



**Consultation on Building a Fairer Britain: Reform of  
the Equality and Human Rights Commission**

**JUSTICE Response to Government Equalities Office  
Consultation**

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## Introduction

1. Founded in 1957, JUSTICE is a UK-based human rights and law reform organisation. Its mission is to advance access to justice, human rights and the rule of law. It is also the British section of the International Commission of Jurists.
2. JUSTICE welcomes the Government Equalities Office consultation on the role of the Equality and Human Rights Commission (EHRC). We note that there has been some criticism of the EHRC's finances and expenditure since its creation. We also appreciate that the Government is committed to making substantial savings in general, and in particular to the number and cost of 'quangos', including the EHRC which it claims 'has not been cost effective for the tax payer'.<sup>1</sup>
3. We agree that there may be lessons to be learnt from the way the EHRC has been functioning over the past three years but believe it is important to not lose sight of its fundamental purpose, which is to provide a national equality and human rights body which is robust, effective and independent. The existence of such a body is not only vital to the protection of human rights in the UK but also is also part and parcel of the UK's obligations under international human rights law, including article 1 of the European Convention on Human Rights and the UN Paris Principles on National Human Rights Institutions:<sup>2</sup>
  - *The composition of the national institution and the appointment of its members...shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights...*
  - ...
  - *The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*
  - *In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate.*

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<sup>1</sup> Executive Summary, para 1.

<sup>2</sup> Principles relating to the Status of National Institutions (The Paris Principles) adopted by General Assembly resolution 48/134 of 20 December 1993.

4. In our view, the proposals put forward in the consultation paper would breach these obligations and diminish the EHRC's role as an UN-accredited National Human Rights Institution. In particular, the proposal to change the EHRC from being a protector and promoter of human rights into being a quasi-legal regulator reveals a fundamental lack of understanding of the relevant international standards in this area. The proposed accountability measures are also likely to undermine the Commission's independence. More generally, the consultation fails to give proper weight to the importance of maintaining the constitutional and democratic role of an independent and robust human rights institution, one that ensures that public bodies comply with their domestic and international human rights obligations.

## **EHRC'S CORE FUNCTIONS**

5. In its own response to the consultation on Public Bodies Bill, the EHRC described its role as:

*'... an independent statutory body established under the Equality Act 2006. The Commission works to reduce inequality, eliminate discrimination, strengthen good relations, and promote and protect human rights. As such, the Commission is the designated independent body required by European Union Equality Directives to promote equal treatment without discrimination.'*

6. We believe that this is an accurate description of the Commission's role and one that should not be weakened or resiled from. The problems with the EHRC to date have not arisen from its wide remit – the breadth of which is in our view entirely necessary – but are mainly ones to do with governance and management. These issues will not be solved by reducing the remit of the EHRC. Instead, such a step would only serve to restrict the valuable work the Commission has undertaken and weaken the UK's commitments under international human rights law.

## **PROPOSAL ONE – Repealing the General Duty**

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

7. No. The objectives set out in the General Duty were subject to lengthy consultation with civic society and debate during the passage of the Equality Act 2006. They were also agreed by all political parties in Parliament following amendments proposed by Conservative MPs.
8. The General Duty provides a clear mandate which the EHRC must have regard to when deciding how to act. By repealing the General Duty, the mission and very purpose of the EHRC would be altered, and the UK's commitment to the Paris Principles would be fatally

undermined. As such, any proposals to reduce the Commission's remit in respect of the promotion of a fair and equal society should be opposed.

9. To object to the General Duty on the grounds that the EHRC cannot itself hope to establish and promote a fair society is to fundamentally misunderstand the nature of the duty. In particular, it does not require any specific action to be taken but instead operates as a general guiding principle in relation to the work that the Commission is already required to undertake.

