing the EHRC's performance to date, it is important to take into account the positive achievements of the EHRC in this area, as well as recognising that prior to the establishment of the EHRC, the good relations duty only applied to the area of race; a duty placed on the former Commission for Racial Equality. The EHRC has therefore had a relatively short period of time to fulfil effectively its mandate in relation to a much broader good relations duty which covers seven equality grounds.

We also note that the EHRC has made it clear that it has used effectively its good relations mandate to tackle racism. In particular, it states, for example, that it has used its legal powers to successfully change the British National Party's restrictive membership policy, so that people from any ethnic background can join.

We recommend that rather than removing the good relations duty in Section 10 of the Equality Act 2006, measures are put in place to ensure that work is undertaken in a strategic way that represents value for money and delivers tangible outcomes.

As regards duplication of activities, we recognise that a range of other organisations, such as Stonewall and the Runnymede Trust, undertake work to foster good relations and promote community cohesion. However the EHRC is the only public sector organisation with a clear duty to promote good relations across a wide range of equality grounds and across different sectors. The EHRC can ensure, when setting the strategic direction of its good relations work, that it liaises closely and, when appropriate, works in partnership with other organisations, so that its work supports and complements their work rather than duplicates it.



**EHRC's Non-core activities****PROPOSAL FIVE – Repealing the Commission's power to make provision for conciliation services**

**Question 6: Do you think the Government should repeal the Commission's power to make provision for conciliation services, as part of the process of focussing the Commission on its core functions?**

Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why –

We note that the Government has indicated that the EHRC's current conciliation work has not been cost effective to date. Particularly in the current economic climate, we agree that it is essential that public authorities' services are cost effective and deliver value for money.

We note, however, that the Government's findings in relation to the EHRC conciliation service appear to be in contrast with the added value of the conciliation service provided for by the former Disability Rights Commission (DRC).<sup>8</sup>

We are of the view that the EHRC's power to make provision for conciliation services in non-employment areas across the equality strands should be retained, subject to appropriate steps being taken to ensure that it is cost effective and represents value for money.

The Government has also highlighted the fact that a range of mediation services is already available and it is 'unclear that the Commission's Equalities Mediation Service has a unique role in this landscape'.

We are of the view that one benefit of having a dedicated conciliation service relating to non-employment equality complaints is that it can provide independent expert equality advice to both parties in a complex area of law. It also has the capacity to assist vulnerable individuals facing discrimination or harassment in circumstances which can be stressful. The need for expert advice and guidance on equality law is

<sup>8</sup> The White Paper on the Commission for Equality and Human Rights in 2004 cites that the DRC's conciliation service and the ACAS conciliation services for employment discrimination cases, have proven the usefulness of this approach as an alternative to legal proceedings.

particularly important at this time in light of the changing legislative landscape following the phased introduction of the Equality Act 2010.

In addition, arguably, if the Government proceeds with its proposals to restrict the provision of legal advice and advocacy, there may be an additional demand for conciliation services. For example, there is the potential that individuals who are otherwise unable to obtain civil legal aid in relation to their discrimination complaints, will seek access to an independent conciliation service in order to resolve their complaints.

**PROPOSAL SIX – A new system for equality information, advice and support**

**Question 7: Do you agree with the proposals set out to provide a new system of information, advice and support? If not, what changes to the system would you recommend?**

Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

The Government Equalities Office's recent report on *Information, Advice and Support on equality and human rights issues*<sup>9</sup> has indicated that the current system is fragmented, lacking in strategic partnership working and co-ordination and does not represent value for money. It has highlighted deficiencies in the way in which the EHRC has delivered this service.

Again, we are of the view that it is essential that the EHRC, as well as all public bodies, ensures that its services are cost effective, deliver value for money and work effectively.

The Equality Commission has operated in Northern Ireland an information and advice helpline both in relation to individuals alleging unlawful discrimination and as regards employers, service providers and others who seek advice in relation to their responsibilities under equality law.

Whilst recognising the different scale of the service required in Northern Ireland compared to Great Britain, our own experience has shown the benefits of operating a specialist equality information and advice helpline.

