

# Equality South West response to the Government Equality Office consultation on reform of the Equality and Human Rights Commission

## **General points**

The draft regulations/specific duties published in March 2011 leave public bodies scope to provide a minimal response to the duties set out on the face of the Equality Act. They also make it more difficult for civil society to monitor their performance in relation to these duties. It is against this background that we approach the consultation proposals on the reform of the EHRC, since while the specific duties are consistent with the government's 'localism' agenda, this appears to be at the expense of ensuring that its equality aims are given sufficient political impetus to overcome the inertia and resistance evidenced for example among some local authorities in the South West.

The United Nations 'Principles relating to the Status of National Institutions (the Paris Principles)', under which the EHRC gained accreditation in 2009, state that "*A national institution shall, if necessary ... recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures*" (that are intended) "*to preserve and extend the protection of human rights.*" The GEO consultation document contains a number of proposals that would seem to have the effect of reversing the roles of government and the Commission in relation to the latter's functions as a national human rights institution, and as an independent body charged with promoting and regulating equality and human rights in the Britain.

The document proposes a series of changes which we believe represent regressive measures in relation to the promotion of equality, diversity and good relations in Britain.

We have concerns about the reference in the consultation document to defining the EHRC's human rights work, as it is not clear what is meant by this or what the implications will be.

## **Question 1: do you agree that section 3 should be repealed?**

We do not agree with the proposal to withdraw the current provisions under the general duty, and see the proposed amendment, along with those affecting Section 8 as a serious watering down of the provisions, and the powers of the Commission.

**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 paragraph 1.9 of chapter 1 will help to focus EHRC on its core objectives as an equality regulator? If not, what do you think EHRC's core functions should be?**

We recognise and regret that the Equality and Human Rights Commission has under-performed in some areas, and would welcome proposals to improve the efficiency of, and to strengthen the Commission. However, we believe that the proposals to redefine the EHRC's core functions and to remove those which the document categorises as non-core functions would not represent the changes necessary to achieve the desired progress in equality and human rights in Britain.

We are concerned that the wider context within which the EHRC's general duty would be withdrawn actually makes its retention, and the retention of parts 1 – 3 of Section 8, more important than ever. We fear that the breadth of discretion available to, and the lack of transparency required of public bodies, in terms of both how they undertake their public sector equality duties and how they set and fulfil their equality objective/s, will have the effect of signalling a diminution of government support for greater equality.

We believe it is crucially important that the EHRC continues in its role of promoting human rights and equality and diversity, alongside its regulatory role as is set out within the Paris Principles. This cannot be achieved simply through the exercise of its duties as a public sector body. As the nation's special-purpose equality and diversity organisation the EHRC needs to be specifically charged with, and adequately resourced and empowered to perform, these two essential roles. We believe the general duty, and the powers within it, should be retained and can be made compatible with proposals a. to f. Set out in Proposal 2, para 1.9.

We welcome the emphasis throughout Proposal 2 on partnership working, and believe this is an area which requires further development by the EHRC. Indeed, we believe that a sub-national partnership between the EHRC and civil society organisations such as ours would provide a highly effective and economical mechanism for achieving the government's equality objectives.

The proposition (Proposal 2 Para 1.9 (c)) that "*EHRC should work in partnership with other regulators and inspectorates, trade and sector bodies to ensure they monitor compliance in the course of their regulatory activities*" is a welcome one in its intent. However, we note that there are contradictions between the reality of outcomes that such monitoring and regulatory partnerships have the capacity to yield within the government's wider 'light touch' regulatory proposals, and the expectation that this proposition encourages.

We highlight as examples of this contradiction proposals to abolish the Audit Commission, and to amend Ofsted's inspection framework, removing equality performance as a limiting grade. Such measures, along with others already implemented (e.g. abolishing all National

Indicators and Local Area Agreements) have depleted the overall regulatory capacity to support the promotion of equality that is anticipated in this proposal.

It is presumed that the other regulators and inspectorates with whom EHRC are charged to work in partnership will co-operate and would expect to see some requirement on them to do so. Self-evidently, the EHRC can only work in partnership if this is two-way.

Proposal 2, para 1.9 (f) allows the EHRC to *"make recommendations to Government about the effectiveness of the Equality Act 2010 and whether it should, in EHRC's view, be amended, repealed or further consolidated."* The power to recommend strengthening the legislation is not included.