**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?**

10. We strongly disagree with the consultation paper's description of the EHRC as 'a *regulator* of equality law'. Whilst it is obviously an important role of the EHRC to ensure compliance with legislative measures, the UN Paris Principles make clear that the primary function of National Human Rights Institutions must be much broader, i.e. to promote respect for human rights including the basic human right of the right to equality.<sup>3</sup> Its role must therefore go beyond that of a regulator. We believe that the consultation paper's failure to understand what is required by the UK's international obligations also has the effect of artificially isolating human rights as a distinct issue, rather than ensuring they underpin the framework for all of EHRC's work, including its equalities mandate.
11. As a result of the misconceived way in which the EHRC has been depicted as 'an equality regulator', the specific duties proposed to replace section 8 also focus too much on enforcement and compliance of law. In particular, it would be a basic error to restrict section 8 duties to 'specific regulatory functions that the EHRC must carry out'.<sup>4</sup> The work of a national human rights institution under the Paris Principles cannot be sensibly restricted to addressing legislation, regulation and casework. For instance, the development of a human rights culture - which we note is a continuing commitment of government - will not be brought about solely by casework but also by measures which increase public understanding of equality and diversity. The work that the EHRC currently undertakes under section 8 is essential to counter discrimination and promote equal opportunities. The EHRC's role should not be restricted too narrowly to restrict this powerful promotional and learning tool.

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<sup>3</sup> See e.g. Article 1(3), UN Charter ; Article 2, Universal Declaration of Human Rights (UN Doc A/811); Article 26, International Covenant on Civil and Political Rights; Article 14, European Convention on Human Rights; section 15, Canadian Charter of Rights and Freedoms (Schedule B of the Constitution Act (Canada) 1982); section 19, New Zealand Bill of Rights Act 1990.

<sup>4</sup> Para 1.10

12. This proposal must also be considered in light of the suggested removal of the good relations duty. With both proposals involving a narrowing of the EHRC's remit, it is likely to result in the EHRC no longer being able to undertake this valuable work. It is essential that the EHRC retains equality duties that are wide enough to enable it to carry out similar types of work in the future. The proposed core functions as set out in paragraph 1.9 also focus too much on acting in partnership with others. Whilst such partnership work should be encouraged to impact societal change within businesses and public bodies, this can only be seen as part of the EHRC's role. It must, in itself, be able to promote equality rights and good practice and therefore this needs clarification.

**Question 3: Do you agree with our proposal to amend the section 12 duty so that it: (i) specifies the aims and outcomes which EHRC is required to monitor progress against; and (ii) requires a report every five rather than three years, to tie into the Parliamentary cycle and enable reports to capture meaningful change over time?**

13. We support the requirement on the EHRC to report on progress towards its goals. However, as the consultation does not specify what 'aims and outcomes' it would specify we cannot evaluate their effectiveness. We believe that the current section 3 objectives should be maintained and covered by any suggested alternatives. Furthermore, we would welcome further consultation as to what issues they should be monitored on should this be amended.

14. We disagree with the proposal to move the reporting time to tie into the Parliamentary cycle. The Paris Principles make it plain that a national human rights institution must be independent from Government and that it must have a 'stable mandate' in order to do so. By tying the reporting cycle to the electoral cycle this may influence the EHRC to report on the performance of the particular Government. This may therefore change the ethos of the reporting stage into a political, non-independent report skewed for the benefit of political parties.

### **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?**

15. We welcome the retention of section 9 of the Equality Act 2006 as recognition of the important role the EHRC plays in the promotion of human rights. However, it must not be forgotten that

the right to equality and non-discrimination is itself a basic human right.<sup>5</sup> We do not therefore agree that a narrowing of the EHRC's functions will assist the Commission in fulfilling its human rights remit. As previously stated human rights need to underpin and be integral to the work of the EHRC and should not be considered as a separate issue.