For example, there is a significant advantage in having a single point of contact for specialist equality information and advice on an increasingly complex area of law. There are, in addition, benefits in terms of

<sup>9</sup> *Information, Advice and Support on equality and human rights issues*, GEO, 2010, [www.equalities.gov.uk](http://www.equalities.gov.uk)

continuity of service and building effective relationships with individual complainants, in being the first point of contact with that person.

In addition, we have benefited from data collected from the operation of our helpline as it has helped to inform the strategic direction of our case work and litigation strategy, as well as feeding into other areas, such as our policy and development work, communications and research work. It is also clear that users of our advice service have benefited from the dedicated helpline.<sup>10</sup>

Whilst recognising that there have been difficulties in the operation of the EHRC helpline and also that the EHRC has taken a number of steps in order to address these deficiencies, in general, in light of our own experience of the value of operating a specialist information and advice enquiry line, we would query whether the removal of EHRC function to run the helpline is the correct approach.

An alternative approach would be for the Government Equalities Office to work with the EHRC to ensure the provision of an effective and efficient service, with appropriate systems and safeguards put in place to address highlighted deficiencies.

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<sup>10</sup> The results of the Commission's most recent customer survey of its complaint advice service has shown high satisfaction ratings with 90% of survey participants being satisfied with the service.

**Question 8 What should a new citizen - focused, cost effective information and generalist advice service look like?**

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Please explain -

We agree that it is important that individuals are able to obtain advice on equality matters quickly and efficiently, particularly in light of the tight timescales for lodging discrimination complaints. It is also important that advice is provided by skilled advisors who have a good knowledge and understanding of equality legislation and tribunal/court practices and procedures. It is important that advisors have the ability to relate to individuals who may be vulnerable or experiencing a high degree of stress due to having been subjected to discrimination.

It is important that the advice service is well publicised and that individuals are aware of the range and breadth of the services available. It is also essential that the service is cost effective, providing value for money and that its efficiency and effectiveness are regularly monitored. Services must be provided in an accessible manner and, in particular, meet the standards on accessibility (Article 9) under the UN Convention on the Rights of Persons with Disabilities.

**Question 9: How can government best provide public education on discrimination and human rights, targeted on the most disadvantaged groups?**

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Please explain -

This is clearly such a broad question that it is difficult to address in brief; there are many ways to provide public education, including by Government itself as well as through bodies such as the EHRC.

The Equality Commission currently takes a range of measures to raise awareness amongst individuals about their rights and responsibilities under the equality legislation, working in partnership with key stakeholders, and this is an important area of work for us.

Measures include awareness raising campaigns through a variety of media (TV, radio, articles, etc), the development of employer equality networks, the production and examination of good practice, Codes of Practice, guides and information, the organising of seminars and conferences, engagement with schools and local businesses, joint events with representative organisations and through its proactive work with public authorities as part of its advice and enforcement role on the public sector equality duties. It also takes measures to monitor and evaluate the degree to which its work achieves tangible outcomes, including the degree to which individuals, employers, service providers and others are aware of their rights and responsibilities.

**Question 10: Is there anything that distinguishes discrimination cases from other cases eligible for civil legal aid that would justify further public funding for support?**

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Please explain-

We are concerned at the Government's proposals to remove the separate funding stream for the EHRC for legal advice and advocacy in discrimination cases (except in relation to cases of strategic importance) with the aim that support is solely delivered through civil legal aid.

The proposals mean that the EHRC can no longer administer legal grants to organisations, such as Citizens Advice Bureaux, law centres and independent advice centres, in order to enable them to provide legal advice and representation to individuals alleging discrimination.

The Government will be aware that there is limited funding available under the civil legal aid scheme towards obtaining legal advice and assistance in connection with a claim to a tribunal/court and the preparation of a case. Legal aid is not generally available for legal representation in tribunal proceedings.<sup>11</sup>

In the current climate in which the Government is aiming to reduce the overall cost of legal aid and remove the EHRC's legal grants programme, its proposals have the potential to significantly restrict the number of individuals who can access legal advice and assistance (including legal representation) at tribunals/courts in relation to their discrimination cases.

