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Communities and Local Government Committee

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Summary

Deep and entrenched inequalities and unfair discrimination persist in the UK in spite of 40 years of anti-discrimination legislation. Reducing these inequalities is not just a moral imperative; it would benefit society as a whole by tapping into the abilities and talents of all people in the UK as well as improving social cohesion and integration.

We welcome the creation of the Commission for Equality and Human Rights, which will bring together all equality strands and human rights. Concerns exist, however, about the practical arrangements for its establishment, including fears that it will not be fully ready to take on its new work on its 1 October 2007 start date; that its budget will not be sufficient; and that there may be some loss of expertise among the staff of the three former commissions. Nonetheless, we believe that the CEHR will be an important advocate for social justice and a fairer society, and we welcome its vital role in reducing inequalities and eliminating unfair discrimination.

Equalities legislation has grown piecemeal over the past four decades, and moves towards unifying it within a Single Equality Act have been delayed, raising concern both about how the new Commission can proceed in its absence and about the Government's commitment to bringing about a new, simpler legal framework. We recommend that the Government presses ahead with a Single Equality Bill that removes anomalies in the current law, simplifies it and promotes action to prevent unfair discrimination in our society.

Finally, we recommend that the Government acts to reduce persistent inequalities such as those which affect the life chances of ethnic minority women and people with disabilities and sets out a long-term strategy to achieve equality for all.

1 Introduction

The case for tackling inequality

1. Deep and entrenched inequalities and unfair discrimination persist in the UK. Recent data demonstrate that at the present rate of progress it may take decades to achieve parity in employment and education for some groups while for others it will never happen. At the current rate of progress, it is estimated that it will take until 2085 for the gender pay gap to be closed and until 2105 to close the gap in ethnic employment.¹ The situation is much starker for some groups, such as disabled people and Pakistani and Bangladeshi women who, under the same measure, are unlikely ever to achieve parity in employment.²

2. Tackling unfair discrimination and reducing inequalities is a moral responsibility, but this is not the only reason for doing so. There are benefits to be gained for all people from living in a more equal society—economically and socially. The Women and Work Commission concluded that removing the barriers to women working in traditional male occupations and “increasing women’s participation in the labour market would be worth between £15 billion and £23 billion: equivalent to 1.3 to 2 per cent of Gross Domestic Product (GDP)”.³ The Equalities Review reported that disabled people are 30 per cent more likely to be out of work than non-disabled people with the same profile, and “this costs the Government almost £9 billion annually [...] in lost revenue”.⁴

3. There is also a case for tackling inequalities to support social cohesion. The Equalities Review reported, “Violence, conflict, insecurity and political instability are all more likely to occur in more unequal societies”.⁵ The Commission on Integration and Cohesion likewise concluded “if discrimination experienced by some groups within our society continues, we will not be able to achieve the goals [...] for building integration and cohesion.”⁶ It pointed out that, for example, the life chances of immigrant communities vary widely, with the employment rate among immigrants from Somalia at just 12 per cent compared with 62 per cent for all other new immigrants.⁷

The national policy context

4. At the time of our inquiry, policy responsibility for equalities and human rights was split across a number of Whitehall departments. The Department for Communities and Local Government (DCLG) held lead responsibility for equality in respect of gender, race, religion or belief and sexual orientation and was also the sponsor department for the new Commission for Equality and Human Rights (CEHR). The Department for Work and Pensions (DWP) held lead responsibility for combating disability and age discrimination,

¹ Fairness and Freedom: The Final Report of the Equalities Review (hereafter ‘the Equalities Review’), Feb 2007, p 24

² The Equalities Review, p 25

³ The Equalities Review, p 20

⁴ The Equalities Review, p 20

⁵ The Equalities Review, p 21

⁶ Commission on Integration and Cohesion, Our Shared Future (hereafter ‘Our Shared Future’), June 2007, para 2.21

⁷ Our Shared Future, para 2.22

though responsibility for age discrimination matters relating to employment rested with the Department for Trade and Industry (DTI). The Ministry of Justice was responsible for the operation of the Human Rights Act 1998 and human rights policy generally. Current changes in the machinery of government may result in some re-allocation of these departmental responsibilities.

5. The CEHR will come into operation on 1 October 2007. It is a non-departmental public body established under the Equality Act 2006. Its tasks will be to reduce inequalities, eliminate discrimination, strengthen good relations between people and promote and protect human rights.

6. A range of new legislation and supplementary measures on equalities have been implemented in recent years. Most recently, in June 2007, the Government published the Discrimination Law Review (DLR) and subsequently launched a public consultation on proposals for a Single Equality Bill, which it is committed to introducing in this Parliament. The publication of the DLR followed the publication of the Equalities Review's final report, itself commissioned by the Government in February 2005. A panel was established to lead the review and investigate the root causes of inequality and discrimination in British society. The Government appointed Trevor Phillips, who at the time was Chair of the Commission for Racial Equality (CRE), to lead this review in a personal capacity. Its findings were published in February 2007.

Our inquiry

7. Our remit was extended to incorporate DCLG's new equalities responsibilities following the machinery of Government changes in May 2006. We felt that a short inquiry now would provide a timely opportunity to examine issues around the establishment of the CEHR and to further the debate on equality in preparation for the introduction of a Single Equality Bill.

8. We launched our inquiry following our examination of Trevor Phillips, chair-designate of the CEHR on 24 April 2007. We published our terms of reference in May 2007, received 16 memoranda and subsequently examined Meg Munn MP, the Parliamentary Under-Secretary of State (Women and Equality). Both oral evidence sessions were held and almost all our evidence received before the DLR was published. We do not comment on the specific details of the DLR but discuss broader policy issues and the establishment of the CEHR. We thank all those who contributed to our inquiry by submitting evidence or by more informal means. We are also grateful for the work of our specialist adviser, Shelagh Prosser.

2 Commission for Equality and Human Rights

Establishment

9. The CEHR acknowledged “the ambitious timescale for [its] launch and delivery” as its most immediate challenge.⁸ Trevor Phillips stressed the “absence of time” as a major constraint, going on to point out that the Government has created the new institution without a Single Equality Act on the statute book and that this “is why things are not quite as straightforward as they ought to be”.⁹

10. The Government established a transitional team to manage the merger of three existing commissions—the CRE, the Equal Opportunities Commission and the Disability Rights Commission—and the establishment of the CEHR. This team in turn appointed a number of consultancy firms to take forward different aspects of the transitional work including recruiting a chairperson, commissioners and a senior management team; development of the necessary infrastructure; and the provision of premises.¹⁰ Two consultancy firms have been used in organisational development work. This is a time-critical aspect of the transition as the process of matching staff from the existing commissions to posts within the CEHR cannot start until an organisational design defining the structure, nature and location of posts has been developed and agreed by the CEHR board. Ernst & Young LLP was initially retained but following the appointment of Trevor Phillips as CEHR Chair, it was replaced by Towers Perrin.¹¹ The CEHR told us that the final organisational design would be agreed by the board in “late June” at which point the job-matching process would commence.¹² This has now occurred.

11. The Public and Commercial Services Union (PCS) stated that “as a result of changes in the DCLG transition team and the replacement of the original consultants engaged to develop the CEHR organisational design, the programme schedule is now running 9 months later than anticipated”.¹³ The CEHR confirmed the delay, except in respect of the helpline service where an exemption had been made to ensure that its personnel were in place on 1 October, but nevertheless sought to assure us that delays in the organisational design work would “not delay the job-matching process”.¹⁴ The Minister admitted that some of the processes had “taken longer than would have been ideal”.¹⁵

12. A number of implications flow from delays in the transition process. Not all staff will be in place on day one. Although it is expected to be operational on time, the PCS

⁸ Ev 39

⁹ Q 6

¹⁰ Ev 77

¹¹ Ev 78

¹² Ev 40

¹³ Ev 26

¹⁴ Ev 40

¹⁵ Q 84

questioned how effective the helpline could be without the support of other staff across the CEHR. It argued “the helpline cannot function in a vacuum” and that to be effective it needs to work closely with “law enforcement, campaigns, media and policy teams to identify strategic cases, inform potential investigations, promote campaigns, [and] assist with good practice development”.¹⁶ On the basis of these concerns the PCS argued for “a more realistic timetable” for the establishment of the CEHR.¹⁷

13. The long-term impact on staffing is also a consideration. The existing commissions offered voluntary redundancy to those staff who did not wish to join the CEHR.¹⁸ Delays in establishing an organisational design have meant that employees have been expected to decide whether to accept voluntary redundancy without knowing what jobs will be available in the new Commission, what the grading structure might look like or where in the country they may be located. Anecdotal evidence suggests that uncertainty over a future with the CEHR may have prompted some experienced staff to opt for redundancy who might otherwise have chosen to stay, representing a loss of expertise to the Commission. Some of those opting for redundancy could subsequently be re-employed by the CEHR when its staffing requirements become clear. While this may go some way to recovering any loss of experience and expertise it will also be an unnecessary and costly process: those staff could simply have been matched to posts in the new organisation if the transition process had been more effectively managed. It is inevitable that the uncertainty and delay over the establishment of the CEHR will have lowered the morale of staff in the existing commissions.

14. In June 2007 the Minister confirmed that the CEHR will not be fully operational at the time of its launch: “it will not be doing everything on day one”.¹⁹ She expected helplines and a website to be in place on 1 October but stated: “exactly how much of the Commission will be in place and the issues which will be dealt with are not known at this point”.²⁰ It is deeply disappointing that the responsible Minister could, with less than four months left before its launch, offer so little information on the extent to which the Commission will be operational at the time of its launch. It is indicative of a significant failure to manage the transition process.

15. The Commission for Equalities and Human Rights will not be fully operational when it is launched in October 2007. The decision to establish the Commission before a Single Equality Act could be implemented complicated the process from the outset but indecision, instability and delays in Government’s management of the transition have also undermined the ability of the Commission to deliver effectively from day one.

16. The CEHR has been allocated an annual operational budget of £70 million. This is more than the combined budgets of the three existing commissions. The Government told us that among the factors taken into account in determining the CEHR’s budget were the operational budgets of the existing commissions, the larger remit the new Commission was

¹⁶ Ev 26

¹⁷ Ev 26

¹⁸ Ev 40

¹⁹ Q 81

²⁰ Q 82

expected to fulfil and the fact that “clearly bringing Commissions together would lead to some economies of scale”.²¹ A research report for the EOC suggests that the last of these factors is questionable. It showed that merging existing commissions in Northern Ireland “actually produces little or no cost savings or economies of scale” partly because of the need to develop a cross-equality strand approach.²² Both the EOC and the Fawcett Society have called for the CEHR to have an operating budget of £125 million with a significant element reserved for supporting individual cases.²³ The PCS argued that the current budget is insufficient and that “without sufficient funding [the CEHR] will be unable to make effective use” of its enforcement tools.²⁴ It has also argued that there should be “ring-fenced resources for each equality strand”.²⁵

17. The start-up budget for the CEHR is £24 million. The Fawcett Society has noted that the start-up costs for Ofcom, which brought together five existing regulatory bodies, was £80 million, more than three times the amount provided for CEHR start-up costs.²⁶

18. The Minister was “confident that the Commission will have the amount of money to do the job that Government expects it to do”.²⁷ This confidence was shared by Trevor Phillips who told us that, while the Commission could always use more funding, he was “moderately relaxed about the budget” and more concerned with how the CEHR influenced other bodies to “spend their money in the interests of equality”.²⁸ It remains to be seen whether the budget for the CEHR is sufficient.

Remit and role

19. The CEHR’s remit is broad and its objectives ambitious. At its launch it will bring together three existing public bodies—the EOC, the DRC and the CRE. As well as assuming their powers, the CEHR will have further powers to enforce legislation more effectively and promote equality for all. Its remit will also cover three equality strands not covered by the existing commissions—sexual orientation, religion or belief, and age. It will also have a duty to promote awareness and understanding of human rights. Trevor Phillips, Chair of the CEHR, explained that if it is successful the Commission would, amongst other things, “become a substantial national institution, the guarantor of standards of decency and fairness in our society and the guardian against injustice”.²⁹

20. The Government’s position, supported by many who responded to the consultation preceding the Equality Act 2006, is that a single Commission will be a “stronger champion for diversity”, and more effective in tackling inequalities by bringing all the equality strands

²¹ Q 97

²² Equal Opportunities Commission, Colm O’Cinneide, University College, *A Single Equality Body: Lessons from abroad*, (London, 2002), para 4.9, www.eoc.org.uk

²³ The Fawcett Society, *Fawcett Society Response to White Paper* (hereafter ‘Fawcett Society Response’), (August 2004), p 3, www.womenandequalityunit.gov.uk

²⁴ Ev 25

²⁵ Ev 24

²⁶ Fawcett Society Response, p 3

²⁷ Q 100

²⁸ Q 4

²⁹ Q 1

together.³⁰ It also believes that a single Commission for equality is able to tackle more effectively the discrimination on multiple grounds that some may face—disabled women, for example. The EOC shares this view, arguing that its “recent work on ethnic minority women and employment and on the impact of caring responsibilities and social care on women’s employment show how inter-connected different equality issues are”.³¹

21. Over and above the case for establishing the CEHR to cover all equality strands a further argument is that it enables a more holistic approach, going beyond the current focus on particular groups. Trevor Phillips argued that this traditional approach is outdated as a number of equality deficits “do not line up neatly with strands”, such as equality for carers.³² **We welcome the establishment of a single Commission to cover all aspects of equality. It is a positive development in the battle against unfair discrimination and inequalities.**

22. Nevertheless, some continue to fear that the creation of a single Commission risks reducing the emphasis applied to some areas of equality or a degradation in the expertise and resources devoted to them. The PCS, for instance, commented that it is important to ensure that some strands are not prioritised over others in the overall CEHR workplan and resources.³³ Help the Aged argued that disability, race and gender issues could dominate the agenda for the CEHR to the detriment of combating age discrimination, partly because existing commissions will have a strong legacy impact on the CEHR and partly because older people have a “relatively quiet voice”.³⁴ The DRC is concerned that the CEHR may not be able to sustain across its wide remit the focus currently given to the “distinctive features of disability inequality”.³⁵ Indeed, based on these concerns the DRC was successful in persuading Parliament to include provisions in the legislation which ensure that the CEHR will have a disability committee with statutory decision-making powers.³⁶ The CRE similarly emphasised the priority it had given to tackling segregation and social exclusion and is “concerned that issues of cohesion might become marginalised by an over-concentration on equality”.³⁷

23. It is inevitable that to some extent the work of the CEHR will be judged against that of its predecessor commissions. Each of the existing commissions has its own track record on casework support for individuals experiencing discrimination which reflects differences in strategic priorities and resources. Each existing commission has different resources at its disposal—the Fawcett Society pointed out that the EOC’s budget was half that of the CRE.³⁸ One of the challenges for the CEHR is to ensure that there is no diminution of emphasis on any one equality strand and one way for it to allay concerns over this outcome

³⁰ DTI news release, *Hewitt and Falconer publish White Paper on the new Commission for Equality and Human Rights*, 12 May 2004, www.womenandequalityunit.gov.uk

³¹ Ev 27

³² Q 7

³³ Public and Commercial Services Union, *What price equality?*, p 5

³⁴ Ev 67

³⁵ Ev 53

³⁶ Ev 53

³⁷ Ev 37

³⁸ The Fawcett Society, *Equality Bill, Second Reading Briefing*, 21 November 2005, p 1

would be to monitor and evaluate its strategic outputs, such as casework support, and resource allocations against each equality strand. The Northern Ireland Equality Commission has a statutory obligation to monitor its expenditure on each equality strand.³⁹ Trevor Phillips stated that “we will monitor, certainly by the six categories but probably by other categories as well, our own output: how we spend our money, who calls us, how many hits there are on our website”.⁴⁰ Some doubts have been expressed that those strands which are less easy to monitor—such as beliefs or sexual orientation—may suffer under this approach. **We welcome the commitment made by Trevor Phillips, Chair of the CEHR, that the Commission will monitor its outputs and resource allocations by each equality strand but recognise that there may be difficulties in monitoring for less visible strands such as sexual orientation.**

24. Trevor Phillips told us he expected that all CEHR staff, “whether they are in research, on helplines, dealing with strategic and policy wants and so forth, will work across the integrated mandate”.⁴¹ This approach appears to have prompted concerns over a possible loss of specialist expertise. The Mayor of London argued,

it is unclear that it is realistic or desirable for all staff to be able to work across the entire scope of the CEHR’s mandate. In the case of legal officers, for example, this would require expertise in six complex areas of anti-discrimination law [...] it is not difficult to see how this could lead to a dilution in expertise.⁴²

The DRC stressed the importance of retaining a specific focus on disability in addition to work on generic issues. In particular, it argued that the disability committee, working within the CEHR’s overall remit and strategies, should be able to carry out specific functions and, because the distinctive features of disability discrimination warrant a targeted approach, that it should be supported by expert staff and specific resources.⁴³ The complexity of existing equalities legislation underlines the case for specialist expertise being maintained and developed within the CEHR. However, even if equalities legislation were simplified there would still be a strong case for specialist expertise on each equality strand to explore the reasons for persistent inequalities and to address the distinctive elements within certain types of inequality.

25. The CEHR will be a state-funded organisational advocate for human rights, the first of its kind in the UK. The British Institute for Human Rights (BIHR) laid out a compelling case for placing human rights at the heart of the CEHR’s work. It argued that human rights “offer a unifying framework” to bring together all equality strands and to provide the conceptual basis for demonstrating the relevance of the work of the CEHR to all UK citizens, not just to particular interest groups.⁴⁴ It sees a human rights-based approach as an opportunity for the CEHR to expand its work to cover groups who may be discriminated

³⁹ The Northern Ireland Act 1998, Section 74; Equal Opportunities Commission, Colm O’Cinneide, University College, *A Single Equality Body: Lessons from abroad*, (London, 2002), para 4.9

⁴⁰ Q 8

⁴¹ Q 10

⁴² Ev 61

⁴³ Ev 54

⁴⁴ Ev 49

against but not covered within the established equality strands framework, groups such as asylum seekers, refugees or carers. The Commission's creation is also an opportunity to tackle the problems of those who face discrimination on multiple grounds.⁴⁵

26. Trevor Phillips stressed the importance of the CEHR challenging common misunderstandings that exist around the use of the Human Rights Act 1998.⁴⁶ He told us:

human rights as a concept is generally seen as a framework which allows perverse individuals to set their own personal interest against the interests of the community as a whole.⁴⁷

He also stated that human rights are important in providing a framework for resolving conflicts, for example “between those people who think that the interests of their faith may override questions of equality in relation to sexual orientation or gender equality”.⁴⁸ **We welcome the CEHR's role in promoting human rights and its commitment to challenging popular misunderstandings and myths surrounding their application.**

27. Current equality legislation prohibiting discrimination against people on specified grounds applies equally across the public and private sector. However the positive duties to promote racial, gender and disability equality of opportunity and to tackle discrimination in these areas apply only to public authorities. The Fawcett Society, among others, called for a greater emphasis on combating discrimination in the private sector where, for instance, women make up only 10.35 per cent of FTSE 100 directors.⁴⁹ Part of the CEHR's remit will be to work with the private sector to promote equality and tackle unfair discrimination. The CBI argued that providing “high quality advice for business on diversity issues [and] support when employers inadvertently get things wrong” should be a priority for the new Commission.⁵⁰ The need for parity of opportunity in the private sector as well as the public sector is underlined by the fact that it provides an estimated 80 per cent of all employment opportunities in the UK.⁵¹ **We agree that the CEHR should work closely with private sector employers to promote equality and tackle unfair discrimination.**

28. The Fawcett Society, among others, argued that, if the CEHR is to be successful in reducing inequalities and tackling discrimination in society at large, then it needs to consider discrimination in the home as well.⁵² It points out that traditionally efforts to eliminate inequality have focused on issues such as access to employment and individual rights in the workplace but that inequalities experienced in the home, the result of caring responsibilities or domestic violence for example, can also affect experiences, particularly those of women, in more public environments.⁵³ The EOC included “promoting greater

⁴⁵ Ev 49

⁴⁶ Q 42

⁴⁷ Q 42

⁴⁸ Q 42

⁴⁹ Ev 42

⁵⁰ Ev 44

⁵¹ Office of National Statistics, *Public Sector Employment*, www.statistics.gov.uk

⁵² Ev 42

⁵³ Ev 42

safety, including addressing domestic violence, rape, forced marriage and trafficking for forced prostitution” among its six priorities for the CEHR, thus reflecting a broader approach than one centred on employment only.⁵⁴ **We agree that the CEHR should address inequalities and discrimination arising from domestic experiences and circumstances and well as those which relate to the workplace.**

29. The CEHR will inherit from the existing commissions powers to conduct inquiries, to issue codes of practice, to support individual strategic cases and to settle disputes. It will also be vested with new powers to take up human rights cases, to intervene in court cases relevant to its remit as a third party, and to enter into binding agreements with public authorities on the steps needed to prevent or end discrimination. The Fawcett Society stressed the importance of the CEHR “supporting strategic litigation that deepens equality outcomes including by championing individuals’ cases”.⁵⁵ The PCS also welcomed this development, stating that “having an effective law enforcement function will maximise the integrity and reputation of the CEHR”, although it is concerned that the CEHR may have insufficient resources to undertake necessary investigations and strategic cases.⁵⁶ On the other hand, the CBI argued that it is important to take enforcement action only as “a last resort”.⁵⁷

30. According to the Public Interest Research Unit—a small non party political think-tank—the existing commissions have a poor track record in enforcement. Its research showed that between 1996 and 2006 little use was made of enforcement powers. For example, despite the fact that no other organisations could enforce provisions against discriminatory job advertisements, none of the commissions had used their powers in this area. As a consequence, the unit argued, the majority of discriminators “got away with committing unlawful acts, and that some of the most vulnerable people in the country were left without protection or redress”.⁵⁸ Trevor Phillips, a former head of the CRE, disputed this analysis, claiming that the existing commissions had used their powers “pretty extensively”.⁵⁹ Nevertheless he said that the new Commission would focus on strategic cases, including by supporting the legal profession and trade unions, and that the CEHR itself would only “take a very tiny minority of the cases that enter tribunals”.⁶⁰ The Mayor of London told us that, given the very high number seeking support to challenge discrimination, this “actually means that many people will be denied the necessary legal assistance”.⁶¹ **Effective action against specific instances of discrimination can be a powerful deterrent to others. We believe that the CEHR’s long-term priority should be to prevent discrimination but we welcome its capacity to intervene in strategic cases to support individuals seeking redress against discrimination. The balance between these two functions should be monitored closely.**

⁵⁴ Ev 28

⁵⁵ Ev 42. See also Ev 36

⁵⁶ Ev 25

⁵⁷ Ev 28

⁵⁸ Public Interest Research Unit, press releases, *Sex, ‘Race’ and Disability Discrimination Laws Not enforced*, www.piru.org.uk

⁵⁹ Q 18

⁶⁰ Q 14

⁶¹ Ev 61

3 Single Equality Act

The case for a Single Equality Act

31. The case for a Single Equality Act has repeatedly been made by equality organisations, including the CRE and the EOC. In 2000 the Independent Review of the Enforcement of UK Anti-Discrimination Legislation was published. It detailed the case for reforming the existing equalities legislative framework and the possible content of a Single Equality Act.⁶² A Single Equality Bill was introduced by Lord Lester and approved in the House of Lords in 2003 but, unsupported by the Government, fell in the House of Commons.⁶³ The Government pledged in its 2005 manifesto to introduce its own Single Equality Bill during the lifetime of the current Parliament.⁶⁴

32. In June 2007 the Government set out detailed proposals for a Single Equality Act in A Framework for Fairness, a consultation exercise developed as a result of the Discrimination Law Review. The grounds it puts forward for changing the law are threefold: simplification, greater effectiveness and modernisation.⁶⁵ Our evidence demonstrated extensive and widespread although not unanimous support for a Single Equality Act. The CBI, for instance, argued that “a convincing case for a major reform of Equality legislation has not been made”.⁶⁶ It said that such an Act could be a “damaging distraction” with an “excessive emphasis on bureaucratic compliance”.⁶⁷

Simplicity

33. The Equalities Review found that many see existing equalities legislation “as overly complicated and difficult to navigate”.⁶⁸ Equalities legislation was first enacted over 40 years ago and has since been extended piecemeal. The law is set out in nine Acts, four European Directives and a number of other regulations, orders and codes of guidance.⁶⁹ This accumulation has resulted in a large and complex body of law which often requires great expertise to operate and interpret. This places greater burdens on employers and tribunals and can lead to protracted and costly litigation. The complexity of the law also makes it difficult for individuals to gain redress and equality organisations, such as the EOC, have argued that simplification will ensure better access to justice for individuals.⁷⁰

⁶² Bob Hepple QC, Mary Cousey, Tufyal Choudhury, *Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation*, (Hart publishing, 2000).