#### **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?**

16. We agree that not all of the initiatives undertaken under the good relations function have necessarily been appropriate. However, we maintain our position that the EHRC's primary function should be to promote respect for human rights and focus on 'achieving strategic change through promotion, advice, the spreading of best practice and the raising of public awareness'.<sup>6</sup> The good relations function assists in the promotion of understanding and awareness of equality and diversity and therefore should be retained in its wider remit to ensure compliance with the Paris Principles. The ability to undertake good relations work is essential to the proper functioning of the EHRC if it is not to become too narrowly confined as a regulator. We also doubt that the Public Sector Equality Duty is an adequate substitute. Whilst this is clearly a very useful tool to transfer skills to public bodies to understand good relations again this must be something that the ECHR actively pursue in their own right as the national human rights institution.

#### **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?**

17. We repeat our concerns set out above that the Government perceives the ECHR's role as a 'strategic regulatory' one. The EHRC's conciliation power is a valuable function that assists vulnerable people, particularly the disabled, with resolving issues without the need to litigate in

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<sup>5</sup> See e.g. Article 1(3), UN Charter ; Article 2, Universal Declaration of Human Rights (UN Doc A/811); Article 26, International Covenant on Civil and Political Rights; Article 14, European Convention on Human Rights; section 15, Canadian Charter of Rights and Freedoms (Schedule B of the Constitution Act (Canada) 1982); section 19, New Zealand Bill of Rights Act 1990.

<sup>6</sup> *Commission for Equality and Human Rights: Structure, Functions and Powers*, 11th Report of the Joint Committee on Human Rights, 2003-04 (JCHR, Cmnd HL 78, HC 536) 5 May 2004, p 7.

court. It also serves to encourage businesses to make voluntary long-lasting changes aimed at benefiting those suffering from discrimination or equality issues. This provision should therefore be maintained under the EHRC's wider remit as a promoter and protector of human rights, as required by the Paris Principles.

### **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?**

18. It is with great consternation that we acknowledge the closure of the EHRC's helpline from 31 March 2012. We feel that such a helpline was a valuable service for individuals, groups, public sector workers and in particular, advisers. It acted as a vital source of information and advice from the UK's equality and human rights institution, which we suggest is one of its more vital roles.
19. The proposals for a outsourced new general information advice line is welcomed as an alternative (albeit inferior) provision, with trepidation that it should meet the standards of the current advice helpline and should be giving priority funding to ensure information, advice and assistance on equality and human rights on a national wide basis. As set in the Paris Principles, it is for the EHRC to combat discrimination and increase public awareness and as such it must play a part in this new helpline, even if outsourced, to ensure that it is meeting the international standards.
20. Whilst the alternative provision of a helpline is welcomed as at least meeting some level of our international requirements, we urge the Government to consider what other options might be available in delivering an efficient service and to ensure that human rights and equality standards are placed at the heart of the process.

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

21. The helpline needs to provide specific (not generalist) advice and guidance on human rights and equality law to all members of society. Therefore, the description of the service as being 'citizen-focused' causes us some concern when clearly advice should be provided irrespective of their citizenship. The service must be available to all members of the public, including children, people who use English as a second language and disabled people.
22. It is essential that an advice service is accessible to all, and so although a telephone or internet helpline will be useful to some people, it should not be the sole access point to legal

help, as this will assist those without access or the ability to use a telephone or computer. Face-to-face advice must therefore be maintained locally in order to service the disadvantaged and vulnerable members of society who require this service.

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

23. We disagree that public education on discrimination and human rights should only be targeted on the most disadvantaged groups. The ECHR must promote and protect equality and human rights in the wider society to encourage societal change.

**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?**

24. Funding must continue to be available for civil society organisations to promote equalities, human rights and tackle discrimination. This should be maintained under the wider remit of the ECHR in promoting equality for a fairer society.