Further, the EHRC's powers to advise on legislation are restricted to proposed but not existing legislation. Evidence gathered by the EHRC might, however, suggest instances where existing legislation is hampering progress on equality and human rights. In addition the powers it does have regarding advising government on proposed legislation are restricted in a way which appears to require the commission to anticipate whether campaigning organisations or lobby groups will take up issues which, in the EHRC's objective view, are matters of concern.

**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?**

We support the idea of clearer specification regarding the aims and outcomes against which to monitor progress.

We would also suggest that the proposal as set out does not provide enough detail, and that it requires retention of the existing Section 3 to clarify what is meant by 'a fairer society'. It also refers to monitoring progress in 'broad terms' consistent with the EMFs, but does not state whether the EMFs will be the used in the measurement of progress as currently.

With regard to reporting, we believe it is important to retain the current triennial review. We are not convinced that the Parliamentary cycle, should it become set as five yearly, is necessarily the best pattern for equality reporting, nor is it clear at what point in the cycle reporting should take place and why.

Given that the proposed specific duties allow local authorities to identify a little as one equality objective in relation to just one of the 'protected characteristics', and need not report on progress before four years, the triennial review is an important means of keeping track of trends at a national level more frequently. Three yearly reporting would also make it easier to identify any relationships between progress on equality and economic trends and legislative changes.

**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?**

EHRC was set up to promote equality, diversity and human rights in furtherance of British legislation and in compliance with the requirements of a number of international bodies and of agreements such as the Paris Principles.

**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?**

We recognise that the EHRC has not worked well in the area of 'good relations' to date. However, it is a very important function, particularly for organisations concerned with race, religion and belief, hate crimes and violence against women.

The limited progress so far should not lead to the conclusion that 'good relations' work should be removed, but instead it should be improved, particularly since we cannot see that this work is being picked up by other government bodies or organisations whose continuation does not depend on discretionary grants. There seems to be an assumption that such work will be carried out by NGOs such as the Runnymede Trust, Runnymede's work in this area has itself been funded by EHRC, an arrangement which seems unlikely to survive the proposed ending of the grants programme.

It is important to take into account, in this context, the extent to which 'good relations' work around the country is being hit by local authority and other public spending cuts in general.

We would support a reduction in EHRC involvement in such 'good relations' projects as summer camps, if these were resourced to be delivered by NGOs in local areas.

The proposal to abolish, rather than improve project grants scheme based on lessons learned will deprive small organisations of opportunities to innovate and develop good practice.

**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?**

The conciliation/mediation function is a valuable area of the Commission’s work which is carried out by people who have specialist knowledge and understanding of the ways in which discrimination works, and the impact it can have on those affected.

It has the potential to act as a real-time information feed, indicating issues and trends, as well as being a trusted, independent and authoritative body on which individuals and organisations from all sectors could rely.

If this ceases to be an EHRC function the alternative provider organisation needs to be able to demonstrate that advisers have a similar level of understanding and are not profit motivated.

**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? and**

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

The existence of a dedicated, efficient, specialist helpline which both responds to its users’ needs and collates data regarding the issues arising across the country is of crucial importance to everyone, but has particular significance in the context of rural areas. Many contributors to our focus group and survey research – people who identify with protected characteristics - highlight issues of isolation, discrimination and lack of representation, advice and support services as a result of living in rural and semi-rural areas. Whilst the helpline may be in need of improvement we do not believe outsourcing is the only answer.

We are deeply concerned at the lack of any assurances within the consultation that that an out-sourced helpline would be run by providers with specialist knowledge and experience in equality and human rights, or that potential providers would have the interests of service users as its primary concern. We believe that such a service needs to be publicly accountable and that GEO should undertake evaluation exercises to ensure that it provides the quality of services that users need.

We understand that public bodies are among those who use the helpline to obtain advice about how to fulfil their obligations under the PSED. This indicates the potential benefits of a specialist ‘one stop shop’ helpline which ensures that the needs of service providers,

policy makers and the public are met in a professional and informed way. We note that other regulators such as OFGEM which operate specialist helplines and are funded to do so. The government should demonstrate its commitment to these communities of interest by applying this principle to the EHRC helpline.

If the government is determined to outsource the helpline, then we would strenuously urge that it should be placed with an appropriate specialist civil society organisation with nationwide reach in order to maximise consistency, including in the potential for data collection and analysis that the helpline offers. Its track record in relation to equality and human rights work would, in our view, make Citizens' Advice one of the organisations best-placed to inspire confidence among users and achieve the above mentioned consistency and efficiencies.