⁶³ The Equality Bill, HL Bill 56, www.publications.parliament.uk

⁶⁴ Q 62

⁶⁵ Department for Communities and Local Government, *Discrimination Law Review, A consultation paper* (hereafter ‘Discrimination Law Review’, June 2007, p 12-15

⁶⁶ Ev 44

⁶⁷ Ev 47

⁶⁸ The Equalities Review, p 101

⁶⁹ Discrimination Law Review, p 28

⁷⁰ Ev 31. See also Ev 72

The Government agrees that the scale and complexity of equality legislation provides a “good case for bringing the law together in one place”.⁷¹

34. Legislation protects people from discrimination on a number of grounds. Yet, for those who belong to more than one protected group—for instance, disabled people who also belong to an ethnic minority, it may be hard to determine which of their protected characteristics is driving any discriminatory behaviour. The Fawcett Society argues that current legislation is failing individuals who experience discrimination on multiple grounds and, far from helping, fragmentation is a “barrier to justice for many claimants”.⁷² For example, an Asian woman working part-time who experiences less favourable treatment in the workplace has to rely on a number of different regulations and statutes for protection and any claim of discrimination would need to specify which treatment related to her sex and which to her race.⁷³ A Single Equality Act provides the opportunity to protect against discrimination on multiple grounds in a more coherent manner. This is, indeed, one of the principles behind the formation of the CEHR. The Government states that it does not have any evidence to demonstrate that in practice people are losing, or failing to bring cases, because they involve more than one protected ground. It is however consulting on whether there is a need for multiple discrimination cases to be allowed.⁷⁴ **The Government’s hesitancy towards permitting combined multiple discrimination claims rests upon the additional complexity this might add to any legislation and the consequent additional burden it would place on employers. These are not insignificant concerns but we urge the Government to recognise the inherent difficulty in amassing evidence of actions that have not been taken.**

Consistency

35. Current equalities legislation provides varying degrees of protection for different groups. For example:

- discrimination in the provision of goods, facilities and services is unlawful on the grounds of race, disability, sex, religion or belief and sexual orientation, but not age, and
- duties placed on public bodies to eliminate discrimination and promote equality of opportunity exist in respect of race, sex and disability, but not age, religion or belief, sexual orientation or transgender status.

36. A number of key terms are defined differently in different Acts, and potential remedies vary depending on the reason for the discrimination. For example, under the Sex Discrimination Act 1975, a hypothetical comparator can be used as the basis for a tribunal claim but under the Equal Pay Act 1970, an actual comparator—someone of the other sex who is treated more favourably—is needed.⁷⁵ The Fawcett Society argues that this requirement can be a real obstacle for women working in gender-segregated workplaces

⁷¹ Discrimination Law Review, p 28

⁷² The Fawcett Society, *Gender Equality in the 21st Century: modernising the legislation*, April 2006, p 9

⁷³ The Fawcett Society, *Gender Equality in the 21st Century: modernising the legislation*, April 2006, p 9

⁷⁴ Discrimination Law Review, p 123

⁷⁵ The Fawcett Society, *Gender Equality in the 21st Century: modernising the legislation*, April 2006, p 8

where there may be no male comparators.⁷⁶ The degree of protection also varies depending on where the discrimination takes place: within the public or private sector, within employment or in accessing services, in contractual and non-contractual terms and whether in the home or public arenas.

37. The PCS argued that the CEHR cannot be fully effective without harmonisation of equalities legislation as current disparities “create a hierarchy of rights, sow confusion amongst stakeholders and [are] a potential source of division”.⁷⁷ We asked Trevor Phillips whether he believed a Single Equality Act was essential for the Commission. He replied: “yes, without question”.⁷⁸ He believed it likely that without simplification, the Commission would not have the capacity to manage “dealing with the requirements of different pieces of legislation, never mind the new gloss that the Human Rights Act brings to the whole situation”.⁷⁹

Effectiveness

38. Equality legislation in the UK has developed out of a philosophical approach to supporting individuals, one which provides “a remedy for individuals who have been discriminated against”.⁸⁰ Legislation, however, is equally important as a preventative tool and a vehicle for providing standards for fair treatment.⁸¹ As the Government suggests, revising equalities law would also provide an opportunity to tackle through legislation systemic discrimination. Measures to achieve this might include placing a positive duty upon private sector employers to promote equality and to eradicate discrimination within their organisations.⁸²

The process leading to a Single Equality Act

39. The Government launched the DLR in February 2005. The results were originally expected to be published in mid-2006 but have been subject to repeated postponement.⁸³ On 12 June 2007 the DLR was finally published, a year later than first planned. We have already referred to the additional challenges which the CEHR faces as a result of the consequent absence of single equality legislation at the point at which it comes into operation. Justice was not the only organisation to suggest that the delay indicates “a lack of commitment and a reluctance to change” on the part of Government and to worry that it may also imply that equality legislation is no longer a priority.⁸⁴

40. The Minister reiterated the Government’s commitment to introducing a Single Equality Bill within the lifetime of this Parliament, though she noted that the feasibility of

⁷⁶ The Fawcett Society, *Gender Equality in the 21st Century: modernising the legislation*, April 2006, p 8

⁷⁷ Ev 25

⁷⁸ Q 20

⁷⁹ Q 21

⁸⁰ *Discrimination Law Review*, p 60

⁸¹ *Discrimination Law Review*, p 61

⁸² *Discrimination Law Review*, p 14

⁸³ Ev 73

⁸⁴ Ev 73

legislation actually getting on the statute books depended on the length of the remaining Parliament.⁸⁵ Trevor Phillips stated that he believed that “Ministers would like to see something in statute before 2009”.⁸⁶ The option of introducing a draft bill to enable pre-legislative scrutiny is being considered but the Minister told us that there were “tensions” within Government on the topic.⁸⁷ The DRC called for a draft bill to be laid to enable a greater degree of parliamentary scrutiny.⁸⁸ Either way, “the timetable is tight” if the current Parliament is to enact legislation within its expected lifetime.⁸⁹ **A draft bill would enable wider public and greater parliamentary scrutiny but whichever legislative route is chosen, it is imperative that the Government acts swiftly to secure effective legislation for individuals and organisations and to enable the CEHR to discharge its functions efficiently. Any further delay would be regrettable.**

41. **A Single Equality Act to harmonise and simplify equality legislation and to address inconsistencies in the current legislative framework is essential. Beyond the moral imperative for Government to protect its citizens from discrimination there are also economic benefits to be gained from legislation that better supports utilising the talents of all people to the full. Without a Single Equality Act it will be much harder for the CEHR to fulfil its remit. We note with regret that the Government’s recently published draft legislative programme for the next parliamentary session does not include an equalities bill. We recommend that the Government give greater priority to its development than it has to date and introduce or publish a bill early in the next parliamentary session.**

Single Equality Bill content

Levelling up

42. Protections against discrimination in employment exist for all six equality strands—age, disability, race, religion or belief, sex and sexual orientation. Protection against discrimination in the supply of goods, facilities and services, premises, education in schools, and other public functions does not exist for all groups. There is currently no legal protection against age discrimination in these areas. The Government is consulting on whether to legislate to extend protections on the grounds of age in these areas.⁹⁰

43. Help the Aged and Age Concern argued strongly in favour of extension. The former told us that older people face extensive discrimination yet have little means of redress. Its research shows that 73 per cent of people agreed that older people face discrimination in their daily lives.⁹¹ Age Concern argued that older people are particularly discriminated against in the provision of social and health care. There is, for example, an explicit age

⁸⁵ QQ 68-69

⁸⁶ Q 27

⁸⁷ Q 70

⁸⁸ Ev 53

⁸⁹ Q 70

⁹⁰ Discrimination Law Review, p 141

⁹¹ Ev 68

criterion governing access to mental health services.⁹² Similarly funding allocations to support older people within social care are less generous than for other age groups.⁹³

44. Trevor Phillips supported in principle the introduction of measures to prohibit “unjustifiable discrimination on the grounds of age, whether that is so with youth or older people” although he added that it was a complicated area.⁹⁴ The Government acknowledges that any legislation should avoid “the unintended consequences of prohibiting positive benefits for either younger or older people, such as youth clubs, or clubs for older people, holidays catering for people of particular ages, or concessions and discounts which help younger or older people”.⁹⁵ Its consultation requests evidence on how any unintended consequences and disproportionate burdens arising from possible legislation to prohibit age discrimination in this area can be avoided and what specific exemptions are needed.⁹⁶ **We welcome the Government’s consultation on the possible inclusion of measures within a Single Equality Bill to prohibit age discrimination in the provision of goods, facilities and services. If such legislation is introduced it is important that appropriate safeguards are included to avoid criminalising positive age-related benefits, such as the provision of discounted bus passes for older people.**

Integrated public sector duty

45. Currently three separate duties are in place requiring public bodies to promote equality for race, gender and disability, but not for other equality strands. A Single Equality Bill would provide an opportunity to introduce an integrated public sector duty to eliminate discrimination and promote equality across all strands. The Equalities Review made a strong case for such integration.⁹⁷ All three existing commissions also support an integrated public sector duty covering all equality strands.⁹⁸ They argue that a single duty does not necessarily mean that each strand needs to be treated in the same way if a flexible approach is taken to achieving strategic outcomes.⁹⁹ Equality groups representing those in equality strands not covered by existing duties are particularly in favour of an extension to all groups. Age Concern for instance emphasised that an integrated public duty which covered age would benefit older people by requiring public authorities to ‘age-proof’ their activities and functions.¹⁰⁰ In Northern Ireland there is already a duty placed on public authorities to promote equality across a range of groups.¹⁰¹

⁹² Age Concern, *Age of equality?* p 4

⁹³ Ev 68

⁹⁴ Q 11

⁹⁵ *Discrimination Law Review*, p 136

⁹⁶ *Discrimination Law Review*, p 141

⁹⁷ The Equalities Review, p 115

⁹⁸ Commission for Racial Equality memorandum, Appendix 4, *Joint Statement from the CRE, DRC and EOC on equality duties*, April 2007

⁹⁹ Commission for Racial Equality memorandum, Appendix 4, *Joint Statement from the CRE, DRC and EOC on equality duties*, April 2007

¹⁰⁰ Age Concern, *Age of Equality?* p 4

¹⁰¹ Section 75 of the 1998 Northern Ireland Act requires public authorities to have ‘due regard’ to promote equality of opportunity on the grounds of religious belief, political opinion, age, race, gender, marital status, sexual orientation, disability and people with dependants or persons without and to promote good relations between persons of different religious belief, political opinion or racial groups.

46. The British Humanist Association however voiced concerns over the operation of an integrated public sector duty covering religion or belief. It said “we do not see religion or belief as a characteristic that can be meaningfully treated as analogous to race or gender”.¹⁰² The Minister however recognised that “equality does not mean treating everybody the same” and pointed out that it would be necessary to think through the practical implications before imposing a duty to promote equality between people of different religions or beliefs.¹⁰³

47. The Government has proposed replacing the existing separate race, disability and gender equality duties with a single duty covering these three groups. It is also consulting on the further option of extending the duty to cover all equality strands.¹⁰⁴ **We support the Government’s proposal to introduce an integrated public sector duty, promoting equality across the three existing strands. In the longer term we believe that there would be merit in extending this duty to cover all equality strands.**

48. According to the Equalities Review any duty and subsequent codes of practice or guidance, should “focus on outcomes and not process”.¹⁰⁵ This would reduce the need for detailed reporting on processes and ensure a clear understanding that outcomes should be the first priority. The CBI is concerned about the implications of a duty for businesses that are delivering a public service on behalf of a public authority. It believes that a “flexible” duty would be beneficial, allow for localised approaches, and be less burdensome for business, small and medium-sized enterprises in particular.¹⁰⁶ It argues that the way in which the current duties have been implemented has imposed too many reporting requirements on business, such as requirements to report on recruitment targets or carry out audits.¹⁰⁷ The Government’s proposals reflect this focus on outcomes.¹⁰⁸ It argues that secondary legislation would still be needed to indicate how public authorities should respond but, in contrast to the current duties, it would not be prescriptive.¹⁰⁹ Some concerns exist on whether the Government’s proposals as set out in the DLR would weaken the law as there could be less detailed reporting requirements. The Government is consulting on new approaches and specific duties.¹¹⁰ **We agree with the Government that any new duty and subsequent guidance should focus on achieving equality outcomes rather than specifying detailed reporting requirements.**

49. The public sector procures £125 billion worth of goods and services annually.¹¹¹ The current public sector duties are applicable to all functions of public authorities, including procurement. Nevertheless the Equalities Review recommended “a specific requirement

¹⁰² Ev 58

¹⁰³ Q 73

¹⁰⁴ Discrimination Law Review, p 81

¹⁰⁵ The Equalities Review, p 115

¹⁰⁶ Ev 45

¹⁰⁷ Ev 45

¹⁰⁸ Discrimination Law Review, p 91

¹⁰⁹ Discrimination Law Review, p 91

¹¹⁰ Discrimination Law Review, p 93

¹¹¹ Discrimination Law Review, p 108

for public bodies to use procurement as a tool for achieving greater equality”.¹¹² This might be achieved, for instance, by ensuring tendering processes are inclusive rather than restrictive or by giving greater consideration to the equalities aspects of employment practices in private sector contractors and their supply chains. It argued that despite some good practice, such as that demonstrated by the Greater London Authority, public bodies have not used the duties extensively and that although there is scope within the existing legislation for doing more, “little clarity” exists amongst procurement and commissioning professionals about what can or should be done.¹¹³ The CBI reported that some public authorities adopt a “lowest cost mentality” when awarding contracts, regardless of equalities criteria but argued that procurement could become an “effective lever for equality if it encouraged public authorities to achieve better outcomes for users”.¹¹⁴

50. The Government’s view is that an explicit requirement surrounding procurement in a duty would not be helpful. It believes it would be unnecessary given that legislation already covers procurement and views this approach as inconsistent with the focus on outcomes over process.¹¹⁵

51. Nevertheless, the Government has recognised the need for greater clarity on the use of procurement to promote equality and is therefore consulting on what guidance should be issued.¹¹⁶ The CRE stated that “statutory guidance as opposed to the current non-statutory guidance” would be helpful, as it would provide greater consistency in the application of equality criteria in the procurement process which would in turn help to make the requirements of public authorities clearer to business.¹¹⁷ The EOC has called for Government procurement guidance to refer explicitly to employment practices in respect of ethnic minority women, given the large scale of the employment and pay gaps they experience.¹¹⁸ **We support the Government’s proposal to issue further guidance to public authorities to encourage the use of procurement as a tool for promoting equality. This procurement guidance should encourage public authorities to make clear to businesses the relevant weighting given to equality criteria.**

Positive action

52. The Government draws a distinction between positive discrimination, which is illegal under UK law, and positive action which is legal: “Positive action means offering targeted assistance to people, so that they can take full and equal advantage of particular opportunities. Positive discrimination means explicitly treating people more favourably on the grounds of race, sex etc [...] irrespective of merit.”¹¹⁹ The Equalities Review found that the current law was inflexible in enabling positive action: organisations that wished to be

¹¹² The Equalities Review, p 119

¹¹³ The Equalities Review, p 104

¹¹⁴ Ev 46

¹¹⁵ Discrimination Law Review, p 106

¹¹⁶ Discrimination Law Review, p 109

¹¹⁷ Commission for Racial Equality memorandum, Appendix 3, *Discrimination Law Review technical note*, para 9.17

¹¹⁸ Equal Opportunities Commission, *Moving on up? Bangladeshi, Pakistani and Black Caribbean women and work*, March 2007, p 35

¹¹⁹ Discrimination Law Review, p 61

proactive in making opportunities available to employees and clients were found to be often constrained by the law.¹²⁰ The DLR contains proposals for further positive measures to extend the ability of employers to promote equality.¹²¹ Trevor Phillips agreed that greater flexibility for employers to take positive action would be desirable but stressed that he was against positive discrimination.¹²² The CBI has voiced concerns over any general extension of positive action on the grounds that there may be a risk of “considerable burdens” on employers, but has stated that there “may be some benefits” of a possible extension if it provides greater clarity for employers.¹²³

¹²⁰ The Equalities Review, p 102

¹²¹ Discrimination Law Review, p 75

¹²² Q 25

¹²³ Ev 46

4 Government machinery and action to achieve equality

53. The Equalities Review identified a number of areas where persistent inequalities exist, that is where the disparities between the different life chances of certain groups are not closing. It highlighted three groups in particular who experience “large and persistent equality gaps”: disabled people, Pakistani and Bangladeshi women, and mothers of young children.¹²⁴ Its research showed that at the current rate of progress disabled people and Pakistani and Bangladeshi women would never achieve equality in employment.¹²⁵ Its research also showed that partnered women with children under 11 were 40 per cent less likely to be in employment than partnered men in a similar position.¹²⁶

54. The Equalities Review made several recommendations to the Government designed to address persistent inequalities. It favoured the introduction of long-term strategies, with phased targets and set out 10 key steps required to achieve greater equality, including “targeted action on persistent inequalities”.¹²⁷ It concluded that relevant targets with Public Service Agreements (PSAs) were one of the best ways to ensure that equality was mainstreamed in terms of both policy and service provision.¹²⁸

55. There is no single comprehensive PSA on equality but various PSA targets cover equality strands related to specific departments. At the time of conducting this inquiry DCLG, for example, had two PSA targets, one on race and one on gender; and the DWP had one to improve the participation of disabled people in society and another to increase the employment rate of disadvantaged groups. There are no PSA targets covering other equality strands, such as sexual orientation, age, religion or belief. The Fawcett Society argued “it is important that the Comprehensive Spending Review (CSR) and associated PSAs and indicators pay due regard to equality”.¹²⁹

56. The Minister accepted that there were no clear strategies in place to tackle persistent inequalities but assured us that there would be an “equalities PSA” linked to the forthcoming CSR.¹³⁰ **We recommend that the Government set out a long-term strategy to tackle persistent inequalities when it responds to the Equalities Review. We welcome the Minister’s assurance that an equalities Public Service Agreement would be part of the forthcoming Comprehensive Spending Review settlement. We hope that it will cover all aspects of equality.**

57. The British Humanist Association questioned the Government’s commitment to tackling discrimination on non-religious grounds. It told us that the Government and its

¹²⁴ The Equalities Review, p 47

¹²⁵ The Equalities Review, p 25

¹²⁶ The Equalities Review, p 66

¹²⁷ The Equalities Review, pp 86, 112

¹²⁸ The Equalities Review, p 117

¹²⁹ Ev 44. See also Ev 55

¹³⁰ Q 124

agencies too often use the word ‘faith’ in preference to the more inclusive term ‘religion or belief’.¹³¹ Indeed, the former Prime Minister’s letter to Ruth Kelly MP on her appointment as Secretary of State for Communities and Local Government in May 2006 uses the word ‘faith’.¹³² Our concern is not based merely on principled or abstract grounds but raised in the context of the continuing societal discrimination against people on the grounds of their beliefs whether they are religious beliefs or not. As the BHA said, this needs to be reflected in the work of Government.¹³³ The Minister explained that the DCLG’s work was not confined to faith.¹³⁴ This was not, however, reflected in the information presented to the public on the department’s website. Any mention of ‘belief’ was buried deep within information on faith in the section on the Race, Cohesion and Faiths Directorate. **We recommend that the Government’s language reflects the broad nature of its responsibility for tackling discrimination on the grounds of belief, including non-religious beliefs.**

58. Some of our witnesses were concerned about the split in departmental responsibilities for the Government’s equality policy, finding it confusing and concerned that it potentially served to create an unhelpful hierarchy among equality strands.¹³⁵ Trevor Phillips said some aspects of the CEHR’s work “might be simpler” but he was “somewhat agnostic” on whether the Government should consolidate all aspects of equality policy into one department.¹³⁶ Such a move would however run counter to the objective of mainstreaming equality in every area of Government activity. The Minister argued that equalities is:

an issue which everybody, in my view, should be concerned about. You need people in all departments to be taking seriously issues of equality.¹³⁷

We agree. Tackling inequality should be integrated into the work of each Government department.