**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?**

25. It is vital to ensure the independence, accountability and transparency of the EHRC in accordance with the Paris Principles.
26. The consultation suggests a number of proposals which would alter the relationship between the EHRC and the Government. These include legal requirements, including an annual business plan and a need for the EHRC's chair to have regard to using public money efficiently and effectively, and allows the Secretary of State to impose a financial sanction where the EHRC has been found to misspend public money and to clarify that the EHRC is subject to Government public expenditure restrictions.
27. Although we agree that it is important to promote efficiency and transparency in all public bodies, the Paris Principles also make it plain that a national human rights institution should have adequate funding, which should enable it to be 'independent of the Government and not be subject to financial control which might affect its independence'. We regret that the new proposed legal requirements clearly impact on the ability for the EHRC to be independent. In

particular, the risk of financial sanctions is not only draconian but it is also axiomatic that this will impact on the way in which the EHRC pursue its aims. Another example of government pressure is seen by the legal requirement to produce an annual business plan before Parliament. Given that Parliament is responsible for funding the Commission, we are concerned that this is tantamount to an invitation to Government Ministers to control the EHRC's work plan.

28. We are therefore very troubled by these proposals which will erode the independence of the EHRC and would give overarching power to the Government (of whom the EHRC is tasked with ensuring it meets its international obligations).

## **OUR APPROACH TO REFORM & NEXT STEPS**

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

29. We disagree with curtailing too rigidly the 'what' is covered by the EHRC's role leaving only the discretion of 'how' it reviews this. The EHRC, as an 'A' status National Human Rights Institution, must be able to review any issues it feels are in conflict with human rights issues and be able to act independently to do so. In this respect, we also raise our concern that the EHRC may be sharing offices with government departments. The need for independence and the ability to scrutinise each and every department of the government must be maintained, despite the financial implications this may cause.
30. We note the reliance on the Public Bodies Bill in its proposals for legislative reform. We have serious concerns regarding the Public Bodies Bill and believe that the Bill, in its entirety, should not be passed. In particular, it allows ministerial abolition of and interference with public bodies, including the EHRC, whose independence is vital for the protection of human rights and the maintenance of the integrity of the legal system.
31. Clauses 1 to 6 of the Bill create powers for ministers to abolish, merge, modify the constitutional or funding arrangements or functions, transfer the functions or authorise delegation of the functions of a large number of public bodies scheduled to the Bill in Schedules 1-6. Clause 11 allows ministers to add further bodies to Schedules 1 to 6 from a larger list in Schedule 7. A large number of the public bodies in Schedules 1-7 have vital oversight functions in ensuring compliance with human rights law and maintaining the independence of the legal system from government. We therefore has serious concerns regarding the constitutional impact of this Bill and its effect upon human rights scrutiny of the UK government and others performing public functions for the purposes of the Human Rights Act 1998.

32. While the merits or otherwise of the abolition, merger or reform of non-departmental public bodies (NDPBs) in some policy areas is a political question upon which we would not take a position, other NDPBs have been created precisely because their functions in, for example, adjudicating upon the exercise of governmental powers; investigating compliance with human rights standards by public authorities; or setting rules for courts and tribunals must be independent but should be publicly funded. Their potential abolition (or even the transfer of their powers to ministers or others selected by ministers (*Clause 1*)) is thus of serious cause for concern, and it is inappropriate for government ministers to be able, by order, to interfere with them by changing their chair or members, qualifications for employees, accountability to ministers, funding arrangements or functions (*Clauses 3-5*).
33. We therefore regard the inclusion in this Bill of the EHRC and other bodies with vital oversight functions, as a matter of the most serious concern. We consider the EHRC should be removed from the Bill if it is to become law.
34. The EHRC has important functions which include holding formal inquiries or seeking judicial review to secure compliance with the Human Rights Act, and enforcing equalities duties through inquiries, investigations and litigation. It is axiomatic that the EHRC must be independent of government in appearance and in fact properly to carry out these functions; ministers should not be able to abolish or merge it or make changes to its composition, governance, functions or funding arrangements. Nor should it be included in a list of bodies to whom such changes might be made in future if secondary legislation is passed. The inclusion of the EHRC in Schedules 3, 4, 5 and 7 substantially compromises its independence; if the Bill continues to go through Parliament, therefore, the EHRC should be removed from all Schedules.

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