We are of the view that there are a number of factors which distinguish discrimination cases from other cases eligible for civil legal aid which justifies further public funding for support.

In particular, many discrimination cases can be complex in nature. Cases may involve consideration of detailed case law, as well as evidence from a range of experts (including medical experts). Discrimination cases heard in tribunals are also subject to complex tribunal rules and procedures.

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<sup>11</sup> We note that the Ministry of Defence in its recent consultation on proposals for the reform of legal aid is not proposing to extend the current level of legal aid funding to legal representation at a tribunal.

Legal advice and assistance is particularly critical at this time following the introduction of the Equality Act 2010. The Equality Act 2010 has both expanded and changed equality law in Great Britain, with the result that individuals will require access to expert legal advice and assistance in order to enable them to understand their new or revised rights under the legislation.

Individuals who have a meritorious discrimination claim but who are not eligible for civil legal aid, or who are not supported by the EHRC on the basis that it is not of strategic importance, may well be deterred from pursuing their case due to the potential of incurring significant costs.

Research commissioned by the Equality Commission and the Equality Authority, has confirmed that financial considerations are a major obstacle to lesbian, gay and bisexual (LGB) individuals accessing their rights under equality law in tribunals<sup>12</sup>. The research recommended that legal aid for tribunal cases should be introduced in Northern Ireland.

The Equality Commission has also recommended that legal aid should be available for applicants in the tribunal system, subject to agreed eligibility criteria, in order to ensure their fair and equal access to justice.<sup>13</sup>

In addition, discrimination complaints are often taken by vulnerable individuals, who may experience difficulties in representing themselves at tribunal or require additional support. Further, unlike some forms of civil aid cases, discriminatory treatment can strike at the heart of a person's identity and can result, not only significant financial loss, but also in injury to feelings and loss of dignity and self respect.

Discrimination cases can also highlight wider societal issues, including systematic and institutional discrimination, that have ramifications beyond the circumstances of an individual complainant. They can be an important means of raising awareness of the effects and consequences of discriminatory conduct by employers, service providers, educational establishments, etc, and can have a significant impact, either in terms of

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<sup>12</sup> *Enabling lesbian, gay and bisexual individuals to access their rights under Equality Law*, J Walsh, C Conlon, B Fitzpatrick and U Hansson, commissioned by the Equality Commission and the Equality Authority, November 2007.

[http://www.equalityni.org/archive/pdf/RESKM050603SOFINAL200308\(1\).pdf](http://www.equalityni.org/archive/pdf/RESKM050603SOFINAL200308(1).pdf)

<sup>13</sup> See *ECNI Response to DEL consultation on resolving workplace disputes*, 2010,

[www.equalityni.org](http://www.equalityni.org)



bringing about changes in discriminatory practices and procedures or otherwise. They can raise awareness amongst individuals of the protection afforded by the law, as well as clarifying points of legal uncertainty.

Discrimination cases, therefore, have the potential to raise awareness of new rights and responsibilities under the Equality Act 2010, clarify areas of legal uncertainty and encourage employers and others to adopt good practice in line with recommendations contained in Codes of Practice and other guidance issued under the Equality Act 2010.

In addition, under the changes introduced under the Equality Act 2010, remedies in discrimination cases brought to tribunals can extend beyond the individual complainant and help others subjected to discriminatory practices and procedures by employers.<sup>14</sup>

It is also important in the current economic climate in which jobs are being lost, benefits reduced and services and facilities removed that the most vulnerable members of our society have sufficient access to legal advice and assistance in relation to discrimination complaints.<sup>15</sup>

Finally, it is clear that under the EU Directives there is a responsibility on Member States to ensure that a national equality body established under the Directives can provide independent assistance to victims of discrimination in pursuing their complaints of discrimination.<sup>16</sup> It is important that the Government, through a lack of sufficient funding of legal assistance to victims of discrimination, does not significantly undermine the ability of the EHRC to deliver this key role mandated under the Directives.