59. As the Equalities Review clearly sets out, the cross-cutting nature of discrimination and inequalities demands a joined-up approach from Government. Currently a number of cross-departmental initiatives exist within the equalities remit. Ministers sit on the Ethnic Minorities Task Force, whose role is to ensure that the Government’s ethnic minority strategy is delivered. There is a ministerial group on disability issues to oversee the implementation of the Government’s strategy for disabled people. Cross-departmental ministerial meetings have been taking place on a monthly basis since March 2006 to oversee the establishment of the CEHR but there is no body at ministerial level directing and co-ordinating equalities policies as a whole.¹³⁸ The Minister explained that no decision has yet been made on whether inter-ministerial meetings will continue regularly to oversee the Government’s equalities agenda after the establishment of the CEHR although she

¹³¹ Ev 56

¹³² Ev 56

¹³³ Ev 56

¹³⁴ Q 110

¹³⁵ Ev 67

¹³⁶ Q 2

¹³⁷ Q 101

¹³⁸ Ev 77

agreed that it is important that a “regular mechanism (whatever that is)” for communication is in place.¹³⁹ **We recommend that a permanent ministerial group is established and that it meets regularly to direct and drive forward the Government’s equalities agenda. The ministerial group should also oversee delivery of the Government’s long-term strategy on reducing inequalities and tackling discrimination.**

Parliamentary scrutiny

60. Scrutiny of the Government’s activities on equalities in general falls within our remit although other departmental select committees and the Joint Committee on Human Rights cover specific aspects of equalities and human rights. The Equalities Review recommended the creation of a select committee with a specific remit to examine equalities, arguing “in practice it will be difficult given the breadth of the other issues for which this department is responsible, and given that responsibility for equalities rests with several departments—for this one committee to give the issue the proper focus which it merits and needs”.¹⁴⁰ Trevor Phillips pointed out that an Equalities Select Committee could be established on much the same basis as the Public Accounts Committee.¹⁴¹ He said that he would still expect departmental select committees to hold the Government to account on their relevant department’s performance on equality, in addition to the work of an Equalities Select Committee.¹⁴² We are not persuaded. A number of departmental select committees and the Joint Committee on Human Rights have undertaken substantive work on equality issues. For example, the Home Affairs Committee published a report, in June 2007, on young black people and the criminal justice system.¹⁴³ We believe that scrutiny of equalities policy is most effective when fully integrated into wider scrutiny, just as efforts to reduce inequalities are most effective when fully integrated into routine practices across a range of activities. There would be too great a risk if an Equalities Select Committee were established that, in respecting the remit of that Committee and fearing duplication of effort, other select committees would reduce the emphasis they give to equalities issues at present. It could also lead to a lack of clarity and a blurring of accountability over holding Government departments to account on these issues. **We are not persuaded by the case for the establishment of an Equalities Select Committee. It would tend towards marginalising rather than mainstreaming equality.**

¹³⁹ Q 107

¹⁴⁰ The Equalities Review, p 117

¹⁴¹ Q 35

¹⁴² Q 36

¹⁴³ Home Affairs Committee, Second Report of Session 2006-07, *Young Black People and the Criminal Justice System*, HC 181-1

Conclusions and recommendations

1. The Commission for Equality and Human Rights will not be fully operational when it is launched in October 2007. The decision to establish the Commission before a Single Equality Act could be implemented complicated the process from the outset but indecision, instability and delays in Government's management of the transition have also undermined the ability of the Commission to deliver effectively from day one. (Paragraph 15)
2. We welcome the establishment of a single Commission to cover all aspects of equality. It is a positive development in the battle against unfair discrimination and inequalities. (Paragraph 21)
3. We welcome the commitment made by Trevor Phillips, Chair of the CEHR, that the Commission will monitor its outputs and resource allocations by each equality strand but recognise that there may be difficulties in monitoring for less visible strands such as sexual orientation. (Paragraph 23)
4. We welcome the Commission for Equality and Human Rights' role in promoting human rights and its commitment to challenging popular misunderstandings and myths surrounding their application. (Paragraph 26)
5. We agree that the Commission for Equality and Human Rights should work closely with private sector employers to promote equality and tackle unfair discrimination. (Paragraph 27)
6. We agree that the Commission for Equality and Human Rights should address inequalities and discrimination arising from domestic experiences and circumstances and well as those which relate to the workplace. (Paragraph 28)
7. Effective action against specific instances of discrimination can be a powerful deterrent to others. We believe that the Commission for Equality and Human Rights' long-term priority should be to prevent discrimination but we welcome its capacity to intervene in strategic cases to support individuals seeking redress against discrimination. The balance between these two functions should be monitored closely. (Paragraph 30)
8. The Government's hesitancy towards permitting combined multiple discrimination claims rests upon the additional complexity this might add to any legislation and the consequent additional burden it would place on employers. These are not insignificant concerns but we urge the Government to recognise the inherent difficulty in amassing evidence of actions that have not been taken. (Paragraph 34)
9. A draft bill would enable wider public and greater parliamentary scrutiny but whichever legislative route is chosen, it is imperative that the Government acts swiftly to secure effective legislation for individuals and organisations and to enable the Commission for Equality and Human Rights to discharge its functions efficiently. Any further delay would be regrettable. (Paragraph 40)

10. A Single Equality Act to harmonise and simplify equality legislation and to address inconsistencies in the current legislative framework is essential. Beyond the moral imperative for Government to protect its citizens from discrimination there are also economic benefits to be gained from legislation that better supports utilising the talents of all people to the full. Without a Single Equality Act it will be much harder for the Commission for Equality and Human Rights to fulfil its remit. We note with regret that the Government's recently published draft legislative programme for the next parliamentary session does not include an equalities bill. We recommend that the Government give greater priority to its development than it has to date and introduce or publish a bill early in the next parliamentary session. (Paragraph 41)
11. We welcome the Government's consultation on the possible inclusion of measures within a Single Equality Bill to prohibit age discrimination in the provision of goods, facilities and services. If such legislation is introduced it is important that appropriate safeguards are included to avoid criminalising positive age-related benefits, such as the provision of discounted bus passes for older people. (Paragraph 44)
12. We support the Government's proposal to introduce an integrated public sector duty, promoting equality across the three existing strands. In the longer term we believe that there would be merit in extending this duty to cover all equality strands. (Paragraph 47)
13. We agree with the Government that any new duty and subsequent guidance should focus on achieving equality outcomes rather than specifying detailed reporting requirements. (Paragraph 48)
14. We support the Government's proposal to issue further guidance to public authorities to encourage the use of procurement as a tool for promoting equality. This procurement guidance should encourage public authorities to make clear to businesses the relevant weighting given to equality criteria. (Paragraph 51)
15. We recommend that the Government set out a long-term strategy to tackle persistent inequalities when it responds to the Equalities Review. We welcome the Minister's assurance that an equalities Public Service Agreement would be part of the forthcoming Comprehensive Spending Review settlement. We hope that it will cover all aspects of equality. (Paragraph 56)
16. We recommend that the Government's language reflects the broad nature of its responsibility for tackling discrimination on the grounds of belief, including non-religious beliefs. (Paragraph 57)
17. Tackling inequality should be integrated into the work of each Government department. (Paragraph 58)
18. We recommend that a permanent ministerial group is established and that it meets regularly to direct and drive forward the Government's equalities agenda. The ministerial group should also oversee delivery of the Government's long-term strategy on reducing inequalities and tackling discrimination. (Paragraph 59)

19. We are not persuaded by the case for the establishment of an Equalities Select Committee. It would tend towards marginalising rather than mainstreaming equality. (Paragraph 60)

Formal minutes

Monday 16 July 2007

Members present:

Dr Phyllis Starkey, in the Chair

John Cummings
Martin Horwood
Mr Bill Olnier

Dr John Pugh
David Wright

Equality

Draft Report (Equality), proposed by the Chairman, brought up and read.

Ordered, That the Report be read a second time, paragraph to paragraph.

Paragraphs 1 to 60 read and agreed to.

Summary read and agreed.

Resolved, That the Report be the Sixth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Several Memoranda were ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 17 July at 10.00 am

Witnesses

Tuesday 24 April 2007

Trevor Phillips OBE, Chair of the Commission for Equality and Human Rights Ev 1

Tuesday 5 June 2007

Meg Munn MP, Under-Secretary of State (Women and Equality) and **Ms Susan Scholefield**, Director General, Equalities, Department for Communities and Local Government Ev 13

List of written evidence

The Public and Commercial Services Union	Ev 24
The Equal Opportunities Commission	Ev 26
The Odysseus Trust	Ev 32
The Commission for Racial Equality	Ev 33
The Commission for Equality and Human Rights	Ev 38
The Fawcett Society	Ev 41
The Confederation of British Industry	Ev 44
The British Institute of Human Rights	Ev 48
The Disability Rights Commission	Ev 50
The British Humanist Association	Ev 55
The Mayor of London	Ev 59
Help the Aged	Ev 66
The Inter Faith Network for the UK	Ev 69
JUSTICE	Ev 70
Age Concern	Ev 74
Department for Communities and Local Government	Ev 76

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2006–07

First Report	The Work of the Committee 2005-2006	HC 198
Second Report	Coastal Towns	HC 351 (<i>Cm 7126</i>)
Third Report	DCLG Annual Report 2006	HC 106 (<i>Cm 7125</i>)
Fourth Report	Is there a Future for Regional Government?	HC 352-I (<i>Cm 7119</i>)
Fifth Report	Refuse Collection	HC 536-I
Sixth Report	Equality	HC 468
Seventh Report	Local Government Finance – Supplementary Business Rate	HC 719
Eighth Report	Local Government Finance – Council Tax Benefit	HC 718

Session 2005–06

First Report	ODPM Annual Report and Accounts	HC 559 (<i>HC 1072</i>)
Second Report	Re-licensing	HC 606 (<i>Cm 6788</i>)
Third Report	Affordability and the Supply of Housing	HC 703-I (<i>Cm 6912</i>)
First Special Report	Government Response to the Committee's Fourth Report of Session 2004-05, on the ODPM Annual Reports and Accounts 2004	HC 407
Second Special Report	Government Response to the Committee's Eleventh Report of Session 2004-05, on the Role and Effectiveness of The Local Government Ombudsmen for England	HC 605
Third Special Report	Government Response to the Committee's Seventh Report of Session 2004-05, on the Role and Effectiveness of the Standards Board for England	HC 988
Fourth Special Report	Government Response to the Committee's First Report of Session 2005-06, on the ODPM Annual Report and Accounts 2005	HC 1072
Fourth Report	The Fire and Rescue Service	HC 872-I (<i>Cm 6919</i>)
Fifth Report	Planning-gain Supplement	HC 1024-I (<i>Cm 7005</i>)

Oral evidence

Taken before the Communities and Local Government Committee

on Tuesday 24 April 2007

Members present

Dr Phyllis Starkey, in the Chair

John Cummings
Mr Greg Hands
Martin Horwood
Anne Main

Mr Bill Oler
Emily Thornberry
David Wright

Witness: **Mr Trevor Phillips OBE**, Chair of the Commission for Equality and Human Rights, gave evidence.

Q1 Chair: Good morning, Mr Phillips. Given that the Committee are keen to be able to question you on your new responsibilities, and I know we have agreed that you would make some opening remarks to introduce your priorities for the new Commission, may I ask you to keep your remarks as short as possible, preferably to about five minutes?

Mr Phillips: I will dispense with the other two and a half hours that I have prepared! Thank you for asking me to give evidence. You know that we will launch in October 2007. We will bring together the three existing equality commissions and we will have responsibility for the issues relating to age, sexual orientation, religion and belief, and promotion of human rights in addition. To borrow an analogy from my colleague, the CEHR Commissioner Ziaddin Sardar, the existing equality commissions can be regarded as rivers run on well-known courses for some decades, and now, in a sense, we are at a confluence I think he calls it. We are on an ocean where our remit is much vaster, horizons are quite a long way away and our task is to chart some new waters to find a new course. We would say now that there are really two great challenges this century for humankind: one is how we treat our planet and the other is how we treat each other. The Commission for Equality and Human Rights essentially is being asked to take leadership in the second. The mandate rests on the principle of equality and human rights, which is not only a minority concern. The CEHR, if it is successful, should become a substantial national institution, the guarantor of standards of decency and fairness in our society and the guardian against injustice in the way we are treated by others and the institutions of our society. It should be the repository of key values for us as a society. It should also, I hope, create a fresh vision of human rights, not the one which is much advertised today, which is in a sense a use of human rights as a tool for perverse individuals to impose their interests on the community as a whole, but instead human rights to become a framework by which we reconcile the frictions created by difference and diversity and standards by which we uphold our values of decency, dignity and respect. In essence, we start from the point of view not that the Commission for Equality and Human Rights is here to defend

separate interests but to create a society that makes such a defence unnecessary. Organisationally, it will be a completely new body, more than the sum of its parts; it will draw on the experience of expertise and existing talents of the current equality commissions and other bodies, but we hope that it will take a fresh approach that is consonant with the equalities and human rights climate in 21st Century Britain. Its challenges are to retain a specificity and expertise and to reconcile different kinds of interests and, where those interests cannot be reconciled, to be a forum in which they can be managed. Its advantages are that it has greater powers and a wider range in which to effect institutional reform. Secondly, I personally think that the issue of what people call strands versus not strands has been much canvassed, over-canvassed in the sense that the question for the Commission is not whether we have one overarching, undifferentiated mission or whether we follow, as I was saying earlier, the tracks of previous river beds. I think part of the problem that we have had in the last ten years or so is that the existing commissions have not been able to be specific enough. For example, if you take the scheme laid out by the Equalities Review, you will see that our great preoccupation was not women in general but women with children, not Pakistani and Bangladeshi people but Pakistani and Bangladeshi women. I could make the same case, for example, in relation to mental health. The specificity here is not mental health in general but, if we really wanted to focus on where some of the big issues are, we would be thinking, for example, about black male people who have had mental health episodes. On the argument, which I am sure may come up this morning about specificity versus generality, we should not counterpoise the CEHR against its precursors, but we should ask ourselves whether the structure that we have had previously has been specific enough. I believe that the Commission for Equality and Human Rights properly managed and set up will deal with that. The third thing which the CEHR should be is outward facing in a way that previous NDPBs have not been able to be. You have given me only five minutes but I will just say, in conclusion, a few things about where we are now. We face an ambitious timescale for launch and delivery. We have our first Chief

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Executive, Dr Nicola Brewer, who started in March. She is developing our first interim business plan and recruiting a top management team. She is obviously in the process of setting up our infrastructure. Commissioners are working on the question of developing the strategy that strikes the right balance between drawing on areas of activity identified by the existing commissions and other relevant bodies and developing, on the other hand, a distinctive approach for the CEHR itself. There will be a bedding down process. There is a great weight of expectation on the Commission from Parliament, from Government and from the existing equality commissions. I think, in the end, what will make or break us is how we meet the expectations of the general public, those who face the daily grind of disadvantage and those who confront the sharper thrust of injustice, and also those who do not suffer directly but who just want Britain to be a more equal, fairer place. I am sure that there are many questions that you will want to ask me. I will just ask one thing. This Parliament brought us into being. One of the aspects of the Act which is quite different from our predecessor's is explicit commitment in the legislation to the independence of the Commission. I regard that as one of its most important and significant properties. That level of independence will be crucial to guaranteeing the Commission's credibility and for ensuring that it serves the nation and not the government of the day. That independence has been reflected in my own recent discussions with the Secretary of State with regard to the CEHR's management statement and financial memorandum. I hope that at some point, if that independence ever comes into question, that it will be to this place that we can appeal to help us defend it.

Q2 Chair: Thank you. As you say, there are a lot of questions that we want to ask. May I start with a relatively simple one? Do you believe that the work of the Commission would be simpler if government responsibility for equality policy were consolidated within one department instead of being spread across several?

Mr Phillips: Some aspects of it might be simpler. The sponsorship of some aspects of our work might well be simpler but, to be perfectly honest, I am somewhat agnostic on this, and I will explain the reason for that. I think as a piece of machinery of government, to have responsibility for equality in one place, if it is the right place, is helpful. Politically, however, what would concern me would be to have equality corralled in one part of the government machinery so that everybody else says, "Oh, the equality business; that belongs to government department X. We do not have to do anything about it". What I would be much more interested in ensuring is that there is an effective framework and structure by which government as a whole decides on its strategy for equality and, by the way, promoting a human rights culture, that it is clear across government how that is measured and how all government departments are held to account.

Chair: That issue of whether to mainstream or specify where responsibility lies is one we will return to in another context later. Mr Oler will take up the budgetary issues.

Q3 Mr Oler: The CEHR will be replacing three existing commissions. There is an operating budget of £70 million and start-up costs of £24 million. Will that be enough when others in the same business or in the other commissions have said that at least £125 million is needed as an operating budget?

Mr Phillips: It would be great to have more. That is a pretty straightforward answer. In the end, essentially we will have to do as good a job as we can do with the funds that are made available to us. This is obviously not the sort of answer that you might normally get but it is important for us to be realistic here. We could spend a lot of time arguing about the level of funds that are available to us. In my previous incarnation at the Commission for Racial Equality the view that we took was that we needed something. This Commission could well do with more than £200 million but in the end the more important thing is, first, to decide what we are going to do rather than to construct the envelope. If we find within the next six or eighteen months that the resources do not allow us to fulfil the mandate that you have given us, then there is no question, we will be back, but our first priority is to get ourselves in business and essentially on the map.

Q4 Mr Oler: To follow that through, were there any negotiations? My colleagues will ask later about priorities within the new Commission. It seems to me as an outsider that this has been downsized. Previous regulators have been joined up and their start-up costs were exceedingly more than this figure. Are you very good? Is that why they are not giving you so much money?

Mr Phillips: We will see how good I am in about a year's time! I know that the standard position for somebody like me is to come in and say, "It is an outrage. We are being downsized" and so forth, but let us be straight about this. Nobody would want to bring together these commissions if we were not going, amongst others, to enjoy some economies of scale. Secondly, at the present time, so much of what we will do is very new. It is not so easy to be absolutely certain about exactly what things are going to cost. Thirdly, and this is perhaps the most important, what is new about this body is that in itself it is not going to be the great spending body. Our objective, when it comes to money, is to ensure that the big spending battalions, particularly government departments but also other aspects of civic society, bend their spend in a way that leads to greater fairness and greater equality. Our budget is not going, for example, to be spent on providing extra classes in English for Pakistani and Bangladeshi women, or for young black men or women. Our budget will construct a programme that will force, we hope, the Department for Education and Skills and local authorities to spend their money on doing that. In a sense, the only reason at this point I am being moderately relaxed about the

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budget is that what I am more concerned about, other than how we spend our money, is how we get other people to spend their money in the interests of equality because, in the end, it will be their billions rather than our millions that make the difference.

Q5 Mr Oler: There is no question of matched funding. We are not going down this route where the Commission will say they will give a bit if that will allow a little bit more money from government or local authorities. You are not going to go down that route at all?

Mr Phillips: We are absolutely not because we will be pursuing this on the basis that the law says, particularly in relation to public bodies, that they have to promote equality in relation to gender, race and disability. They are not going to do it simply because we come up with tuppence. They are going to do it because it is their business, and we will make sure that they do their business.

Chair: Martin Horwood was not here for your opening remarks. The clerks have had quite some difficulty of getting hold of any business plan from your organisation. I note you said that your Chief Executive was drawing up an interim business plan at the present. As a committee, we would be very interested to have some hard information from you as soon as possible on how exactly you are intending to spend the money that you do have.

Q6 Martin Horwood: May I apologise for missing some of your opening remarks. This follows on exactly from what the Chair has said. I think the budget issue that Mr Oler has raised does become obviously more pressing and a bit more acute when you get down to the various sub-strands. I take what you say about not wanting to be measured too precisely against predecessor organisations. In terms of what you were saying about fulfilling the legislative obligations on you, the requirements on you—and I suppose the example, because I have worked for disability organisations in the past, that comes to mind—are you confident, for instance, that the disability sub-committee is going to be adequately resourced to fulfil the statutory obligations that you have in that area of inequality?