We are concerned that the reforms should also address the needs that people often have for face to face advice and support.

Any external provider would need to have a strong user-focus, confidentiality awareness and effective data gathering systems to ensure that the information on the nature of calls, types of callers and any trends in the substance of calls would feed into and form part of the EHRC's data monitoring role.

### **Capacity and capability building**

We welcome the proposal that the EHRC should capacity build among front line advisers.

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

Government has a responsibility to conduct a national public awareness campaign, and to support/resource NGOs in local areas to deliver targeted education and support to most disadvantaged groups they support on a day to day basis.

Contributors to our research would like to see public information advertising; 'zero tolerance' posters displayed in public buildings as well as commercial premises; newspapers dealing fairly/being made to deal fairly with groups who are discriminated against; greater diversity among television presenters and more realistic representation of diversity in popular television programmes.

One of the key areas which contributors identify as requiring better awareness and education on discrimination is in schools, and a concerted focus here would be an investment in better health and well-being, and better educational attainment for many young people as they move into adulthood.

**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?**

The proposal to end legal grant giving comes at a time when significant changes are being made to the legal aid system. This is a very important function of the EHRC and if removed it will leave many people without recourse to help with their cases and therefore to justice. There will be a consequent reduction in case law through which Britain's equality practice can be informed, understanding and performance improved and progress achieved.

By no means everyone who experiences discrimination will be eligible for legal aid, yet many whose incomes are marginal are likely to be discouraged from challenging discrimination through the legal system. We also believe there is a qualitative significance to the provision of an EHRC grant in support of a legal challenge. It is important to bear in mind how damaging are the effects of discrimination on people's self-confidence, and it takes a great deal of courage to make this journey. Knowing that a legal challenge is EHRC backed is likely to help sustain people through the process, as well as signalling the seriousness of the issues to the perpetrator/s.

**Question Q 12 - how could the new government funding stream most effectively support civil society organisations to promote equalities, human rights and tackle discrimination?**

We have serious concerns that future funding will be lost within government departments, and not highlighted to organisations wishing to progress Equality and Human Rights.

A core role of government departments should be, proactively, and in an accessible way, to inform organisations of funding available to support equality and human rights work. The EHRC will need to support and monitor government departments to ensure this information is accessible and transparent.

**Question 13 – Do you agree with our legislative proposals to increase the commission's transparency, accountability, and value for money?**

National human rights institutions such as the EHRC are charged with oversight of human rights within their national boundaries, and this requires a degree of independence from government such as to enable them to discharge their role effectively in challenging proposals and actions taken by or on behalf of state institutions.

Under the heading "Composition and guarantees of independence and pluralism", Para 1 (e) of the 'Paris Principles' sets out clearly the nature of government involvement that is expected in relation to decision-making by the Commission.

However, its independence is seriously compromised by various proposals within the consultation paper, not least in the heavily bureaucratic and restrictive requirements concerned with developing, and presenting to parliament for scrutiny an annual business plan.

Such a requirement would enable the Secretary of State to have direct control over the work of the Commission, contrary to the Paris Principles. Coupled with the requirements relating to accounting, this proposal seriously undermines the Commission's independence as well as its ability to respond to unforeseen events and challenges that arise during the course of the year.

We suggest as an alternative to a pre-agreed business plan that an annual report is presented to parliament for debate.

We believe that the current 'value for money' arrangements, which apply to other similar 'quangos' are adequate if properly observed. It is significant in the context of the proposals to note that regulatory bodies such as OFWAT and OFCOM are funded and given independence in order to successfully perform their role as a regulator. To apply a different set of rules to the EHRC would send out unhelpful signals both domestically and internationally regarding the government's attitude to human rights and equalities in the Britain.

### **Non-legislative change: Shared services**

We recognise that efficiencies can often be made through shared services arrangements, however, we are particular concerned that any arrangements that are adopted should not compromise the confidentiality of the EHRC's work, or its independence.

Shared services could lead to a conflict of interest particularly if EHRC is investigating a part of the government, and shared use of IT systems is of particular concern, given that a significant proportion of the Commission's data needs to be secure.

### **In conclusion**

We believe that the wider policy and economic environment within Britain makes it imperative that the EHRC retains its powers, and the clarity of its role and mission (including the definitions within the 2006 legislation of equality and diversity) and its operational independence to carry out the work that it was created to do.