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<sup>14</sup> In addition, the Government is currently consulting on proposed changes which would require Tribunals, for example, to order an employer who has been found to have discriminated on pay matters to conduct an equal pay audit, unless it would not be productive to do so. See *modern workplaces* consultation.

<sup>15</sup> We note from the Government Equalities Office's recent report on *Information, Advice and Support on equality and human rights issues* that evidence from Citizens Advice suggests that the economic downturn has exacerbated discrimination problems in the last two years.

<sup>16</sup> See footnote 18.

**Question 11: Do you agree with the proposal for the Air Transport Users Council (AUC), part of the Civil Aviation Authority (CAA), to provide the complaints handling service for disabled passengers in the future? If not, why not?**

Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

We recommend that the EHRC continues to provide advice in relation to disabled air passengers under the Air Transport EC Regulation.

As highlighted in our response to question 6 above, we consider that rather than replacing the EHRC helpline (which was used to support a complaints handling service for disabled air travellers), an alternative approach would be to work with the EHRC to ensure the provision of an effective and efficient service by it, with appropriate systems and safeguards put in place to address highlighted deficiencies.

In light of the fact that the EHRC's remit covers discrimination against disabled people and it has developed expert knowledge in this area, we recommend that it continues to provide information and advice to disabled passengers under the EC Regulation, as a specialist service.

The benefits the Government believe will flow from this proposal are illusory. There is a superficial logic in locating responsibility for complaints relating to disabled air travellers in part of the CAA but reflection will suggest that the outcome is likely to be unsatisfactory to all.

The CAA will be obliged to develop or engage a service of experience and expertise in relation to disability discrimination if the relevant passengers are to have confidence that their complaints will be adequately considered. To require the CAA to embark on such a course while the EHRC is an existing repository of the knowledge and experience that will better serve the needs of disabled air travellers, is an approach that is difficult to understand.

## **PROPOSAL SEVEN: Supporting Social Action**

**Question 12: How could the new Government funding stream most effectively support civil society organisations to promote equalities, human rights and tackle discrimination?**

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Please explain -

The Government can support civil society through a range of measures including; building the capacity of individuals and representative organisations involved in equality issues; encouraging the participation of under represented groups in public life so that they can effectively engage with Government and other public sector bodies; and empowering groups to deliver public services that are appropriate to needs of different equality groups.

**Achieving greater value for money and accountability****Question 13: Do you agree with our legislative proposals to increase the Commission's transparency, accountability, and value for money?**

Please place a cross in the appropriate box

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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Please explain why -

We agree that there is a need for all public bodies, including the EHRC, to ensure that they carry out their functions in an effective and efficient manner and that proper controls are in place to ensure transparency, accountability and value for money.

We do not agree that there is a need to amend the Equality Act 2006 in order to increase the EHRC's transparency, accountability, and value for money as proposed in paragraph 3.2 of the consultation document. Again, we are of the view that the Government's proposed approach in this area is neither proportionate nor targeted.

Whilst we recognise that the Comptroller and Auditor General qualified the EHRC's first two sets of accounts, it is clear that the EHRC has already taken steps to address identified deficiencies.

Our own experience has shown that transparency, accountability and value for money can be obtained without the need for the specific statutory duties proposed in the consultation document. Proposals, such as on the Chair and Chief Executive Officer of the EHRC to have specific regard to using public money effectively and efficiently, are explicit and implicit in the governance arrangements for all public bodies and the standards of public life required of those running public bodies.

The Equality Commission operates within the clear framework of its Management Statement and Financial Memorandum, agreed with its sponsoring Department, the Office of the First Minister and Deputy First Minister (OFMdfM). It works co-operatively with OFMdfM in relation to its corporate and business planning processes and ensures that all necessary financial and other management controls and procedures are in place. It also has effective liaison, reporting and monitoring

arrangements in place with OFMDFM in order to ensure value for money, transparency and accountability.