Mr Phillips: Yes. I can give you an answer full of flannel, but the answer is “yes”, and we will find a way of making that happen because that is what we are set up to do. I see no reason why we should not so far. If, for some reason, we think we cannot, I doubt if it will be to do with resources in that pure sense. In relation to your direct question, our Chief Executive has been there for six weeks. If I can go back to the previous question, if I were to complain about an absence of any resource, it is an absence of time. The straight point here is that the way that this has been put together is probably exactly the reverse of the way it should have been. We should have had an equalities review, a discrimination law review, followed by a new Act, followed by the setting up of the new institution. In fact, what we have done is to create a new institution, quickly followed by the publication of the Equalities Review, to be followed

by the Discrimination Law Review and one day we will get a new Act. That is why things are not quite as straightforward as they ought to be.

Chair: Many members now want to explore the issue about the different strands of your work.

Q7 Mr Hands: Trevor, you talked about how strands versus non-strands has been over-canvassed but we are about to canvass you a little more about specific strands. I know there are some very specific questions coming about different strands. Can you start off by telling us how you are going to try to ensure fairness and, ironically, equality between the different strands, perhaps concentrating on three specific areas: in terms of funding, in terms of staffing, and in terms of volumes of case work?

Mr Phillips: I am pretty sure you are going to want to explain in more detail exactly what you mean by that. Let me start from the point of view of what I said in my opening remarks. We are not, as I said, in the business of creating an institution which is constructed of six mini commissions. Not only is that inefficient, it is, in my view, divisive and it is also, frankly, rather outdated in its approach to equality. Why is it outdated? The first reason is that there are a number of equality deficits, if I can put it that way, which do not line up neatly with strands. Let me take what I think is probably the next large issue that we will have to confront, and that is the position of carers. There are four to five million people between 45 and 64 in this country who have found themselves in a situation, and I am amongst them, where you think that you have your children out of the door and maybe they will get a job but anyway they are not spending your money any longer and now you can have a life, and what you discover is that actually you have an aged parent, or your partner has an aged parent, who is as likely as not disabled, who is dependent, and therefore you have a whole new set of responsibilities. The strand structure to which we are used has no place for that at the present time. It is true that most of these people are women but this is not a gender-determined issue. Below all that, as I said earlier, there are groups of people who do not line up with strands, who are, I think, principal responsibilities for us: the cases of ethnic minority, mental health patients and so on. The issue of how we make things equal between strands feels to me, if I can put this courteously, the wrong question to be asking at this point. What is more important is: how do we effect institutional reforms of public bodies and indeed public sector bodies so that people, whatever their equality deficits, are treated more fairly.

Q8 Mr Hands: I very much appreciate that answer. I for one do not necessarily disagree with you but nevertheless that is a question that is being frequently asked, as I think you concede in your opening remarks. Can I ask the follow up? Is there going to be any monitoring done within the organisation, e.g. of case work volume? Is there going to be any apportionment of funding and

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expenditure? How will staffing work between the different strands? Will there be no specific stranding of the staffing, for want of a better term?

Mr Phillips: We now talk about the move from a single mandate to an integrated mandate. Of course we will monitor, certainly by the six categories but probably by other categories as well, our own output: how we spend our money, who calls us, how many hits there are on our website for different reasons, and so on. Let me emphasise the central point of setting up the Commission for Equality and Human Rights was actually to get away from the point of view where you had to present yourself as a black person, let us say, or a disabled person, or a woman, in order to get any help when in fact you, first of all, may not actually know what is the reason that you have a complaint, let us say of employment discrimination, or you may be presenting a complaint on more than one ground. Simply to answer your question, we will of course monitor by category, so we will know. The question of whether we then allocate funds in a response to that, I think is much more dubious. I do not think that that is the way that we will look at this at all. We will look at this by: are our functions being successful; are we answering calls properly; are we dealing with complaints properly; are we providing strategic legal advice properly, wherever it comes from?

Q9 Emily Thornberry: You identified this to begin with and we have picked up on this as well as an area of concern. Perhaps some of the questions that I want to ask are in some ways touching on some of the things that Greg Hands has already raised. I do want to ask you about this. Certainly some groups feel that this new body is an amalgam of existing commissions and that some of the new strands may get overlooked and that you may continue to have a hierarchy of inequality. Can you reassure people about that?

Mr Phillips: That is one of the reasons that I have not mentioned about why I am, in a sense, rather hostile to the strand structure. If I can be absolutely frank, if we stuck with the strand proposition, so-called, the single mandate structure, the one that would benefit most is the one from which I myself have come. For all sorts of political and historical reasons, we are more anxious about race than anything else. That does not mean that we are not going to be thinking about race, race and faith and all those issues, but what people used to call the strand-specific model will be biased in favour of what I privately call the classic strands. The new mandate—age, sexual orientation, religion and belief—would essentially, for some years, be regarded as second-class categories. I do not think that the Commission for Equality and Human Rights should be in that position. The last place we should be, as an organisation, is one in which, having been there before or having the loudest voice is what gives you the most resources.

Q10 Emily Thornberry: I understand. Can I ask you specifically about the lesbian, gay and bisexual community, and obviously all of this is new to them.

Will you be promoting and how will you be promoting your work within that community? Given presumably that you will be recruiting staff from existing commissions very often, how will you ensure that your new staff are up to speed on lesbian, gay and bisexual issues?

Mr Phillips: Part of the £24 million that was mentioned, a very large part, is going to be devoted to constructing a new body of staff, many of whom will be completely new to our business, and also training everybody—that is to say, including the staff who come from existing commissions—in knowledge, information and approach to other kinds of inequality and discrimination, and, let me say this again and you will hear me say this several times this morning, human rights. All our staff have to be able to work pretty much across the range of mandates. That is what is meant by an integrated mandate. By and large, though of course there will be expertise—there will be people who come with expertise in disability—we will import people who have expertise in relation to lesbian, gay, bisexual and transgender issues. The expectation is that all our staff, whether they are in research, on helplines, dealing with strategic and policy wants and so forth, will work across the integrated mandate. They will not come to the CEHR simply to do what they did before or to fit in to a convenient silo. That is not the way that we intend to work.

Q11 Emily Thornberry: Chair, may I ask one question about age discrimination as well? Age is not currently protected through goods and services legislation. I met people at a parliamentary lobby last week organised by Help the Aged, and I met more Islington residents at an older people's event organised by Age Concern. Both groups made it perfectly clear that they certainly feel that they are discriminated against as older people. Given the approach that you have told us about that your organisation is going to have, how will you be able to deal with this and the gap in existing legislation?

Mr Phillips: I think this is where we look to the Equalities Review, the Discrimination Law Review and a single Equality Act. The Equalities Review has been very clear about this. If I can switch my “we” here to being Chair of the Equalities Review Panel, we expect the Government to introduce a new Act that brings together a single integrated mandate with a single public duty, which of course is both practical and also a symbol that all kinds of inequalities, all kinds of disadvantage, will be considered together equally alongside each other within a new regime. Secondly, in relation specifically to age, though we now have new rules on employment, the issue of goods, facilities and services of course we know is rather more complicated and it is not just to do with older people; it is to do with younger people as well. I think this is going to be quite complicated but I myself have no doubt it is going to be one of the issues that a new, single Equality Act will have to tackle, and tackle positively, to ensure that there is not unjustifiable discrimination on the grounds of age, whether that is to do with youth or older people.

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Chair: We have some other questions on the single Equality Act and the review. Can we leave those for the moment and come back to them?

Q12 Mr O'Leary: This is all very good. The work looks as though it is proceeding well. I am very encouraged by your enthusiasm as to how the new Commission is going to work. How is that enthusiasm and interpretation actually going to work in the regions of the United Kingdom? Sometimes some of us feel there is inequality within the regions, never mind inequality within what you do.

Mr Phillips: Your point is well taken. If I can refer you again to the Equalities Review, one of the issues that we said in the Equalities Review that we were not really able to address but I would dearly have loved to is the emergence of spatial inequality. What I mean by that is inequality and disadvantage which is caused when you control for other factors purely by where you live. The example given to me, and I do think it is a very good one, is that you are less likely to be able to find a job in Bradford than in Leeds purely because of the way that the changes in the economy overall have favoured Leeds compared to Bradford. These are purely spatial differences. This is one of the issues that I would like the Commission for Equality and Human Rights to address. In practical terms, and the question you are asking me, we will have a regional structure, which will look not dissimilar to that which we have created in the Commission for Racial Equality where there are centres within each of the English regions. We will have our major offices in Manchester; there will also be offices in London, in Cardiff and in somewhere called Glasgow-Edinburgh. We are still not yet absolutely certain of the location. There is no question in my mind that there will be a CEHR presence throughout the country. We will also begin a consultation, I think in two months' time, about grant-giving, which is particularly directed at ensuring that the Race Equality Council network, which the CRE currently has, continues but that we develop parallel structures with the voluntary sector to make sure that we have local presence and local partners. Our job is not just sitting in a bunker in London or Manchester but a substantial proportion of our resource is finding its way out to local schemes, local projects, that advance the interests of equality and human rights.

Chair: I would rather not explore the somewhat controversial issue you have raised there about spatial inequality but I can tell that were we to do so, there would be considerable debate within the Committee and we might spend a lot of time on it. I would rather leave it to one side and pick that up subsequently.

Q13 Martin Horwood: I entirely agree with what is said about getting away from the strictly strand-based approach and that seemed to have lots of advantages in terms of flexibility and lightfootedness by new Commission. Is there not a risk in the approach that you seem to map out in the Equalities Review being quite data-driven and that in a sense

some of the strands may re-emerge by the back door? There are some inequalities that are quite difficult to spot. Gay people are one example; lots of us have been lobbied recently over the sexual orientation regulations where many Christians feel that they may be subject to discrimination. That is difficult to spot because you cannot always spot a Christian. The same might apply to atheists. Some of these are qualitative judgments about things that are being done or being practised that might not show up in this quite data-driven approach that the Commission seems to be taking. Do you think that is a risk?

Mr Phillips: I do not really. I would not argue that it is sometimes difficult, and I certainly would not dispute that some kinds of discrimination are nuanced and subtle to the extent that sometimes the person being discriminated against does not realise it, sometimes for many years afterwards. There is lots of research that demonstrates that. In relation to the central issue for the Commission, which is not, in my view, what may happen to a single individual though that is important and we need to support single individuals, the real big work of this Commission will be to change the way that organisations and institutions operate. I am trying to think of an example where this is not true but I cannot quite think of one. If you measure properly, you will always be able to detect the patterns of inequality and discrimination if they are really there. Having said that, one other aspect of the Commission's work is to provide opportunity to give voice to those who advocate on behalf of these groups. That, by the way, is one of the reasons that it is so important to work in partnership with the voluntary sector because where the data is not there or it is too subtle to see, we can hear if people tell us that something is definitely going wrong by individual cases, individual stories and so on. I am not at all contesting that not everything is just about aggregate measurement. I think it is very important to have the pressure groups, the voluntary organisations and to be able to listen and to hear what they are saying, but I would not want to concede for a moment that there is a kind of discrimination or a kind of inequality where you cannot actually tell by monitoring that it is happening.

Q14 Emily Thornberry: The existing commissions have a range of powers which I did not know that they even had until I read today's papers because they are not used really, although one of the things that the EOC was using, and I know your Commission was using as well, was the power to support and encourage legal cases. I suppose there is a concern that, given your budget, you are not going to have a great deal of room to be involved in as much enforcement as you could be.

Mr Phillips: I do not think that is right. It all depends on what you think our job is for. Let us bear in mind that 20 years ago most legal firms, for example, had no expertise really in the territory of employment discrimination. Now, certainly all the big legal firms and quite a lot of legal aid firms and so on are pretty

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good at this kind of thing. That is partly because they have been supported by grants made available certainly I know by the Commission for Racial Equality and in slightly different ways by the DRC subsequently and the EOC has been extremely good at pioneering advice, support and training for people in the legal profession. I think the answer here, and it goes back to the point I made earlier, is not to measure this by what is in the Commission for Equality and Human Rights' own legal budget. We will take a very tiny minority of the cases that enter tribunals. My hope is, as has been increasingly the situation, that a lot of these cases will be supported by trades unions, by individuals themselves, obviously not by legal aid but by other means and that our work will be concentrated on strategic cases. What I mean by that is very simple. If we have £10 million to spend on legal cases—and I am just taking that as a figure—I do not think that we should end up spending £100 on 100,000 cases, I think that it would be much better if we had to spend £1 million on ten critical law-changing cases. That is our job. What we can then do with some of our other money is support the legal profession, train trades unions and so forth to take cases. We have to see ourselves not as the sole resource but as a catalytic resource within the legal business. That is entirely apart, by the way, from the other battery of powers which the Commission for Equality and Human Rights has, which are way beyond what existing commissions have.

Q15 Emily Thornberry: Are you anticipating using those and how will you balance the work? First of all, will you be using the additional powers because the previous commissions did not really? How will you balance that with your responsibility for promotion?

Mr Phillips: Can I just slightly contest this view that the existing commissions did not use their powers? I do not have to talk about the Commission for Racial Equality but I will in a second. The Disability Rights Commission has used its power at inquiries I think very fruitfully, for example in relation to the East Sussex case and bringing human rights into the field in a way that did not exist before.

Q16 Chair: If I may interject here to give a specific example, in the Equalities Review there is a very interesting table which shows that if we continue as we are, how long it would take to close various gaps. On the issue you have referred to, which is about Pakistani and Bangladeshi women, which is the EOC report on unemployment, the answer is definitely “never” if we continue to do the same thing and we close the gap. Could you specifically address: what is your body going to do differently that might mean that the gap for Pakistani and Bangladeshi women in employment might be closed in the reasonably foreseeable future?

Mr Phillips: With respect, this has almost nothing to do with the question which Ms Thornberry has asked me.

Q17 Chair: I am getting the feeling that people want to move on.

Mr Phillips: I understand that but I would just like to have it on the record as well.

Q18 Chair: Do so briefly.

Mr Phillips: I have been asked a big question but I will be very brief. The existing commissions have used their powers pretty extensively, and in relation for example to formal investigations, the Commission for Racial Equality has spent £2 million in the last couple of years in big formal investigations and have changed practice both in the prison service and the police quite dramatically. The first proposition that these powers are not used is really not borne out by fact. There are six new powers that will be used in formal investigations, binding agreements and so forth, which I expect us to use very actively. In relation to your question, the first question about this is: what do we think is driving this? Is it a cultural issue? Is it an exclusion and class issue? You will see that we say in the Equalities Review Report that we need to do a bit more work to understand exactly what this is. For example, there are some people who think that the way we will crack the position for Pakistani and Bangladeshi women is by spending a lot of money on English classes. I think that there is some case for that but at the moment the truth is that nobody quite knows. Everybody can assert as much as they like but we need to understand this better. That is one of the reasons that we have a Commission.

Q19 Mr Hands: This is a final question on the staffing side. You said that all the staff would be expected to work across the range of mandates. It sounded, from what you were describing, that the staffing structure would be quite flat and you will not have a specific deputy in charge of, say, disability, age or gender and so on. Inevitably part of your role, if I am understanding correctly, is to be obviously a spokesperson for a wide range of equality issues. Is there a danger in having too much concentration on you as the Chairman in that the media in particular would be expecting there to be comments from the Commission on age, disability and so on? It sounds like the structure that you might envisage would have too much concentration and that Trevor Phillips will be the spokesman on all of these issues?

Mr Phillips: I think that is very, very unlikely. There are two separate issues here. The capacity to speak to the press has almost nothing at all to do with expertise, so let me deal first with the expertise issue. There is absolutely no question in my mind that we will attract expertise on all of the fronts that you might have mentioned in terms of what you would call strands, plus some new ones. Let me give you an example. None of the existing commissions, as far as I am aware, has a focus on young people and children. I think it would be criminal if the Commission for Equality and Human Rights did not have the capability and the expertise to be able to address questions that affect young people and understand young people better. I expect to see expertise of all kinds within the Commission for

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Equality and Human Rights and I imagine when my colleague Nicola Brewer appears in front of you, she will talk to you more about the organisational structure she has in mind. Let me just say one thing perhaps about the existing staff in the existing commissions. One of the reasons that many of them welcomed the Commission for Equality and Human Rights, though not all did, is the opportunity to use their expertise on a wider range of issues because again and again, if you talk to staff in the existing commissions, you will find they tell you that they find themselves encountering problems and issues which go outside their traditional track, and they would like to use, for example, the knowledge they have about human rights, not just in relation to disability but in relation to questions of gender inequality and age inequality. In relation to the issue of talking to the press and the Chair and all of that, first of all, I will become, when this is opened, a part-time Chair. I expect to spend rather less time on this. There is a very good reason for that. We have a very powerful, very capable, Chief Executive who will be in effect the leader of the organisation. There will be more than one voice at the head of the organisation, but, more importantly, if you look at the commissioners who have already been appointed, these are not ciphers; these are not people who you would expect to be silent. One of the reasons that I am delighted with the make-up of the new Commission is that amongst the commissioners we have a series of people, people like Ben Summerskill who as you know is the Chief Executive of Stonewall, Jane Campbell from the Disability Rights Commission and Kay Carberry from the TUC, who are themselves public figures and who will, I expect, emerge in various ways as voices of the Commission for Equality and Human Rights. That of course is an expression of the kind of difference of this body from the precursors.

Q20 Mr Hands: Do you think in a very general way that the introduction of a single Equality Act is necessary for the Commission?

Mr Phillips: Yes, without question. If you would like me to expand on that, I am happy to do so. Let us start from the proposition that at the current moment our mandate in various ways encompasses or touches 91 different pieces of legislation, European directives, regulation and so on. Secondly, there are different standards often unnecessarily applied to different kinds of inequality. Thirdly, there are already three different kinds of positive equality duty on the public bodies. For private sector bodies and public sector employers there are different standards deriving often from European directives. All of this makes the business of ensuring that people are treated equally dozens of times more difficult than it needs to be. That is one of the reasons that it is so difficult. It is one of the reasons it is so difficult to measure. That is why in the Equalities Review we were very clear; that is to say that we need one single framework, and in a sense we want to fly our *contessa* here, to have as few complexities as are necessary in this regime, which has grown up over

the last 30 to 40 years rather haphazardly. Now is a great opportunity. It is a tremendous opportunity to rationalise, to make it simpler and that way make the process of ensuring greater equality easier. If you make things easier, generally speaking they are more likely to happen.

Q21 Mr Hands: To summarise, it is not essential but it makes your job a lot easier?

Mr Phillips: If you were to ask me “is it essential?” I would also say “yes” to that. I think at the moment we are going to run out of capacity to manage some of the differences and I suspect that sooner or later—and I am not a lawyer—we are going to run into some clashes in court about dealing with the requirements of different pieces of legislation, never mind the new gloss that the Human Rights Act brings to the whole situation.

Q22 Martin Horwood: Is there not a risk that you might find yourselves accidentally constrained by the single Equality Act. You have talked about being flexible and spotting inequalities where people had not spotted them before. You talk about carers, for instance. I cannot see that is obviously covered in the list that is attached in the review to the legal framework. It does not come under sexual orientation, gender, disability, ethnicity, religion and belief, transgender or age. Is there not a risk that a single Act might actually chop out unexpected inequalities that you would like to take up?

Mr Phillips: There is always a risk that ill-considered and poor legislation will make things worse but I know that in this Parliament it is unlikely that that will happen. The place that we have to start is not from the idea that a single Equality Act simply mashes together what exists. We have to start from the idea that a single Equality Act is being brought in to ensure that we have fairer, more equal outcomes. The problem with most of the legislation at the present time, and I would argue this is true about for example the positive duties, is that they do not start from asking the question: what will secure a fairer, more equal outcome? What they often do is ask the question: what will provide a fairer, more equal process, but these are not the same things. My view is that a new Equality Act has to be focused on what will guarantee fairer, more equal outcomes, and therefore I think that is the way to deal with it. In essence, a new Equality Act focused on outcomes will create a structure which forces us to ask: what sort of people are being discriminated against or are facing disadvantage because of what they are? It does not start from: here are six categories. What it says is: what is causing inequality? In that situation, if you did that now, it would almost certainly throw up the answer that carers in a certain category are faced with a huge disadvantage in the labour market. The Act would be framed in such a way as to attack that. Rather than starting with the categories, we start with: what causes inequality and let us address whatever we find.

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Q23 Anne Main: I am interested in quite a few things that you have said. In your opening remarks you said that the two most important things facing us today are how we treat the planet and how we treat each other and the Equalities Review calls for the single Equality Act to facilitate action to help groups as well as individuals. How would this work in practice, given your stated two aims, which sound a little bit like motherhood and apple pie because I cannot think of a third one if I wanted to. How would you find this Act would work in practice?

Mr Phillips: The answer to how a big new Act like this would work in practice is a rather long answer, but let me try to respond in this way. A single Equality Act in my view would, first, set out clearly what we mean by equality, something which we tried to do in the Equalities Review. This has two parts. First, is it just about income; is it just about the absence of discrimination?

Anne Main: I think we have explored those ideas. I am just trying to envisage that you are broadening the whole range of inequalities, even the ones people do not know exist yet because they have not spotted them. Can you envisage some sort of legalistic nightmare really?

Q24 Martin Horwood: Can I give an example that might help us? If part of your brief is to facilitate action by groups and, to come back to my earlier example, if a Christian group came and said, "We are being discriminated against by atheists or by this legislation to help gay people", what process are you going to go through to try actually to work out what action you are going to facilitate by which groups?

Mr Phillips: Part of our business is not to facilitate action by groups in that sense. There is nothing in any current Act and there will be nothing, I do not think, in a new Act which protects groups. It protects people against unfavourable treatment because of what they are and that is rather a different concept. You are asking me about the law now, not about policy. Forgive me if I am trying to be really careful here.

Martin Horwood: Can I just quote from the executive summary on page 13 of the Equalities Review: "It will be essential that the resulting single Equality Act" will, and at bullet point two, "facilitate action to help groups as well as individuals".

Q25 Chair: I think what we are asking you about is positive action and currently there are barriers in some cases to positive action being taken to remove the discrimination against certain groups. The example we have been given is the Metropolitan Police not being able to adopt a scheme to accelerate recruitment of well qualified female and ethnic minority candidates, for example.

Mr Phillips: Forgive me if I did not understand the question you were asking. Is the question I was being asked about positive action? The straightforward answer is this. We found that there were some kinds of inequalities which simply proved not to be susceptible to what you might call the conventional method; that is to say, giving people different kinds

of opportunities and so on. You can spend a long time, and people have done, trying to understand exactly what precisely is the issue here, and so on, but, even where there has been a great deal of attention and resource ploughed into it, quite often it is not changing. There is a distinction, if I anticipate the question that is being asked here, between what people call positive discrimination, which is essentially making up for a historical wrong by giving a particular group of people an advantage, which is not something I would favour, and what is being proposed in the Equalities Review Report, which is to offer institutions the opportunity for certain kinds of flexibility that would allow them to carry out their basic functions more effectively. The example of the Metropolitan Police you quote says, with good reason, and I can say this as a former Chair of the London Assembly, that it is quite difficult for them to do certain things because they are not diverse enough, both by gender and by ethnicity, and their method of recruitment restricts them from changing that quickly. We think that with the right safeguards it would be reasonable to allow them greater flexibility. By the way, this kind of flexibility I think is more likely to be used first within the private sector and was greeted and is greeted I think with more enthusiasm in the private sector, where there is a need to move faster. For example, you are a retail outlet, the population around you changes very quickly, you want to change the profile of your staff. To some extent, the framework that we have at the present time prevents you from doing that quickly to respond to commercial needs. One of the reasons that the private sector likes this idea, or so the CBI tells us, is that it allows them in an ordered way to be able to respond to business and commercial pressures.

Q26 Anne Main: I am not quite sure I understand quite how you can tailor your staff as your business needs go. That would sound somewhat discriminatory but I will move on from that.

Mr Phillips: I can give you in a sentence a very simple answer. You cannot, for example, now in an area where the population profile has changed very rapidly over three years, say, "We would like to attract Asian staff". You cannot do that. I think that Tesco or Sainsbury, or anybody else who is in the business of serving a local community would like to be able to have the opportunity to do that.

Q27 Anne Main: In which case, when do you expect the Government to try to bring forward a single Equality Bill? Do you have any timetable that you are working towards?

Mr Phillips: I think you would have to ask Ministers about that but my expectation is that Ministers would like to see something in statute before 2009, but it depends on when the Discrimination Law Review comes forward and so on.

Q28 Chair: Could I ask you about the integrated public sector duty to promote equality. Do you think there is a danger that such a duty would simply become a tick-box exercise?

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Mr Phillips: The reason we propose this is because we think to some extent the duties that exist are that. The reason they become tick-box exercises is because they are more focused on process than they are on outcome. Though the disability equality duty is more modern than the race equality duty, we have yet to see how the gender equality duty will work, but in my view there is very little in the existing duties which sets out an outcome for public bodies or a structure by which an outcome can be set up. I think at the moment they are too bureaucratic. There are too many pieces of paper.

Q29 Chair: Why would an integrated duty be less bureaucratic and more focused on outcome rather than process?

Mr Phillips: At the heart of an integrated duty as proposed by the Equalities Review would not be: “You must go through these steps”. At the heart of that duty would be to say to a public authority, a local authority, “The gap between different groups, let us say in educational outcome, should not be larger than a certain degree”. How we set that is a different kind of argument. Essentially, at the moment we tell local authorities, “You must go through these steps” but do not say what their results should be. At the moment, local authorities can fulfil the public duties, if they are prepared to do all the bureaucracy, without changing their outcomes or indeed their practice one iota. It is proposed in the Equalities Review to say to a hospital authority or local authority, “We are not going to tell you your business, how to do things, but we will say if we think something is not acceptable”: for example, that the pay gap should be this large or that the gap in achievement at Key Stage 4 between Chinese children and Gypsy and Traveller children should be 60%.” That is what an outcome-focused duty would concentrate on. It would concentrate on what a community thinks is the right and acceptable gap rather than on the bureaucratic process.

Q30 Anne Main: Further to that, what would you envisage as any form of penalty? It does not become a tick-box exercise. Would you therefore have to regard it as something that would have to be achieved or what?

Mr Phillips: As you will see in the Equalities Review Report, we put great store not by fines and being in the High Court but on transparency. If I may say, by way of preface, my background is in the private sector and I am a great believer in competition. I am a great believer that knowing where you are relative to your competitors is incredibly important. My own view is that the great driver here will be transparency and accountability, which means that you have to measure and publish what your results are. My guess is that the most important thing about an integrated, positive duty is that we will have a common framework that states all your outcomes and, secondly, that you have to publish them, so that your electorate, if you are a local authority, will know that you are the worst in the country when it

comes to, say, the treatment of women. I think that is going to be the great driver rather than any other kind of sanction.

Q31 Anne Main: I am sceptical about that but I shall move on.

Mr Phillips: You are sceptical about competition?

Q32 Anne Main: No, about how much impact that name and shame sort of thing would have, but there you go. You have called for the establishment of a new Equality Select Committee in the Equalities Review. We touched on this earlier, about whether or not this would end up perhaps marginalising the issues. Would you like to say how this would help mainstream equality issues, if there was an Equality Select Committee?

Mr Phillips: Our view about this is not inspired, if I may make this point, by any disrespect of this committee—

Q33 Chair: That is a sensible point to make, if I may say so.

Mr Phillips: If I may be clear about this, but more inspired by the fact that we think that equality and fairness should be tests in the same way as financial probity is for all parts of government. That is to say, this should not be a responsibility that is held solely or even principally by one department. Our view was that we needed to provide every lever that is possible to ensure that the whole of the Government’s machine is paying attention, is being measured and is being scrutinised on its performance in relation to fairness and equality and human rights.

Q34 Mr Hands: You would envisage something similar to the Public Accounts Committee. You mentioned financial probity.

Mr Phillips: Precisely.

Q35 Mr Hands: Currently—correct me if I am wrong, Chair—I think the Joint Human Rights Committee in Parliament does not have a particularly high profile and is there a danger that this Equality Select Committee could have a dangerously equally low profile?

Mr Phillips: With the greatest of respect, that is down to parliamentarians. All we can do is provide what we think is the best advice about a framework that would allow you to scrutinise government in the most effective way. It was our judgment that this parallel—and you are exactly right in making the parallel—with the PAC would be that framework.

Q36 Chair: Is there not an inconsistency in your suggestions on this matter and the answer you gave to the first question about not concentrating responsibility within government within a single department? Would this not exactly avoid the sort of mainstreaming from the parliamentary select committee sort of end that you were concerned about, if equality was concentrated in one single government department?

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Mr Phillips: I do not see why it should do. The point about such a select committee would be to scrutinise the Government's performance, as a very specific function. That does not mean that no other body would be concerning itself with issues of equality. I would expect, for example, the select committee on the new Ministry of Justice to be asking pretty serious questions about the way that ministry performs its business in relation to the treatment of women compared to men and so on. But it seems to me this scrutinising equality is not achieving an exclusive business for one body in the parliamentary jungle.

Chair: I think our experience would be that if you set up a single Equalities Committee it would stop everybody else trespassing on its patch, but there we go.

Q37 Martin Horwood: I would like to come back to your monitoring, the naming and shaming kind of approach to services and local authorities.

Mr Phillips: Naming and shaming was not my expression, by the way.

Q38 Martin Horwood: It is not a bad way to describe what you said. Is there not a problem that this ends up being quite data driven and it misses some of the subtle discriminations that are difficult to measure? To put a different example to the one I gave earlier, you could tick the box, as the Chair said, on something like disability without spotting the very, very different attitudes that the public and presumably employers have between, for instance, people who are disabled and in a wheelchair—where there is generally a very positive public perception—and people with a mental illness or with learning disabilities. Do you not see there is this risk of being very data driven and therefore missing some of those important subtleties?

Mr Phillips: I do not see why it has to be either/or.

Q39 Martin Horwood: You described a process that was very data oriented.

Mr Phillips: That is one of the things that we are proposing; it is not the only thing we are proposing. Let me deal with the points you raise. First of all, comparing performance is not just about isolating who is bad. In relation to, for example, the other great challenge that I mentioned, climate change, ask ourselves why it is now that every major corporate entity produces a report on its carbon footprint and its performance. The reason is not just because they are all good guys; the reason is because their competitors are doing it and they know that becomes part of their profile. For example, if you talk to them in relation to equality, they now worry—private sector employees, particularly—that if they get a reputation for not treating women employees well, they will not get the best talent from the graduate classes amongst women.

Q40 Martin Horwood: There are two crucial differences there. I am an environment spokesman and I know about this. Environmental performance is measurable to the *n*th degree, with scientific data,

and the reason companies pay attention to it is because their customers have a very positive perception about it. If you look at something like mental illness or learning disability, there is not necessarily that very positive public perception because the public also think people in wheelchairs are probably the most obvious discrimination they would like to see tackled. How do you measure how much an organisation is doing, for instance, to promote positive attitudes to people with mental illness? Where will that show up in the process you are describing?

Mr Phillips: Let us not specifically deal with the issue of mental illness because that is a very particular question about measurement and how you get data and so forth, but if, for example, your data shows that you never employ a woman above a certain level or you never employ a person who is registered disabled, for example, or somebody who is gay, that says something about your organisation. Most organisations today want to know that.

Q41 Martin Horwood: But, again, you are coming back to things that are hard data, although it would be interesting to see how you measured the gay issue because you could not necessarily spot amongst those employees who was gay and who was not. I do not know how you would get to that set of data.

Mr Phillips: Because if you ask them, people—not everybody—will tell you. We can have a lengthy and interesting argument about the value of quantitative data as opposed to qualitative data but I do not think there is anything in what the Equalities Review proposes and certainly nothing in what the Commission on Equality and Human Rights has in its locker that says we must do this and we must not do that. All of this information is important. If I could come back to a point I made earlier, in most of the best performing entities, both in the public and the private sectors, one of the features that you see is the development of networks of people, gender-based networks, ethnicity-based networks, organisations which are to do with LGBT employees, who are entities within the organisation, who do speak about these more subtle issues. You hear that, but you have to have it alongside some concrete data. If you do not have the concrete data, our experience is—and this is the real experience—that people say, “You’re just saying that because you’ve had a bad experience.” The only way in which you move most organisations—and it is reasonable—is to be able to produce evidence. I am not quite sure why there is hostility to producing data.

Chair: Martin, I think we have explored this to exhaustion—certainly to the exhaustion of the rest of us. Could we move on, finally, to an issue related to the Human Rights Act.

Q42 Mr Hands: Do you think it is going to be a priority of the Commission to change public and media views, or some might say perceived views, of the Human Rights Act?

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Mr Phillips: Without question. Absolutely without question. At the present time, human rights as a concept is generally seen as a framework which allows perverse individuals to set their own personal interest against the interests of the community as a whole, and we get ludicrous stories of men on roofs being given Kentucky Fried Chicken and all of this, which represents at the moment what people think human rights is about. An absolutely essential task of the Commission on Equality and Human Rights in its promotional guise in relation to human rights is to shift that perception, to shift it to one in which human rights sits properly as a key ingredient of our culture, which protects, for example, the interests of the individual against over-weaning bureaucracy, which ensures that people are treated with dignity and respect. The classic example is the elderly, vulnerable person in the care home. Discrimination will not apply, because in some care homes they are all treated equally badly, but human rights gives us a threshold below which their treatment may not sink. Also, by the way, I think human rights becomes incredibly important as a framework in which we can resolve some of what people describe as conflict of rights, let us say, between those people who think that the interests of their faith may override questions of equality in relation to sexual orientation or gender equality. I think promoting a human rights framework as something that is useful to our society rather than as a weapon for individuals who are selfish is an incredibly important aspect of our function.

Q43 Mr Hands: How do you propose to challenge that?

Mr Phillips: There are two ways in which you do it. First of all, you have to say it: you have to say that is what human rights is about. Secondly, I hope we will be able to demonstrate, particularly at a local level, how this could be made to work. The British Institute for Human Rights, for example, is doing some valuable work locally in helping institutions to resolve some conflicts, of the kind I have mentioned about the way people are treated, using a human rights framework. In the end, the way people get convinced about something is when they see changes in the real-life treatment of people they care about, their elderly relatives or a disabled person with whom they are associated, because of the use of this framework. We have seen that being used most effectively by the Disability Rights Commission already. I suspect this Commission on Equality and Human Rights, though it cannot take stand-alone human rights cases, will be in a position to promote such a change.

Q44 Mr Hands: You have put across quite a broad vision of the role and I guess there is a perception out there amongst some groups that your vision might be just a bit too broad and that their particular strand may suffer as a result of this. I think that is a perception held by many. Could I ask you on a specific area. You have had a number of comments in the recent past about what could be broadly called “community cohesion” which is obviously another

key area of the DCLG remit. How far do you see the CEHR’s role being one of helping to promote community cohesion?

Mr Phillips: I think it is a profoundly important part of our role. But you will see that in the Act we are accorded a good relations mandate, which is rather broader than the one that is currently accorded to the Commission for Racial Equality. I think that is tremendously important. Coming back to the point I made about human rights, I think the human rights framework will probably help us in trying not to adjudicate but to provide a way of discussing some of the conflicts which take place—and here groups do become important—between groups of people who feel that, for cultural or for other reasons, they are at odds with other groups. This is going to be tremendously important for us. I would just caution against one thing, though: we do have to make a distinction between the interests of groups of people and the interests of organisations who are sometimes their advocates. That is not to say that one is bad and one is good but I do think that sometimes we respond not to the needs of the community but sometimes to the needs of the institutions that purport to speak on their behalf. Sometimes we have to be a little bit careful about not confusing those two things.

Q45 Martin Horwood: Do you know people’s human rights extend to celebrating and maintaining separate identities? I am not necessarily trying to draw you into a controversial statement about ethnic multiculturalism—though feel free, if you want—

Mr Phillips: I am sure you are!

Q46 Martin Horwood: But you could think about deaf poets or wheelchair athletes or many of the other populations that, in a sense, you now have some responsibility towards.

Mr Phillips: Yes, of course. If I may go back to my original statement, at the heart of our vision is a very simple thing: a nation at ease with all aspects of its diversity, built on fairness and respect. That means, amongst other things, that we respect people’s idea of who and what they are. That is why we respect their sexual orientation but we also respect their faith. But that has to take place within the context of a cohesive, coherent society that has certain things that we hold in common. If there is a very simple answer to your implied question, these two things have to sit next to each other but there are certain things where difference cannot trump what we have in common. The Commission on Equality and Human Rights is one of the instruments that will help us to find that balance and to track it as it changes, because the balance between individual expression or expression of an individual identity and what constitutes community cohesion is not exactly the same as it was 20 years ago. We change as a society. This is always a subject that is going to be under discussion but now we have a structure that allows us to discuss it properly and not with animosity.

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Q47 Chair: Thank you very much, Mr Phillips. As you repeated at the beginning, your Commission is a creation of Parliament and this Committee certainly takes very seriously our responsibilities to monitor policy in relation to equalities and community cohesion. It has been a useful discussion. I am sure we will return to these issues and we will certainly be monitoring the work that your Commission is doing. I hope that as you develop firmer plans on

your budget example, this Committee will be getting the information we need in order to fulfil our parliamentary role in oversight of work in this area. Thank you very much.

Mr Phillips: We will ensure that. Might I say that I think it will always be a pleasure to appear before you. Thank you.

Chair: That depends on how successfully you are doing your work.

Tuesday 5 June 2007

Members present

Dr Phyllis Starkey, in the Chair

Mr Clive Betts
Anne Main

Mr Bill Oler
David Wright

Witnesses: **Meg Munn MP**, Under-Secretary of State (Women and Equality) and **Ms Susan Scholefield**, Director General, Equalities, Department for Communities and Local Government, gave evidence.

Q49 Chair: Good morning. Could I start by asking you about the publication of the Discrimination Law Review which has now been delayed yet again. My understanding is that it was initially intended to be in the middle of last year. Could you explain why it has been delayed so much?

Meg Munn: If I could perhaps just set it in the context, very briefly, of the work of the Government on equality issues. The Discrimination Law Review is one part of the work. As you will be very aware the Government is in the process of setting up the Commission for Equality and Human Rights; and then to support that move to a new way of dealing with equality we had basically two reviews: firstly, the Equalities Review chaired by Trevor Phillips, which was an opportunity to have a real look at the issues of equality and to say after 30 or 40 years of various pieces of legislation why was our society still unequal in a number of ways and what did we need to do about that, in an holistic way and not just legislatively; and, secondly, the Discrimination Law Review was to do the more technical process of going back and looking at the detailed legislation and looking at how we could simplify, modernise and bring that into a more coherent framework. The idea was that those two pieces of work would essentially run in parallel. The Equalities Review was also delayed and so it was felt sensible to keep those on a parallel track. Since then obviously the Equalities Review was published earlier this year, and then there has been the detailed final discussions going on across government departments to come to the policy views that we want to put in the Green Paper. It is that detailed work which unfortunately has taken longer than we would have liked; but we are able to tell you that we will be publishing very soon and, therefore, you will have an opportunity to see that and obviously to look at that in more detail.

Mr Oler: What does “very soon” mean, Chair?

Q50 Chair: Indeed, what is “very soon”? It also has to be said, Minister, Trevor Phillips (among others) is quite clear that the DLR is an absolutely essential early step in leading to a Single Equality Act and underpinning the harmonisation of equality legislation which he regards as absolutely essential for the work of the Commission. So I think your suggestion that the fact that it has slipped is not a matter of enormous import is not one that the Committee would agree with, and nor indeed one that many others would agree with.

Meg Munn: With respect, Chair, I did not say it was not a matter of enormous import. I think having a single Equality Act is important in lots of ways. It is important not just for the Commission for Equality and Human Rights but it is important for the public sector; it is important for businesses; it is important for individuals who want to know what their rights are, so it is important. What I was trying to convey was that there has been some time in order to try and clarify and get this right, because it is complex and there could be unintended consequences from that. I really would like to be in a position to be much clearer than “very soon”, but I am very aware of the criticism that has been made about dates having been indicated and set and I do not want to again be in the position of saying “We will publish on this particular date” and then it not happening. We are just in the very, very final stages, which is why I am indicating that it will be very soon.

Q51 Chair: It must have been obvious from the outset this was going to be an extremely complex operation. Are you saying it is has turned out to be more complicated than was supposed, or that there has been a level of disagreement within Government about the way forward?

Meg Munn: No, I do not think this is about disagreement as such. If we get into discussing some of the specific areas it will become much clearer about why there are a lot of complexities about it. Because equalities quite rightly involve all government departments, it is something that everybody should be concerned about; then different government departments have concerns about how looking at specific measures might impact upon them; and therefore that complexity and looking at those issues has taken longer than we would have hoped.

Q52 Mr Oler: Minister, I hear what you say about “very soon”, but very soon is a very difficult question to answer when it has been 12 months in the waiting. What assurances can the Government give to ensure when we do get the Single Equality Bill that it will level up and not contain measures that lead to a diminution of existing protections? Sir Trevor Phillips was I think, “concerned” is perhaps the wrong word, but because this area is so vast, and because each of the different commissions at the moment have got their own nuances and their own skills, how are we going to ensure that those skills are levelled up so the best is the norm?

5 June 2007 Meg Munn MP and Ms Susan Scholefield

Meg Munn: If I could briefly say about the commissions. The Equality Act 2006 was very clear that there would be no regression on the powers of the current commissions; and those were part of negotiations of bringing together the existing commissions into the Commission for Equality and Human Rights, and that is why there are differences in terms of the Commission itself. For example, there is a Disability Committee which reflects the current Disability Rights Commission and there are other examples for the other commissions. That was done in setting up the Commission itself, to specifically recognise that in this transitional period as they come together and start to work together. In terms of the legislation, the legislation is aiming to do essentially three things: to modernise; to make sure, because it has grown up piecemeal, that we get the same definitions across all the different areas; and to make sure that it is effective; so there will be a discussion within the Green Paper: are there some measures currently which are no longer required?

Q53 Mr Oler: I think, Minister, the real problem is powers are fine, and reading those powers through is fine, but at the end of the day people who are being discriminated against want action?

Meg Munn: That is right.

Q54 Mr Oler: I am just worried whether the action part of it is going to be diminished?

Meg Munn: No, and making sure that the legislation that we have will be effective. So learning from what is currently in place in terms of both the discrimination legislation but also the public sector duties where we have those three areas; and really then making sure that we extend the legislation to cover areas of discrimination which are harmful. We are very clear about that; we do not want to stop, for example, the travel passes for pensioners; this is beneficial to people so we do not want to stop that. What we are really about tackling is harmful discrimination, so we do want to extend that. As I say, the really important thing is that we do not have unintended consequences from legislation that we bring in.

Q55 Mr Oler: Could I ask whether, on this very soon to be Public Bill where the ink is still wet, is it worth going back and revisiting to say to yourselves, "Will a Single Equality Bill work, or should we be looking at strengthening what we have got?" Is that still on the agenda or is it going to be put back on the agenda?

Meg Munn: There is a clear manifesto commitment which is that the Discrimination Law Review will have a Single Equality Bill. Obviously what we want to do is to ensure that in doing that we meet these objectives I have set out and, therefore, have it all in one place. I think the reason why we do not want to continue in a piecemeal way is that, while that has been effective in meeting particular groups' concerns, we feel we need to move now to have it all in one place; one piece of legislation which underpins the work of the new Commission for Equality and Human Rights; and makes it easier for both those

seeking to enforce their rights, but also for organisations both in the public, private and voluntary sector to ensure they are complying with the legislation in the most effective and easy way.