In summary, we are of view that rather than the need for additional duties, improvements in transparency, accountability and value for money can be obtained through compliance with agreed Departmental controls and procedures and effective monitoring, liaison and reporting arrangements.<sup>17</sup>

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<sup>17</sup> We note the House of Commons Committee of Public Accounts in Feb 2010 outlined a series of recommendations aimed at the EHRC and Government Departments in this area. See *House of Commons Committee of Public Accounts, 15<sup>th</sup> Report of session 2009-10*.

## Our approach to reform & next steps

### Question 14: Do you agree with our approach of legislative and non-legislative reform?

Please place a cross in the appropriate box

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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Please explain why -

The Government is proposing a series of wide ranging reforms to the duties and powers of the EHRC which it states are aimed at helping it to focus on its role as an equality regulator, fulfil its human rights remit, deliver value for money, and to ensure that is more effective and accountable. The reforms are brought forward following the Public Bodies Review and in light of the need for the Government Equalities Office to reduce spending by 38% over the course of the Spending Review period. The Government is proposing that some of the functions currently carried out by the EHRC will be transferred to Government or other private/voluntary sector bodies.

We recognise, as highlighted in the consultation document, that there have been deficiencies in some areas in relation to the performance of the EHRC to date. There is a clear need for all public bodies, including the EHRC, to ensure that they carry out their functions in an effective and efficient manner and that proper controls are in place to ensure transparency, accountability and value for money. The principles of good governance and accountability must underpin the work and conduct of all public bodies.

We also recognise the constrained financial environment in which all public bodies are operating, and are of the view that it is essential that steps are taken by all public bodies, including the EHRC, and indeed ourselves, to ensure all necessary efficiency savings and the effective management of cost reduction.

However, as outlined in more detail in our responses to the specific questions and as summarised below, we have a number of concerns in relation to the Government's proposed approach, through both legislative and non-legislative changes, to reforming the EHRC.

In our response, we have drawn on our own experience as an equality body with a wide equality remit and broadly defined powers and duties. In particular, we have highlighted the benefits we have gained through operating an information helpline, and through our work on promoting good relations.

### **Proportionate and targeted approach**

First, we consider that the Government's proposed approach in some areas is neither proportionate nor targeted at addressing the perceived problems or risks.

We are of the view that some of the proposed changes, including a reduction in the EHRC's duties and powers and the changes proposed in Chapter 3 aimed at achieving greater value for money and accountability, are not required and that deficiencies could be achieved through different means; for example, through the adoption by the EHRC of a more focussed strategic direction across its mandate, with effective controls and systems in place to ensure that services delivered provide value for money and meet the needs of stakeholders.

Crucially, when assessing the EHRC's performance to date, it must be recognised that the EHRC has been in existence for less than four years and has faced significant challenges in terms of the merger and amalgamation of its three predecessor Commissions; as well as taking on a new mandate in relation to the promotion of human rights.

In addition, as recognised by the consultation document, there have been a number of significant positive achievements of the EHRC during that relatively short period. It is also clear that the EHRC has already taken a number of steps to address previously identified deficiencies in terms of its use of tax payers' money, and in order to ensure that it carries out its functions in an efficient and effective manner.

### **Maintaining EHRC's independence**

Secondly, it is critical that the Government, in bringing forward its reform proposals, safeguards the independence of the EHRC and ensures that it is granted sufficient powers and resources to fulfil its role as a national equality body mandated under the EC Directives and as a UN – accredited National Human Rights Institution (NHRI).

In particular, EU Directives<sup>18</sup> require Member States to establish equality bodies to promote equal treatment without discrimination on a number of equality grounds. The Directives stress the need for such equality bodies to carry out their functions independently; in particular, they make it clear that Member States must ensure that equality bodies can independently provide assistance to victims of discrimination, conduct surveys, publish reports and make recommendations.

In addition, the Government will be aware that the EHRC is a NHRI recognised by the UN International Co-ordinating Committee for NHRIs. The Paris Principles on the Status of National Human Rights Institutions ('the Paris Principles') set out the UN standards against which the international community assesses NHRIs.<sup>19</sup>

The Paris Principles also state that NHRIs should have 'as broad a mandate as possible', have independence from Government and be 'adequately resourced'. It is therefore essential that any proposals for the reform of the EHRC do not undermine its independence from Government, or affect its 'A' status as a NHRI.