Q56 Anne Main: You say you want to keep forms of discrimination, such as the travel pass, that were good and you did not want to have perverse consequences. Will you be having an exhaustive list of what you would be keeping such as age-related accommodation, discount cards for students and so on? There have been a lot of concerns raised through the post, as I am sure with all honourable members, about travel insurance for elderly people. How far will you try and ensure that what for some groups are seen as benefits other people may see as discriminatory practices? How are you going to make those decisions?

Meg Munn: What we are setting out in the Green Paper—which obviously as it is the Green Paper is for consultation—is where we feel there should be exemptions to any overall discrimination issues. We are asking for people's views on that. There may well be areas where we, despite our very detailed discussions, have not identified there is a particular benefit there and people can come back to us and say, "This is a benefit which we do not want to lose", and we would therefore then look at what exemptions we would put into the legislation. That is the process we are going through. The Green Paper will include some examples which we have identified, but there is plenty of opportunity for organisations to put forward those that they feel should also be exempt and the reasons for that.

Q57 Chair: Could I just go back to the relationship between the Single Equality Act and the work of the Commission. Do you think the Commission will be able to work effectively to tackle discrimination if the Single Equality Act is not in place when the Commission starts?

Meg Munn: The Single Equality Act will not be in place when the Commission is up and running; that is clear. There has been a discussion which goes back a number of years as to whether we should have had the Act before we had the Commission; but essentially we are where we are. There is a whole range of discrimination legislation in place. The Committee will obviously be aware that very recently there have been more regulations put in place on sexual orientation, which again are issues which would be enforced by the Commission. There is already a range of discrimination law.

Q58 Chair: That is not the question. The issue is whether the Commission will be less effective because the Single Equality Act may not be in place?

Meg Munn: There will be certain areas which some people may feel should have legislation preventing discrimination which will clearly not be in place.

Q59 Chair: Such as?

Meg Munn: Discrimination in terms of goods, facilities and services on the grounds of age, for example, which is one of the areas which is explored

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in the Green Paper. The Commission clearly could not enforce anything in relation to matters which were not illegal; but the Commission's role is wider than that. It is also to look at promoting equality and to look at issues (the kind of thing which was discussed through the Equalities Review, such as: are there other areas that the Commission could be acting on?) which actually do not require legislation. It is about changes of culture, for example, in the workplace, which could create greater equality. Yes, there are areas the Commission will not cover in legislative terms but there is a whole area that they cover in cultural terms.

Q60 Anne Main: Could I just pick up on that. Trevor Phillips mentioned about looking at other areas. I think some of us are a little surprised to hear the phrase "looking for inequalities where people are not aware inequalities exist", or something to that effect. I think some of us found that quite worrying with people having an inequality witch hunt looking for inequalities. Do you think that is the best use? If we cannot have for example, because it will not be up and running, the age discrimination provision of goods and services act, would we be having a commission that is running around looking for things to do?

Meg Munn: I do not think the Commission will be short of things to do. Essentially what the Equality Act 2006 sets out is its overall remit, and one of the important mechanisms which that put in place to guide the Commission's thinking about where it should act (because clearly it has got a whole range of issues to deal with, a much broader range than the existing three commissions) is to do this state of the nation report, as it were, in terms of equality. To have that look at equality issues and to therefore identify where are the issues of inequality and, therefore, where are the most concerning areas.

Q61 Anne Main: Are they commissioning a state of the nation report?

Meg Munn: They are required to produce a report every three years which basically looks at issues of equality in terms of how we are doing in Britain, yes.

Q62 Anne Main: You might want to flesh it out a bit, but what impact would a delay to the publication of the Discrimination Law Review have on the timetable for introducing a Single Equality Bill? Do you feel it is going to be pushed back now or are you still heading for a particular time?

Meg Munn: The manifesto commitment is to do this within the lifetime of this Parliament and we are very aware of needing to do that. Clearly the sooner we get the Green Paper out, the better, and I have said it will be very soon, then we are into the period of consultation, which will be a three-month consultation.

Q63 Anne Main: There is nothing you can do to hurry it up then?

Meg Munn: We can keep to timetable on where we are, I think is the answer to that. We have to have an appropriate consultation period, because we have to

allow people to look at what we are proposing and to come back with their comments. That is a helpful process because that will enable us to identify ahead of drafting the legislation precisely the issues you were raising earlier about exemptions, and to get the best drafted legislation which has a consensus around what we need to do—because we want to have a consensus.

Q64 Anne Main: In which case should a draft bill be published to ensure a greater degree of Parliamentary scrutiny?

Meg Munn: That is clearly an option which is possible. A final decision has not been made on that but that again would allow that kind of scrutiny.

Q65 Anne Main: Do you anticipate a decision being made on that fairly soon?

Meg Munn: Yes.

Q66 Anne Main: How soon is "soon"?

Meg Munn: Very soon.

Anne Main: We keep getting "soons".

Q67 Chair: Weeks or months?

Meg Munn: I understand the Committee's frustration on this, and I really wish I could be more exact on this but, for the reasons I stated earlier, I do not feel that it would be appropriate to—but weeks.

Q68 Chair: Is it feasible to have a draft bill and then complete the actual legislation in this Parliament and get it on the statute book?

Meg Munn: It is feasible.

Q69 Chair: Just?

Meg Munn: It depends on how long!

Q70 Chair: Where is the disagreement about whether to have a draft bill or not?

Meg Munn: I think "tensions" (and I like to put it that way, Chair) rather than disagreements. Clearly a draft bill allows for good scrutiny of it; allows for all parties to look at it and to raise concerns and issues at an early stage which then mean when a bill is published it has a much quicker passage through Parliament. The trade-off is essentially, do you spend a period of time having a draft bill which leads to well scrutinised legislation, which then moves more quickly through Parliament; or do you say the timetable is tight (which it is) and therefore we want to move straight to taking legislation through but that then takes longer because there is a requirement for longer debates, greater discussion at committee stage? That is the trade-off, and that is the discussion which is taking place. The issue of having a draft bill is definitely on the table.

Q71 Chair: Can we move on to some further issues about what might be in a Single Equality Bill, and in particular ask whether you favour introducing a new integrated public sector duty; and what do you think the advantages of it would be?

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Meg Munn: That is one of the issues that is clearly in the Green Paper. One of the concerns obviously is that at the moment we have three public sector duties which are framed in different ways. The race duty has been in place the longest; and I think it is fair to say that we have learnt from that process in putting together the disability duty and the gender duty. Particularly what we have tried to move to is to being more outcome rather than process focussed, so people are clear about what is the outcome they are looking for and not spending lots of time ticking boxes and filling in forms. Certainly I think there is a real benefit about integrating those three existing duties and we would clearly favour that, while ensuring there is an outcome focus on each of the areas. The issue then becomes, do you want to extend those duties into the other areas, sometimes referred to as “strands”—specifically sexual orientation, age and religion and belief? We would be consulting in the Green Paper on whether those should be extended; again recognising that there are different issues affecting each of those areas—and a duty to promote gender equality is not the same as a duty to promote, for example, equality in terms of religion and belief—and we are exploring that and really want people’s views on that.

Q72 Chair: Is it too early to have any lessons from Northern Ireland, where I understand there already is an integrated public sector duty?

Meg Munn: I do not think it is too early at all to learn from existing areas. It is certainly true to say in setting up the Commission for Equality and Human Rights the experience in Northern Ireland was useful in relation to that. We obviously have to be aware they do have a slightly different legislative framework and different history, which impacts upon the way they do that. I think there are benefits clearly to be learnt from that and that can be looked at.

Q73 Mr Betts: Are there any serious downsides in actually having the same approach right across all the issues in principle?

Meg Munn: I think we have to ask people this because, again, we do not want to be in a situation which does occur when you put legislation in place that there are unintended consequences. We have to be clear about what it would mean, for example, in terms of promoting equality between people of different religions and beliefs; what exactly does that mean in practice; what would a public sector organisation be required to do in order to demonstrate their policies were doing that? It may well be there are no downsides, but there may be a view if it was put in place in a certain way that that might require particular organisations to have to put in place measures which were very burdensome. We want to look at that. As for having an integrated approach, I think having approaches which mirror each other in terms of processes are helpful, but again we have to recognise that equality does not mean treating everybody the same. If you look particularly in terms of the disability duty and the Disability Discrimination Act, the requirements

within that are often to make reasonable adjustments, and the making of reasonable adjustments does not translate into other areas of equality in the same way. It is just getting that right and having that discussion which is important.

Q74 Mr Betts: There are actually currently duties promoting equality on race, gender and disability—those three issues are different for the practical reasons you have just explained. It is possible, therefore, to extend the principle to include other areas while recognising some practical differences.

Meg Munn: This is the debate we want to have because precisely what we have to work out is what that actually means in practice. I think because these are new areas, and legislation in relation to those areas is much newer, and although we only have public sector duties on disability and gender, we have had other legislation on equality in those areas. The other areas are new and we need to be clear what that means in practice.

Q75 Chair: Can I ask about the requirement on public bodies to use procurement as a tool to achieve equality. Is that going to be extended, and what value do you see in that?

Meg Munn: In terms of procurement, there is discussion on this issue in the Green Paper, and the issues we are looking at are obviously the public sector having the requirement to promote equality of gender, race and disability; and, therefore, when they are procuring services from the private or voluntary sector they do not lose their duty to promote that equality; so they need to ensure that happens within their procurement practices. The issues around procurement are from that point of view rather than looking at procurement itself as a means of securing equality, as it were. I do not know if I have been clear on that. I can see from Clive’s face that I have not!

Q76 Mr Betts: Having studies is an essential extension of obvious parts of a duty. For example, if a local authority has a duty to promote equality amongst its own workforce but then it out-sources that workforce to a third party then surely if that requirement to promote equality is removed we are taking steps backwards rather than steps forwards. It has to be included on the same basis, has it not?

Meg Munn: I can see I have not explained this particularly well. The public sector duty is clearly in terms of employment referred to the public sector, and does not refer to the private sector. What I was trying to say, and not saying very well, is that this is not a mechanism for bringing in a duty for the private sector. Whether local authorities are using private sector or voluntary organisations to deliver their service, they have a duty to promote that equality. Therefore, yes, in terms of their contracts and their procurement they would have to include those requirements within that.

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Q77 Mr Betts: That is the case now?

Meg Munn: Yes.

Q78 Mr Oler: Could I just ask, Minister, how far down the chain does that go? What Clive has mentioned does go on, but usually that is just the start of somebody subcontracting something else and then subcontracting little bits of it. Are we assured that we can police this all the way through?

Meg Munn: A local authority, for example, continues to have that duty to ensure that services it is providing, whether it is providing them directly itself or it is contracting somebody else, do promote equality on gender, race and disability. Yes, that would go all down the chain to a subcontractor.

Q79 Anne Main: Given that there seem to be conflicting opinions whether or not the private sector should have measures that outlaw discrimination inside the Bill, do you think a Single Equality Bill should introduce measures?

Meg Munn: We are not seeking to do that within the Green Paper. Obviously in terms of employment the legislation already is there in terms of sex discrimination *et cetera*. Coming back to Mr Oler's earlier point, we are not regressing on current legislation that is there in terms of employment and discrimination; but we are not seeking to have a private sector duty; that has not been proposed.

Q80 Mr Betts: I think one of the issues around which probably causes some confusion is that while under the terms of the contract there may be a general intention to ensure that the private contractor works within the terms of the public duty on the local authority or whatever to promote equality, sometimes there is a difference in culture: it may be a lack of understanding; or maybe local authorities do not always have the best monitoring systems; or whichever public sector body, the health service, the private sector is delivering at arm's length the sort of things you would expect the public sector body was doing. I just wondered how much more Government could do to properly lay down examples of good practice or encourage and promote those elements of good practice that do exist around the public sector so that we actually up the game in public sector procurement in general?

Meg Munn: Certainly, that is one of the issues we are proposing, that there should be more guidance produced in relation to that. We are asking within the Green Paper for the kind of issues that should be covered in that guidance to promote that. Again, that is a role as well for the Commission for Equality and Human Rights in terms of sharing good practice. One of the benefits of the new Commission is that because it is larger than the existing commissions it has to have a regional presence throughout England, and obviously in Scotland and Wales as well, which means that we want it to be working much more directly with other local organisations who are providing guidance and advice to ensure that it is being more effective in

terms of making sure people access that information and have that guidance. That is the way we are seeking to do that.

Anne Main: You have said guidance and a regional presence and I think we are talking about the funding of this.

Chair: Can we leave this until later.

Mr Betts: We have moved from the days of compulsory tendering where Government specifically legislated to prevent companies from including these issues in its contract.

Q81 David Wright: I want to talk about the establishment of the Commission. We understand that it is to be "open for business" on 1 October. Is it going to be?

Meg Munn: Yes, it is set to be open for business on 1 October. Clearly what "open for business" means is not necessarily all singing, all dancing at that point. What is happening at the moment is work is being done on ensuring that there are a range of services available on 1 October; but clearly this is a new Commission; it has got to recruit staff, assimilate staff from existing commissions; it is a big task and it will not be doing everything on day one; but it will be open for business on 1 October.

Q82 David Wright: The Public and Commercial Services Union (PCS) have contacted us and they have given us evidence in terms of the structures in place by 1 October. They are concerned, as I think the Committee will be, that we are going to have staff that will deal directly with the public, helpline staff in place but the structure behind that will not be in existence by 1 October. Clearly there is an issue about whether caseload can be transferred from those frontline staff to people who can actually deal with it. Clearly there is a concern there are people out there who are looking for support from the Commission who are not going to receive it. They will be able to handle their phone calls but they will not have any practical backup beyond that. Is that right?

Meg Munn: I cannot say at this point in time exactly what is going to be there. We are very clear that there is a process which has to be gone through and obviously involvement and consultation with the unions is part of that. An organisational design is being finalised. There will then be a process of assimilating existing staff from commissions into post. There will also be a process of those who have opted for redundancy. Those issues will be looked at. We will move through that process and that will be done as quickly as possible to get us to 1 October. The existing commissions and the chairs and chief executives are working extremely closely with the Chief Executive of the Commission for Equality and Human Rights and the Chairman and the Commissioners of the Commission for Equality and Human Rights to ensure that those processes happen. I cannot say to you now in June exactly how much will be in place. We are very clear there have to be helplines and a website on 1 October; and clearly the handover issues need to be clear at that

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point, but exactly how much of the Commission will be in place and the issues which will be dealt with are not known at this point.

Q83 David Wright: Do you think that we should review the timetable? Should we be putting the process back? My concern is that we will not be able to pick up on a case once it has gone onto the system and that is going to get lost. There is a clearly an impact there on staff; clearly there is going to be a morale issue for people who are working on the frontline who are not able to respond in an effective manner necessarily on particular individual pieces of casework?

Meg Munn: I think if you look at the range of work the existing commissions do there is the casework, as you say, and the issues which come through the door of people seeking help and advice. There is a whole range of other work which is done in terms of research on issues of equality: specific inquiries into areas, and we are clear, as a group of ministers who meet regularly to monitor the progress of the Commission being set up, that precisely the work you are talking about is *the* most important and needs to be there from day one.

Q84 David Wright: That is helpful, Minister. In terms of the process that has been used to set this up, we have a transitional team I think in the DCLG; we have had obviously the individual elements of the Commission coming together and you have already mentioned that; and we have also had consultants working on this. How do you feel that approach has gone? Have there been issues about change in the transitional team? Does it work effectively, do you think? Has there been significant staff turnover during this period of time?

Meg Munn: There has been a very tight monitoring process in place throughout this. I feel it is a very challenging timetable but we do know exactly where we are. We do know what needs to happen. We have a project plan. We have mechanisms in place to monitor that. We have an inter-ministerial team which meets about monthly, obviously allowing for recesses, and has a regular update on that. There has been extremely close oversight. I feel that we have had an effective process in place. It remains a challenging timetable. Some of the processes inevitably with any project have taken longer than would have been ideal in terms of getting the Chair and Commissioners in place, in getting the Chief Executive in place. We are very happy with the people but it is not always possible, because they are doing responsible jobs and moving from those jobs into these posts, to be as quick as we would have liked. That has taken a little longer than we would have liked. It is a challenging timetable but the processes are very tightly managed.

Q85 David Wright: How much have you spent on consultancy?

Meg Munn: I am not able to tell you that. I have not got that figure in front of me but I am sure we could let the Committee know.

Q86 David Wright: The consultants were changed. When Ernst and Young were working on this I understand they were not employed to see the process right through. Why was there a change, do you know?

Meg Munn: There have been different consultants working on different aspects of that. I have not got all those details on front of me, so I think it would be much better if I were to provide a note to the Committee on that.

Q87 David Wright: Do you know if the consultants' costs are met from the £24 million start-up budget?

Meg Munn: That is the transition budget. Yes.

Q88 David Wright: The consultants' fees are coming out of that budget?

Meg Munn: Yes.

Q89 David Wright: It would be helpful to the Committee to have that material and I am sure you will provide it?

Meg Munn: Yes.

Q90 Chair: Minister, I understand there has been a Gateway Review?

Meg Munn: Yes.

Q91 Chair: It would be very helpful if we could have a copy.

Meg Munn: The Gateway Review is to the Commission and therefore it is not a document that is held by Communities and Local Government, so that is a matter for the Chief Executive of the Commission and not Communities and Local Government.

Q92 Chair: So we should pursue it directly with him?

Meg Munn: I am referring to Nicola Brewer the Chief Executive.

Q93 David Wright: I would just like to pose a couple of questions about the role of the Commission. Trevor Phillips in his evidence to us indicated that he felt the independence of the Commission was of crucial importance. How is it more independent than its predecessor? Is it more independent?

Meg Munn: The model is a non-departmental public body and, therefore, the mechanisms which are in place for the existing commissions are similar mechanisms which are in place for the Commission for Equality and Human Rights in terms of a sponsor department. There was a lot of debate at the House of Lords stage of the Equality Act around how independent this would be, and different people took different views and some people put forward that there should be a different arrangement. Government took the view, and the legislation went through, that it would be a non-governmental public body, so in terms of the financial arrangements, the sponsorship arrangement and the regular monitoring of the Department it is a similar process.

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The existing commissions make decisions about the programmes of work that they pursue, the issues that they are going to take up in terms of equality. The new Commission for Equality and Human Rights will do so.

Q94 David Wright: You are the Minister who will take responsibility for the outcomes of the performance of the Commission, is that what you are saying?

Meg Munn: The arrangement for non-departmental bodies is that there are requirements in terms of approving business plans, and in terms of the financial arrangements which go through the sponsoring department, which is the role I currently play in relation to the Commission for Racial Equality and the Equal Opportunities Commission. There are certain decisions such as the appointment of the Chair and Chief Executive which are taken by the Secretary of State. Clearly if there was concern that the Commission was completely outside the remit that Parliament had set then the Department would need to act; but these organisations are independent; Parliament set them up to be independent because clearly one of the public bodies they may want to criticise is the Government or, indeed, government departments.

Q95 David Wright: How are you going to measure the effectiveness of those bodies? You have indicated they are independent. There is cross-departmental responsibility, if you like, for strands of the work. How are you going to effectively monitor this?

Meg Munn: The Commission for Equality and Human Rights sponsoring Department will be Communities and Local Government; and Communities and Local Government is the lead Department in terms of equalities and continues to be so, so it will sit with that. Because this goes across other areas, DWP still have the lead in terms of age and disability. It would seem to me that what we will be looking to is to continue some mechanism. I do not think it will continue to meet as frequently as the current inter-ministerial group overseeing the implementation; but there will need to be that regular liaison between the relevant minister and DWP, and also in the new Ministry of Justice, because they have the human rights lead, to ensure that those issues and the performance of the Commission across these areas is being properly overseen.

Q96 Chair: Minister, can I turn to the issue of budgets. The start-up budget is £24 million; I think the operating budget is £70 million. How are those figures arrived at? What were the assumptions made? It has been pointed out that the start-up budget, for example, is nearly a quarter of that which was granted for the setting up of Ofcom in 2003. What are the assumptions in setting those budgets?

Meg Munn: A whole range of assumptions were put together. Again, I have not got the detail in front of me, and it actually predates my time as a Minister; but a budget was put together setting out the kind of expectations there would be in terms of the processes

that needed to be gone through to set up an organisation: organisational design; development, for example; issues about staff moving; those kinds of things. A whole range of assumptions were put together. Again, I am very happy to provide the Committee with information on that. This was done some considerable time ago now.

Q97 Chair: The operating budget?

Meg Munn: The operating budget: that, as I understand it, and this predates me being in post as Minister, was a discussion between the key departments who, as I was just discussing, had the input into it (and they were different departments from the ones now) as to what they felt was appropriate in terms of an increase on the existing commissions. The existing commissions' budgets at the time came to a total of £48 million, and it was felt that clearly bringing commissions together would lead to some economies of scale. In addition to that there was adding in the three new areas plus human rights, so that there was an agreement that there needed to be an overall increase. This was an issue which was thoroughly debated during the committee stage of the Equality Act, and I think I can say that the Liberal Democrats felt the budget was too small, the Conservative Opposition Party felt it was too big and the Government felt it was just right!

Q98 Chair: Are you making any representations as part of the Comprehensive Spending Review that this budget should be increased?

Meg Munn: The outcome of it will depend on—

Q99 Chair: Have you made any representations?

Meg Munn: No. The view that has been taken is that this was the budget which was set out at the outset and that is the budget we are looking to have in place.

Q100 Anne Main: On that very point, are you confident then, given the budget seems to be just right, that you will be delivering all the wish lists that seem to be gradually emerging; and it is still quite vague as to exactly what the role of the Commission is going to be? Are you confident the regional presence, the number of staff, will be delivered for that; and, if not, what?

Meg Munn: It depends what you mean by "wish list" because I am confident that the Commission will have the amount of money to do the job that Government is expecting it to do. I know that it will not do everything that every organisation who has an interest in the issues of equalities will want it to do, because essentially you would be talking about huge amounts of money because many organisations want to see this Commission do a whole range of issues which it clearly will not be able to do. Like any other public body we take a view as to what we feel is an appropriate budget. We feel this is the appropriate budget and then within that the Commission will need to decide on its priorities in terms of the issues that it wants to deal with. As I said

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earlier, obviously the work done by the Equalities Review sets out some of the early priorities for the Commission; and then subsequently, as they have been in place for a while, they will then have the state of the nation report which will be a key driver in terms of looking at what are the top priorities that they ought to be looking to do and investigate in terms of their role.

Q101 Mr Oler: What still concerns me in listening to the answers you gave to David is the fact that we still have not got a single department that has got responsibilities in this Discrimination Bill. I just wonder whether the rationale of still keeping it in little separate compartments is actually going to work. Would it not strengthen equality if we had just one minister responsible?

Meg Munn: The last machinery of government changes which were just over a year ago did bring together more of the equalities issues into Communities and Local Government, and also had the benefit of locating it in a department which deals with a wide range of people delivering services, i.e. local authorities; so there were clear benefits on that. One of the problems about how you deal with equalities is that it is an issue which everybody, in my view, should be concerned about. You need people in all departments to be taking seriously issues of equality. Therefore, the view was taken that because of the other range of responsibilities in terms of age and disability it was still appropriate that the Department for Work and Pensions should have a lead on that. This requires close working across ministers as indeed I mentioned earlier in response to David Wright's question—the Ministry of Justice as well, leads on human rights. We do have to work closely with each other as ministers. I suppose logistically it would be simpler to have it in one department, but equalities goes wider than just the Commission for Equality and Human Rights and impacts in other areas, so it is a judgment issue.

Q102 Mr Oler: Would there be any benefits in having just one department?

Meg Munn: In terms of the Commission for Equality and Human Rights I think it would be simpler for that particular minister. Whether in terms of delivering the whole issue of equalities across government that might be less effective, because one person raising those issues might be less effective than having more ministers concerned with that.

Q103 Mr Oler: Quickly totting it up, there are seven government ministers at the moment who have specific portfolio responsibilities for equality and human rights, including your good self as one of those seven. Could I ask how frequently you meet?

Meg Munn: The inter-ministerial group, which has overseen and is overseeing the setting up of the Commission for Equality and Human Rights and

the Discrimination Law Review process, meets approximately monthly; sometimes it might be five or six weeks because of a recess but it is approximately that.

Q104 Mr Oler: Out of those seven ministers will there be a minister who will be specifically in charge of the other six?

Meg Munn: I am the lead minister in relation to the Commission for Equality and Human Rights and I would not want to venture that I am in charge of them, for obvious reasons, Mr Oler!

Q105 Mr Oler: Will that much stay the same when we have these new powers?

Meg Munn: The lead department and sponsoring department for the Commission for Equality and Human Rights will come to me with the Communities and Local Government as things stand at the moment. Clearly as members are no doubt well aware things might change in a few weeks' time but those are issues which I am sure the Committee can come back to if necessary at that point.

Q106 Chair: Is this group of ministers just in charge of the transitional arrangements, or will it continue to meet?

Meg Munn: A decision has not been made on that.

Q107 Chair: It is possible that they may cease to meet?

Meg Munn: It is possible they could cease to meet; it is possible they could continue to meet. I think members of the Committee are rightly identifying that this is an issue which concerns more than just Communities and Local Government, particularly because there are lead ministers in areas in other departments, and a regular mechanism (whatever that is) for being in touch needs to be in place.

Q108 Mr Oler: It comes back to your question, Chair, about funding the thing. I usually find where there are several departments involved then there is not much push by anybody to ensure it is adequately funded; the funding somehow slips down the side of the chair. This again is coming back to, why should we not have a single minister responsible for all of it?

Meg Munn: I think specifically on the funding my personal view on this is that I am not sure that would make such a significant difference. What happened last May, because of the machinery of Government changes, I personally moved from the Department of Trade and Industry with the lead on women and sexual orientation, and race and religion and belief came from the Home Office so the budget had to follow. If it all moved to one ministry there would have to be a process where the budget at that point would need to move. I do not think that is so much the issue. In terms of the whole area of equalities outside the Commission for Equality and Human Rights, we obviously have public service agreements as well, and looking at those which will be in place

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following the Comprehensive Spending Review there will be an equalities one which, again, will need to operate across a number of departments. Therefore, there will need to be ministers in all the departments affected who are concerned about issues of equality.

Q109 Mr Oler: Having spoken to Trevor Phillips obviously as Chair of the Commission he is champing at the bit and wanting to get going, and the earlier question that got the answer from you of “soon”, I understand that thing is still driving forward. Do you think we have perhaps missed a trick in setting up the Commission before we have had the benefits of the Equalities Review, the Discrimination Law Review and the introduction of the Single Equality Act? I am just wondering whether we have set that up before we have had evidence of the other stuff.

Meg Munn: Some people take that view. There were clearly some people who took that view when the Equality Act went through the House of Lords; particularly there was a lot of debate about that as to whether this was the right way round. I have been in post for just over two years and the whole process started with a White Paper back in 2004, *Fairness for All*, which set out the proposals about the new Commission. I really do not know exactly the history of how we ended up coming to do it this way round as opposed to the way round you are suggesting. My view is that we will benefit—and a lot of groups, organisations and individuals will benefit—from having one Commission looking at equalities issues. We need to have a more effective legislative framework to support that and we are moving to getting that. I think in the long-term the effect of doing it this way round as opposed to the other way round is not necessarily negative. We could have been in the situation where we had strong legislation around sexual orientation, religion and belief and no organisational body to support people who then wanted to enforce their rights. It is not perfect, but that is my experience of where we are at.

Chair: Could we move to a couple of the strands that the Commission is covering.

Q110 Anne Main: Does the DCLG hold departmental responsibility for tackling discrimination on grounds of belief?

Meg Munn: Yes.

Q111 Anne Main: Why use the terminology of “faith” which implies exclusion of those who have non-religious beliefs?

Meg Munn: I do not think I did. I think I always referred to it as “religion and belief”.

Q112 Anne Main: There have been some arguments that people with non-religious beliefs are quite discriminated against. What are your views on that?

Meg Munn: That is an argument that has been put very strongly, and been put very strongly to me by organisations such as the British Humanist Association and National Secular Society as well. Before the Commissioners were appointed to the

Commission for Equality and Human Rights we had a steering group which was in place for a significant period of time, which had representatives of all the different areas; and there was a representative of the belief strand, if I can put it like that, from the humanist organisation; so that has been raised.

Q113 Anne Main: In which case, and perhaps you will correct me, apparently the DCLG has responsibility for a Faith, Race and Cohesion Directorate. I just wonder if you are clear in your difference between belief and faith?

Meg Munn: I personally am.

Ms Scholefield: It is called “race, faith and cohesion”, but it does cover those responsibilities. It covers quite a range of things actually that are not within the title.

Q114 Chair: Can I just turn to the issue of persistent inequalities. There were some very interesting timelines provided in the Equalities Review of if there was simply the current rate of progress when certain inequalities would disappear, with a representative House of Commons by 2080. For example, closing the ethnic qualification gap it would be “definitely never”. Specifically I know the EOC have done a report on employment of Pakistani and Bangladeshi women and that is another one where it will be “definitely never”. What strategies and targets does the Department have to address those sorts of persistent inequalities where clearly there has to be some step change or the inequalities will persist forever?

Meg Munn: In terms of these issues, if I could just say first, Chair, I think the Equalities Review was helpful in that respect of setting out that process; and one of its recommendations in terms of its ten steps was to have that process of being clear about how do we measure inequality and, therefore, how do we respond and identify the priorities for that. In terms of issues around representation, what we have done within the Department is set up a commission to look particularly at councillor level at how we get more under-represented groups in there, including black and minority ethnic people, women and younger people as well. In terms of Parliament, we are asking within the Discrimination Law Review whether people feel that, whereas there is already legislation which allows for parties to have measures in place to have positive discrimination in terms of women, we should have legislation that should do that in terms of minority ethnic groups. In terms of employment, you will be aware that we had the Women and Work Commission which looked in detail at the gender pay gap. It looked less in detail at the issues which affected minority ethnic women, because obviously it was a fairly substantial piece of work in itself. We have looked at the work that has come from the Equal Opportunities Commission; we have also looked at some research which was done also by Sheffield Hallam University around local labour markets—which very importantly identify that we need to be very clear that sometimes the headline figures around particular black and minority ethnic women’s participation hides some

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real distinct differences between particularly ethnic groups—and so further work is now being looked at as to how we can address those issues around black and minority ethnic women.

Q115 Chair: So further work has been done but there are not as yet any clear strategies about how to tackle it?

Meg Munn: No.

Q116 Anne Main: Trevor Phillips said when he was here that he supported businesses and he used the word Tesco actually having positive discrimination in terms of being able to say, for example, the majority of their staff were Bangladeshi if that represented the community it served. Would you support that?

Meg Munn: We are not setting out—

Chair: Sorry, but can I just correct you slightly. He did not suggest positive discrimination, which of course would be illegal, but positive action.

Q117 Anne Main: Sorry, yes, he did not use the phrase “positive discrimination”, but “positive action”.

Meg Munn: We are within the Green Paper seeking views on whether we should extend the existing opportunities which are there for positive action. We are not suggesting positive discrimination, so should we extend it in that way?

Q118 Mr Betts: Just specifically on the issue of generally lower levels of pay and the often less-good jobs that Pakistani and Bangladeshi women might do or indeed their lower activity rates in terms of their employment at all, how far is the Government willing to get into some of the more difficult areas here because there is undoubted discrimination, I think that is true, against people from Pakistani and Bangladeshi backgrounds who are just as qualified as their white counterparts, particularly younger women, who then do not get on in the same way and do not achieve the same level of pay or responsibility? Also, within that community there is the issue of arranged marriages and the second generation not necessarily moving on in quite the same way as perhaps previous immigrant communities have before and if the wives, who often are, are brought from rural Kashmir or Bangladesh themselves and are probably not very well educated, then it is probably less likely they are going to get a job in this country and it is more likely you will have single-earner families, and certainly there are some big cultural issues about elements of the community, and it is by no means in general, not wanting to work and get involved and just seeing a role in the home. I just wonder how those issues will be tackled as well because they are sensitive and they are difficult, but they are still there.

Meg Munn: The Department for Work and Pensions leads on work with its Ethnic Minority Employment Task Force, which actually specifically looks at how we can tackle precisely these issues and Jim Murphy, who is the lead Minister on that, has been looking at

how it can focus the work that is done on that to tackle some of these specific issues. That Task Force does include representatives of business and the public sector and the voluntary sector as well as government ministers and government departments, so there is work going on and specific projects around that. On the issue particularly about how you get to women where families are less keen or maybe they, as you say, have come from the Sub-Continent and have not got the skills or the ability, there is a range of projects around the country, some of which I have visited, which are becoming more successful at encouraging this by working within communities and providing childcare for people and support from other people within the community, and they are being more successful in helping women to move out of the home and to gain employment, so spreading that good practice is of course something as well that we need to do more of.

Q119 Mr Betts: Of course one of the things that strikes me straightaway is that someone literally who has come to this country relatively recently and who has not got the skills and does not feel confident, they are not likely to go five miles away to a college to get the skills.

Meg Munn: No.

Q120 Mr Betts: Something in the community is much more likely to get the response you require.

Meg Munn: Exactly, and there are some very innovative things going on. I visited a project in Trafford very recently which is actually a sports project. It is quite a small community sports centre and one of the things it does four days a week for three hours is it provides sporting activities for women only, so during that period no men enter the sports hall and it is taken by a woman instructor. I was talking to one of the young women there who explained what a difference it had made to her life because basically what she did in those four mornings a week was she took her kids to school and, instead of going back home and sitting at home and really being isolated within the house, she now came out, went there, met other people and it had increased her confidence and from that she was beginning to feel more able to go on and do other things. You might not immediately have thought of the prospect of doing yoga or circuit training, which is what they were doing when I was there, as being something which would get women into work, but actually it was a way of opening up and giving them an experience which they were not having, so there is a lot of that kind of innovative work going on.

Q121 Chair: I think this issue of strategy and targets brings us to the question about whether there is a robust cross-departmental system of PSA targets to achieve equality across all the strands. Is there?

Meg Munn: Discussion is ongoing about a PSA equalities target for the Comprehensive Spending Review, so there will be an equalities PSA. There has been one up to now which we have monitored closely on a range of issues and there will be one as part of the new Comprehensive Spending Review.

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Q122 Anne Main: Soon?

Meg Munn: That is beyond me to say because it is linked to the Comprehensive Spending Review on which the Treasury is the lead Department.

Q123 Chair: Should there not be a commitment to an equalities PSA anyway?

Meg Munn: There is, yes. Sorry if I was not clear on that.

Q124 Chair: I can see how departments might argue that they might be unable to deliver it without a certain level of resource, although much of this does

not necessarily require resource, but, as you pointed out, it should be mainstreamed within the budgets of departments anyway.

Meg Munn: Yes, I am sorry, I am being unclear. What I meant in terms of being able to tell you about the details of the PSA on equalities because the whole setting of PSAs for everybody is linked to the Comprehensive Spending Review regardless of how much of that PSA is linked to resources, I am not able to give you the details of that, but I just wanted to reassure the Committee that there will be an equalities PSA.

Chair: Well, thank you very much, Minister.

Written evidence

Memorandum by PCS

INTRODUCTION AND SUMMARY

The Public and Commercial Services union (PCS) represents the majority of staff working at the three existing equality commissions which will be replaced by the new Commission for Equality and Human Rights (CEHR).

This memorandum sets out a summary of the PCS vision for the new Commission for Equality and Human Rights. It is based on an extensive consultation with our members working for the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission in England, Scotland and Wales and represents the unique experience and expertise of those whose day-to-day works involves the promotion of equality of opportunity.

PCS has supplemented this evidence with our consultation document “What price equality? PCS’s vision for a robust, properly funded and authoritative Commission for Equality and Human Rights.” This document is aimed at decision makers and stakeholders. Its purpose is to provide a useful and authoritative contribution to the current debate on the organisation and structure of CEHR.

BUDGET

PCS believes that the proposed budget of £70 million falls far short of the funding required for the CEHR to be an authoritative, coherent and effective organisation with a respected presence.

The new body must be equipped to achieve the goals with which it has been tasked, to use its enforcement powers effectively, to run high profile campaigns, and to work with employers on good practice development. It must also have national and regional structures able to deliver local advice provision and work with communities to promote equality.

Although the proposed budget is slightly greater than the combined budgets of the three existing commissions (currently approx £50 million), this body will be expected to take on three additional equality strands, the promotion of human rights and the enforcement of the new disability and gender public sector duties. Added to this, the new equality areas will need to develop legal strategies, support cases, commission research and initiate investigations in relatively new areas of law. All this costs money.

The CEHR has been given strong enforcement tools, but without sufficient funding it will be unable to make effective use of them.

Legal Framework

The CEHR cannot be fully effective without harmonising the legislation.

It is imperative that parallel to the CEHR is a single equality act with a consistent framework of legislation and rights between all the equality groups. The general duty to promote equality should be extended across all six equality strands and apply to both the public and private sector.

The current disparities will result in different groups of people having different levels of protection. This will harm the positive introduction of the CEHR, hinder how it carries out its work, create a hierarchy of rights, sow confusion amongst stakeholders and be a potential source of division.

STRUCTURE

Whilst recognising that to be effective, the CEHR will need to have multi-strand functions, we recommend that there should be some capacity for specialism and ring-fenced resources for each equality strand. The unique and complex nature and causes of each area of discrimination must be recognised in order to develop and maintain expertise and prevent competing priorities which might result in the under funding and marginalisation of work on less high profile issues.

Location

A key concern for our members is the avoidance of compulsory redundancies or compulsory relocation. The structure should take account of where staff currently work to prevent any disproportionate and potentially unlawful adverse impact on ethnic minority or disabled staff, or on staff with family responsibilities, many of whom would find it impossible to relocate. It would be a great shame to lose the skills and experience of current staff as well as a shameful waste of public money.

London

It should be a priority to retain the experience, skills and expertise of the current London-based staff, in order to meet the needs of the high concentration of ethnic minority populations in the London region. London is also the natural base of a wide spectrum of national lobbying work owing to the presence of the main government offices and stakeholder organisations in London and the South East.

Scotland and Wales

- A network of regional offices throughout both countries will be essential, given the poor transport and communication infrastructure in many areas, and recognising the marked regional differences in issues affecting communities.
- The Scottish and Welsh offices must have the same devolved powers as the Scottish Parliament and National Assembly for Wales, and be recognised as being a division of the CEHR in a different country with the powers and importance along with local control that that would entail.
- The provision of quality front-line advice services in both Scotland and Wales will be essential. The in-house helpline services in the CRE and EOC currently provide invaluable information about key issues in both countries, as well as important legal cases testing and clarifying the equality laws.
- PCS strongly urges early dialogue in Scotland between the Scottish Commissioner for Human Rights and the CEHR, the Scotland CEHR Commissioner and those responsible for the organisational design and business priorities for the CEHR in Scotland. This will enable detailed arrangements to be put in place about how the two human rights bodies, once they are operational, will work together. The priority should be to minimise the effect on the public in Scotland of the reduced powers that are being proposed for the Scottish Commissioner on Human Rights.
- The need for the CEHR to operate bilingually, not only at a Wales level, but at a GB-wide basis must be recognised.

A GREAT BRITAIN REGIONAL STRUCTURE

The CEHR must have sufficient funding and staffing levels for the establishment of a robust regional structure in England, Scotland and Wales. The English regions are more than the north/ south division implied by a presence only in Manchester and London, and there are marked regional differences across both Scotland and Wales.

A robust and properly staffed regional structure will play a significant role in delivering local advice provision, working with communities to promote equality and developing regional partnerships.

The CEHR should also build upon existing structures, for example the Race Equality Councils, which should be expanded to reflect the broader pan-equality context within which the Commission will operate.

The CEHR will have the power to fund voluntary and community groups working to promote equality across all strands. This will require a substantially higher funding budget than the £4.2 million per annum currently spent by the CRE on funding local groups. The CEHR's overall budget will need to be increased accordingly to avoid any withdrawal of support for those groups currently funded by the CRE to promote race equality in the community.

Functions

Decisions regarding the functions of the CEHR will impact on budget and location issues. The decisions on functions should not just be made by commissioners but also by staff with expertise in the existing commissions.

PCS believes that all the major functions of the CEHR should be delivered in-house. The experience of outsourcing central services in the civil service has been unsuccessful and puts at risk the accountable and effective delivery of public services.

LAW ENFORCEMENT AND ADVICE

Having an effective law enforcement function will maximise the integrity and reputation of the CEHR—meeting public expectations of the CEHR as a body prepared and able to use the power of the law to protect people from discrimination. It will be a public demonstration of the government's support for a civilised society.

The CEHR should act as the champion of victims of discrimination, but it can only do that if it has the budget and resources to undertake investigations and to take the strategic cases that will lead to changes in practices and to fairer treatment. PCS is concerned that the new body may not be willing or able to use its enforcement powers effectively. There is no duty under the Equality Act for the CEHR to consider all complaints of discrimination.

HELPLINE

The helpline will be the public face of the CEHR and must be at the heart of its structure. To be effective, the CEHR must address the dearth of advice provision in both the voluntary and statutory sectors. A “call centre” scripted service will not fulfill this role.

PCS believes the helpline should be properly resourced and delivered in-house, and it would be a mistake to separate out the advice service from the main body. The current helplines, staffed by trained legal advisers, play a central and integrated role within each commission—working closely with law enforcement, campaigns, media and policy teams to identify strategic cases, inform potential investigations, promote campaigns, assist with good practice development, provide case studies for the media and give feedback on the website. The staff are trained legal advisers with an integrated career development structure and the opportunity to join cross-cutting working groups. Without this joined up way of working, the CEHR will be far less effective.

POLICY DEVELOPMENT, RESEARCH, INFORMATION AND STATISTICS

A professional team providing research, statistics and information services to the CEHR will be essential. The three functions provide complementary services, which together will ensure that the organisation has the factual evidence it needs to base policy, and maintain credibility with stakeholders. The CEHR’s information service should include a well-resourced library with public access.

LAUNCH OF THE COMMISSION

As a result of changes in the DCLG Transition Team and the replacement of the original consultants engaged to develop the CEHR organisational design, the programme schedule is now running nine months later than anticipated.

To date, no organisational design with a staffing structure and locations has been presented to or agreed by commissioners, and therefore the transfer of staff to posts in the new Commission has yet to commence.

A decision has been taken to prioritise the filling of posts in the helpline, but PCS believes that the new organisation will not be “open for business” in October. The helpline cannot function in a vacuum for reasons stated earlier, and we would recommend that a more realistic timetable is adopted if the CEHR is to be established successfully as an authoritative functioning organisation which meets the needs of stakeholders and the public.

Memorandum by the Equal Opportunities Commission

SUMMARY

The EOC welcomes the creation of the Commission for Equality and Human Rights. We believe that, if well established, resourced and led, a single equality body could be very effective in securing equality, tackling discrimination and promoting human rights. From our work we recognise that sex equality is becoming an increasingly subtle and complex issue that is best tackled in a broader equality context.

- We would like to see the CEHR’s priorities including:
 - closing the substantial income gap between women and men;
 - securing more support for modern families so that women and men can both balance paid work and caring responsibilities;
 - improving public services and policies so that they more effectively meet the real and sometimes different needs of women and men;
 - promoting greater safety, including addressing domestic violence, rape, forced marriage and trafficking for forced prostitution;
 - securing more equal sharing of power between women and men; and
 - securing respect for transgender people so they have equal rights and access to services.
- We welcome the final report and recommendations of the Equalities Review, in particular the report’s recognition that mothers of young children; and British women of Pakistani and Bangladeshi heritage face some of the largest employment penalties. Our own investigation, *Moving on up?*¹, looked at Pakistani, Bangladeshi and Black Caribbean women and employment and supports the Equalities Review findings. We have identified four external barriers and made

¹ http://www.eoc.org.uk/PDF/bme_final_report2007.pdf

recommendations to address each to ensure that the opportunity presented by these increasingly well qualified, confident and ambitious women is not missed by employers.