Finally, when considering a narrowing of the EHRC's remit and the removal of some duties and powers, it is essential that the Minister, in accordance with the duty under Schedule 1 of the Equality Act 2006, has regard to the desirability of ensuring that the EHRC is under 'as few constraints as reasonably possible in determining (a) its activities, (b) its timetables, and (c) its priorities'. This provision was included in the Equality Bill 2006 in order to enhance the Commission's *de facto* independence from the Government.

### **Support for the EHRC's equality and good relations work**

We note that the Joint Committee on Human Rights in its report on the structure, functions and powers of the Commission for Equality and Human Rights (now EHRC) indicated that it believed that the decision of the Government to proceed with the establishment of the Commission for Equality and Human Rights provided 'an opportunity to make the UK an example of best practice in the design of an independent and effective Human Rights Commission'.<sup>20</sup>

<sup>18</sup> EU Directives 2000/43/EC (Race Directive), 2002/73/EC (Equal Treatment Directive), 2004/113/EC (Gender Directive) and 2006/54/EC (Recast Directive)

<sup>19</sup> UN Commission on Human Rights Resolution 1992/45, [www.unhchr.ch](http://www.unhchr.ch)

<sup>20</sup> Commission for Equality and Human Rights: *Structure, Functions and Powers*, Joint Committee on Human Rights, 11<sup>th</sup> Report 2003/04, [www.publications.parliament.uk](http://www.publications.parliament.uk).



We endorse this sentiment and believe that, as a sign of its commitment to the promotion of equality of opportunity and human rights, particularly following on from its commitment to the implementation of the Equality Act 2010, the Government should ensure that it is an example of best practice in terms of the powers, duties and financial support given to the EHRC.

The necessity for maintaining and supporting a strong and independent EHRC with a clear mandate, effective enforcement and investigatory powers and sufficient resources is particularly critical at this time for a number of reasons.

The EHRC faces a significant and critical task in promoting awareness of the rights and obligations, encouraging good practice, and taking effective enforcement action in relation to the Equality Act 2010; the great majority of the provisions of the Equality Act 2010 have just been implemented by the current Government, with additional significant provisions (for example, in relation to age discrimination outside the workplace) to be implemented at a later date.

Also, at this time of substantial reductions being made in all areas of public spending, it is vital that all possible steps are taken to protect the most vulnerable in our society. It is clear from the findings of the EHRC's first Triennial Review report, *'How Fair is Britain'* that persistent inequalities exist and that significant challenges in addressing inequalities remain. The Government has also made it clear in its Equality Strategy that 'at a time of global economic pressures, equality becomes more, not less, important'.<sup>21</sup> It is therefore essential that the EHRC has the resources and tools to protect those most at risk of discrimination.

In addition, it is important that any reduction in services do not impact most severely on those who are already at risk. For example, as outlined in our response to question 10, we are concerned that the Government's proposed reduction in funding of organisations for legal advice and assistance in discrimination cases has the potential to significantly restrict the number of individuals who can access legal advice and assistance (including legal representation) at tribunals/courts in relation to their discrimination cases.

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<sup>21</sup> *Government's Equality Strategy: Building a Fairer Britain*, Dec 2010, <http://www.equalities.gov.uk/pdf/Equality%20Strategy%20tagged%20version.pdf>

We have also highlighted in our response to question 4, the need for the EHRC to retain its current good relations duties and powers so that it can engage proactively across **all** sectors in helping to build strong cohesive communities and tackle prejudice. The Government is also proposing the removal of EHRC powers that were present in the predecessor bodies- an outcome that was not in contemplation when the EHRC was created. We recommend greater consideration of the impact of the proposed changes on those for whose benefit the original arrangements were made.

Finally, we note that one of the aims of the reform proposals is to ensure that the EHRC focuses on its core role as an independent equality regulator. We note that, in bringing forward its proposals for reform, the Government did not consider ways to strengthen the EHRC's powers (including investigatory powers) so as to enhance its ability to act as an equality regulator.