- The EOC welcomes the Discrimination Law Review (DLR), which we view as a significant step towards creating more positive and effective discrimination legislation. Some of the principles that we would like to see underpinning a single equality act include being pro-active—placing the onus for achieving equality and eliminating discrimination primarily with political, economic and social institutions rather than individuals, and outcome-focussed—the purpose of the act should be to promote substantive equality and to eliminate systemic as well as individualised discrimination, rather than dealing with individual cases once they arise.

INTRODUCTION

1. The Equal Opportunities Commission (EOC) is the statutory body responsible for sex equality in Great Britain. Our specific statutory duties include promoting equality between women and men, seeking to eliminate sex discrimination and unequal pay and advising the Government on keeping sex discrimination and equal pay legislation up to date. The EOC is a non-departmental public body, largely funded through grant-in-aid, and is the leading agency working to eliminate sex discrimination in 21st Century Britain.

2. We welcome the opportunity to respond to this timely, wide-ranging inquiry into equalities. This submission covers the EOC's thinking on:

- The issues facing the new Commission for Equality and Human Rights.
- The recommendations of the Equalities Review.
- The Discrimination Law Review and any Single Equality Bill.

COMMISSION FOR EQUALITY AND HUMAN RIGHTS

3. The EOC has consistently supported the establishment of the Commission for Equality and Human Rights (CEHR) since it was first proposed in 2002. In an increasingly complex society, a single integrated body has a greater chance of successfully advancing equality, tackling discrimination and promoting human rights than a series of single-issue bodies do. EOC's recent work on ethnic minority women and employment and on the impact of caring responsibilities and social care on women's employment show how interconnected different equality issues are. In addition, because the CEHR will handle issues that touch the lives of a large proportion of the population, it has the potential to secure a wide base of popular support. This should help CEHR to pursue the whole of its remit effectively, including those parts that deal with stigmatised minorities. CEHR should also be a clearer, stronger voice for equality and human rights than individual equality commissions have been able to be.

4. International comparative research commissioned jointly by the EOC together with the Disability Rights Commission (DRC) and the Commission for Racial Equality (CRE)² shows that integrated equality commissions have been very successful in a number of countries, although their success depends on a number of pre-requisites being in place. We therefore believe that, if well established, resourced and led, the CEHR has the potential to be very effective in securing equality, tackling discrimination and promoting human rights.

Pre-requisites for CEHR's success

5. The pre-requisites for CEHR's success include:
- Strong, skilled leadership.
 - An appropriate suite of roles and powers.
 - Resources, both money and skilled staff.
 - A clear and compelling vision that conveys the benefits of greater equality to society as a whole as well as to individuals.
 - A legal framework that gives parity of protection to all protected groups.
 - Strong governance and good relationships with a wide range of stakeholders.
 - Institutional arrangements and working practices that reflect the reality of devolved government in Scotland and Wales.
 - Flexibility, including the ability to address single strand issues (such as pregnancy discrimination) as well as generic equality issues (such as harassment) and inter-sectional or multiple discrimination issues (such as

² http://www.eoc.org.uk/PDF/4_single_equality_body.pdf

6. Some of these pre-requisites—such as the powers given to the CEHR by Parliament or the legal framework within which it operates—are outside the direct control of CEHR itself. Delays in appointing both Commissioners and the Chief Executive mean that the CEHR’s leadership faces an extremely challenging timetable in addressing the other issues. In most areas it is also too early as yet to judge their success in doing so. Critical issues such as CEHR’s priorities and work programme, its organisational design and ways of working and its approach to working with stakeholders have all still to emerge.

7. We welcome CEHR’s consultation about its draft vision and mission, although we think both could be strengthened, in particular by spelling out more clearly the benefits of greater equality and by drawing more explicitly on the excellent statement of CEHR’s fundamental purpose contained in clause three of the 2006 Equality Act.

8. We are pleased to see that so far CEHR has tried hard to design itself in ways that reflect the realities of devolved government in Scotland and Wales.

9. We are concerned about whether CEHR will have a sufficient budget to deliver its responsibilities. The Government has allocated CEHR £70 million. This sum is a bit more than the combined budgets of the existing three commissions but takes little account of the fact the CEHR’s remit is very significantly wider than that of the existing bodies: CEHR covers three new equality strands (age, religion or belief and sexual orientation) as well as human rights. We know from our own experience of the historic under-funding of the EOC that too little money will affect CEHR’s effectiveness and are concerned that the budget set is quite significantly less than is needed.

CEHR Priorities: Long Term

10. As the EOC looks forward to the CEHR we have identified what we see as an “unfinished revolution”. Changing social roles and attitudes, migration and demographic change have transformed British society in the last 30 years. Women’s and men’s lives and expectations have changed so rapidly that it comes as a shock to young people now to hear that practices—such as forcing women to leave jobs when they married or had children, or preventing women from having mortgages in their own name—were lawful within their parents’ lifetime. However, many aspects of life have not kept pace with these changes, which means that the full benefits of greater sex equality are not yet being realised.

11. Workplace practices and public services are still largely designed around the “breadwinner dad, stay at home wife” family model, even though today fathers want to spend more time with their children. Mothers often want, and need to work for financial reasons, as well as care for their children. But in order to balance work and caring women are frequently forced to trade down jobs in order to work part-time or flexible hours, with the result that four out of five people who work part-time are working beneath the level to which they are qualified, at considerable cost to the economy as well as to individual women. And as the population ages, parents are increasingly called upon to care for elderly relatives at the same time as bringing up children. Alongside these new challenges, some old challenges remain. Although it is falling slowly, the hourly gender pay gap is still 17% for full time workers and a massive (and stubborn) 38% for part time workers. Women still tend to be concentrated into a narrow range of jobs that do not use their skills and offer only low pay and poor prospects. Almost half of all pregnant women face unfair treatment at work, sexual harassment is still rife, women pensioners are still disproportionately likely to be poor, violence against women is still widespread and the top jobs and positions of power are still dominated overwhelmingly by men.

12. In order to meet these challenges CEHR will need an ambitious agenda for change. CEHR will no doubt want to define this agenda on a cross-strand or integrated basis but as EOC’s expertise and remit is gender, we are developing our view of the major challenges of the next ten years on that basis. Following extensive research and consultation, in July we will be publishing a document setting out this gender agenda in full. The central elements of this document will be:

- closing the substantial income gap between women and men;
- securing more support for modern families so that women and men can both balance paid work and caring responsibilities;
- improving public services and policies so that they more effectively meet the real and sometimes different needs of women and men;
- promoting greater safety, including addressing domestic violence, rape, forced marriage and trafficking for forced prostitution;
- securing more equal sharing of power between women and men; and
- securing respect for transgender people so they have equal rights and access to services.

13. The draft document setting out these suggested long term CEHR priorities is attached as annex one. As this document will be launched later in the year and is currently confidential to EOC, the Committee is requested to treat this attachment as confidential.

CEHR Priorities: Short Term

14. Alongside this long-term agenda, CEHR will need a short-term plan for its first year or so of work. Given CEHR's stated desire to pursue the best of the initiatives of the existing commissions, we have submitted to CEHR EOC's thoughts about some short-term priorities and opportunities. The key points are:

- Following up the recommendations of EOC's general formal investigation (GFI)³ into how workplace culture and practice could be changed to allow individuals to better meet the demands on their time, an issue of particular importance to women at work.
- Following up the recommendations of EOC's GFI into the barriers facing ethnic minority women at work⁴.
- Tackling the undervaluing of jobs predominantly done by women, following up EOC research that will be published imminently.
- A project to promote improvements in social care services and independent living, covering needs of disabled people, older people and carers.
- Keeping better support for modern families high on the political agenda.
- Embedding and enforcing the gender, race and disability equality duties, including promoting a strategic approach to equality by Government.
- An inquiry to establish the incidence of harassment in the workplace.
- Influencing the Single Equality Bill.

THE EQUALITIES REVIEW

Taking forward the recommendations

15. The EOC recognises the large and difficult task that the Equalities Review was asked to tackle. The Review's remit was very wide and the Review team showed great energy and determination in approaching it. We appreciate the open nature of much of the work and the many opportunities that stakeholders had to contribute to the project.

16. We are supportive of many of the recommendations included in the final report, and particularly welcome the focus on the barriers that still face mothers of young children and ethnic minority women. We hope that the Government, CEHR and others will take a strategic and creative approach to implementing the recommendations. We particularly want to see the Government taking forward the main recommendations made:

- to build a consensus on equality,
- to measure progress towards equality consistently,
- to build the evidence base needed to monitor this progress,
- to make the legal framework simpler and
- to use public procurement strongly to support equality.

Mothers and Fathers of Young Children

17. EOC's own work has shown that achieving equality for women at work is far from done, and we were encouraged to have this recognised in the Equalities Review. We would add that the issues facing mothers are likely to become issues for fathers too. Although fathers' working patterns are currently radically different from those of mothers (typically, fatherhood leads men to increase their working hours whilst mothers reduce theirs and get stuck in low paid part time jobs), men's attitudes to their role as fathers are changing.

18. EOC research found that 70% of fathers with babies under 15 months want to be more involved with their children, and almost nine out of 10 new dads (87%) are as confident in caring for their child as their partner.⁵ We also know that three in four people say it should be as easy for men to take time off for caring responsibilities as women. A more flexible approach to leave for parents in their child's early years is needed to tackle this, building on the improvements that the Government has already introduced. The final report of our *Transformation of Work* investigation is due to be launched in June 2007. Throughout the course of this investigation we have been working with employers to develop innovative models for the workplace of the future. Our early findings revealed a huge appetite for flexible working, with 52% of men and 48% of women saying they would like to work more flexible hours.⁷

³ Due to published on 14 June

⁴ *Moving On Up*, published in March 2006; http://www.eoc.org.uk/PDF/bme_final_report2007.pdf

⁵ Thompson, M et al (2005) Dads and their babies: Leave arrangements in the first year. EOC: Manchester.

⁶ http://www.eoc.org.uk/PDF/equality_review_interim_repot_response.pdf

⁷ <http://www.eoc.org.uk/Default.aspx?page=20024>

Ethnic minority women

19. We were also encouraged to see the recognition of the persistent employment penalty faced by Pakistani and Bangladeshi women identified by the Equalities Review. The EOC has recently published the final report of our *Moving on up?* investigation⁸. This looked at the employment, pay and progression of Pakistani, Bangladeshi and Black Caribbean women. It revealed, contrary to popular perception, that young women from these groups are leaving school and higher education with good qualifications and are supported by their families in their ambition to combine a career with family life. Earlier generations of women were held back by a lack of skills or by lack of English language skills and some action is still needed to help women for whom these remain problems. However, looking forward, lack of skills or problems with English are no longer the main issues that need to be addressed.

20. Following extensive research and consultation, the EOC's investigation concluded that one of the biggest problems in this field was the outdated perception of many policy makers and employers, who believe that ethnic minority women do not want to work, have poor skills, do not speak English well and are held back from working by family and cultural pressures. These are increasingly becoming outdated stereotypes that do not reflect the reality of an increasingly well qualified, ambitious cohort of women who want to combine working and having a family life just as other women do. Because policies and workplace practices have largely been based on what are now outdated stereotypes, they are not helping ethnic minority women to overcome the real barriers that they face.

21. EOC's research identified that the main real barriers are:

- *A combination of racism, sexism and anti-Muslim prejudice*: one in three Black Caribbean working women under 35 have experienced racist comments at work; Bangladeshi, Pakistani and Black Caribbean women are two to three times more likely than white women to be asked about plans for marriage and children at interviews.
- *Workplace culture*: For example, if an organisation encourages long hours, drinking with colleagues and clients, time away from home, this could cause problems for many employees but it will be more of a barrier to women who are lone parents and/ or have larger families. Ethnic minority women are disproportionately likely either to be lone parents or to have larger than average families.
- *Insufficient support for working parents and carers*: Finding affordable childcare and a job with flexible working arrangements is critical for Black Caribbean women (who are more likely to be lone parents) and Bangladeshi and Pakistani women (who are more likely to have larger than average families). As these women are disproportionately likely to be in lower paid jobs, the cost of childcare is an even greater obstacle to them than to women in general.
- Ethnic minority women's issues are invisible because of a silo-mentality that treats race, faith and gender separately: Often when looking at gender there is a focus on white, middle-class women, and when looking at race there is a focus on ethnic minority men. Therefore the needs of ethnic minority women are often overlooked and means that their voice is also often absent from policy development debates. The CEHR will be in a strong position to spearhead a more holistic, joined-up approach, building on EOC's work.

Data collection

22. EOC also strongly supports the Equalities Review's recommendations for a cross-cutting government review of data needs and for better use of data by government, public bodies and the private sector. Better collection and use of data is vital, for example, to understand the specific needs of ethnic minority women.

23. Better and better-used data are also vital for the success of the public sector equality duties. The Gender Equality Duty (GED) came into force in April 2007 and requires public bodies to demonstrate that they are promoting equality for women and men and that they are eliminating sexual discrimination and harassment. Public authorities have to gather information on the effect of their policies and practices on men and women and use this information to identify priorities for improvement in their employment, service and policy functions. The gender equality duty requires public authorities to focus on the issues within their remit that have the greatest importance and impact on gender equality and so public authorities will need to ensure that they have sufficient data to enable them to do this.

24. In the EOC's submission to the Comprehensive Spending Review 2007⁹, we highlighted the pivotal role of the Treasury using the equality duties as levers on government departments and public bodies to improve service outcomes and to ensure a more efficient and effective use of resources. Data is key to this and our recommendations included that sex, race, disability disaggregated data be collected and utilised to inform target setting and indicators for progress. For example, evidence from the EOC's General Formal Investigation into Gender Segregation in Modern Apprenticeships¹⁰ underlined the fact that increasing

⁸ http://www.eoc.org.uk/PDF/bme_final_report2007.pdf

⁹ http://www.eoc.org.uk/Docs/CSR_submission.doc

¹⁰ EOC *Free to Choose—tackling gender barriers to better jobs* (March 2005)

overall participation will not necessarily tackle this segregation. A gender-sensitive target would need explicitly to aim to increase the participation of women and men in sectors that are not traditional for their sex.

DISCRIMINATION LAW REVIEW

25. The EOC welcomes the Discrimination Law Review (DLR) and the proposed Single Equality Bill. We see them as significant potential steps towards creating a more positive, effective simpler legislative framework. However, there is no magic in the device of a Single Equality Bill in itself: the provisions within it are what count. Until the Government has published its proposals, it will not be clear whether the outcomes of the DLR will indeed make the law either simpler or more effective.

26. The Sex Discrimination Act (SDA) was passed in 1975 and the Equal Pay Act (EPA) came into force in the same year. Although the significance of this legislation cannot be denied the outcome has not been as successful as we would have hoped. For example, the full-time gender pay gap although reduced from 29.4% in 1975 still remains at 17% today, and the part-time pay gap has barely changed from 41.6%–38.5%. At the current rate of progress the full time pay gap will not be closed until 2085. Although discrimination against pregnant women and sexual harassment are both unlawful, both remain widespread. At the heart of the weakness of the current law is their failure to require action from institutions to pursue equality. Current laws largely rely on individuals complaining about discrimination after it has happened: they do little either to prevent discrimination occurring in the first place or to address the impact of past inequality and disadvantage.

27. EOC has identified some basic principles that we would like to see underpinning any unified equality act. These are that the legislation should be:

- Outcome-focussed: the purpose of the single (unified) equality act should be to promote substantive equality and to eliminate systemic as well as individualised discrimination.
- Equality amongst strands: the single equality act should harmonise equality and anti-discrimination provisions up to the highest standard to give all protected persons equally comprehensive rights.
- Positive: the law should promote respect for the equal dignity and worth of each individual.
- Proactive: the law should place the onus for achieving equality and eliminating discrimination primarily with political, economic and social institutions.
- Accessible: the law should set standards that are clear, intelligible and consistent.
- Enforceable: the law should be capable of being effectively and efficiently enforced when necessary, with accessible, effective and timely means of securing redress for individuals and, where appropriate, groups of individuals.
- Inclusive: the law should provide opportunities for individuals and communities to engage in the process of change and participate in decisions that affect their lives.

28. These principles formed the basis of the Commission's April 2006 preliminary submission to the DLR¹¹. Clearly until a Green Paper is finally published, we cannot judge the extent to which the Government's proposals will meet these standards. However, we are concerned that the proposals may be weaker and more cautious in some areas than we would like. In particular, we are concerned about whether there will be any obligation on institutions beyond the public sector to take action to tackle inequality and about whether there will be greater protection from discrimination and inequality for people with caring responsibilities.

29. The EOC's full agenda of proposals that we would like to see addressed by the DLR is:

- Introduce a Single Equality Act that embraces multiple (or intersectional) discrimination.
- Incorporate a purpose clause into the Single Equality Act to assist in the interpretation of the legislation, and to give a "steer" to courts and tribunals. A purpose clause could also help the public to understand the underlying principles of anti-discrimination law by setting out its goals and aspirations in a language that is both accessible and meaningful.
- Provide employers and others with greater freedom to take proportionate positive action expanding GB law to reflect the scope for positive action allowed by EU law.
- Introduce an integrated public sector duty covering all equality strands that provides for:
 - A strategic cross-governmental approach to promoting equality.
 - Express duties on both the Secretary of State and inspectorates to promote equality.
- Include caring status in the integrated public sector duty so public bodies must address the impact of their policies and services on people with caring responsibilities.

¹¹ Available at http://intranet.eoc.org.uk/PDF/DLR_submission_April_2006.pdf

- Extend the right to request flexible working to all employees.
- Reform the equal pay provisions to enable:
 - Women to claim equal pay in circumstances where there is no actual comparator doing equal work, but where there is prima facie evidence of discrimination in the employer's pay practices.
 - Employers to be protected against claims being brought while they carry out a rigorous equal pay review and take action to eliminate discriminatory pay practices and implement equal pay.
 - The CEHR and other interested parties to be able to challenge discriminatory pay practices by bringing representative actions on behalf of groups of workers.
 - The Employment Tribunal to manage complex equal pay cases more effectively.
- Ensure better access to justice for individuals by:
 - Harmonising the definitions of discrimination across all the various equality strands and taking a consistent approach to exemptions.
 - Providing transsexuals with protection against discrimination equivalent to that enjoyed by the other equality strands.
 - Providing better protection against victimisation for those bringing claims or helping others to do so.
 - — Providing better protection for volunteers.
 - Transferring jurisdiction for cases raising matters of discrimination in Goods, Facilities and Services, and in Education, to the Employment Tribunal.
 - Enabling the Employment Tribunal to:
 - Make enforceable general recommendations where the evidence warrants.
 - Order interim relief.
 - Order employers to reinstate or re-engage employees where appropriate.
 - Enforce awards of compensation.
 - Empowering the CEHR to institute proceedings in its own name.

Memorandum by the Odysseus Trust

1. The Odysseus Trust¹² is a non-profit company limited by guarantee which seeks to promote good governance and the effective protection of human rights. The Trust is directed by Lord Lester of Herne Hill QC, together with two Parliamentary Legal Officers, Kate Beattie and Bonita Meyersfeld. This paper responds to the Communities and Local Government Committee's inquiry into Equality.

2. The groundwork for a Single Equality Bill has already been done in the wide-ranging and ground-breaking report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation, *Equality: A New Framework*, published in 2000 ("the Hepple Report"). The Hepple Report led to Lord Lester's Private Member's Single Equality Bill, which was passed by the House of Lords in 2003.

3. There are several key points which must be followed if we are to achieve effective equality legislation. First, there must be no levelling down of existing protection. Second, there must be effective individual remedies and scope for enforcement. Third, there must be less emphasis on procedures, and more emphasis on outcomes.

4. The Hepple Report made important recommendations for a single Equality Act for Britain. The Report recommended that the equality framework should be based on the following principles:

- The goal of legislation is to eliminate unlawful discrimination and to promote equality regardless of sex, race, colour, ethnic or national origin, religion or belief, disability, age, sexual orientation, or other status;
- There must be clear, consistent and easily intelligible standards;
- The regulatory framework must be effective, efficient and equitable, aimed at encouraging personal responsibility and self-generating efforts to promote equality;
- The regulatory framework must state the whole of the law including EU law implementation within a single Bill, as far as possible;
- There must be opportunities for those directly affected to participate, through information, consultation, and engagement in the process of change; and

¹² For more information about the work of the Trust, please visit www.odysseustrust.org

- Individuals should be free to seek redress for the harm they have suffered as a result of unlawful discrimination, through procedures which are fair, inexpensive and expeditious, and the remedies should be effective.

5. The Hepple Report also contained new ideas which should inform the current review. It recommended effective action to tackle pay inequity, including a duty on employers to conduct workforce reviews. It focused on government contracts and state aid: where there is persistent non-compliance with tribunal orders, companies should be ineligible for Government contracts. The Report also focused on positive action and positive duties, and considered the merits of a general duty to promote equality of opportunity on all public bodies.

6. We enclose the full list of recommendations in the Hepple Report which we hope will be useful for the Committee's inquiry.

Memorandum by the Commission for Racial Equality

BACKGROUND

1. The Commission for Racial Equality (CRE) was established under the 1976 Race Relations Act. Its main duties are:

- To work towards the elimination of racial discrimination and promote equality of opportunity.
- To encourage good race relations between people from different racial and ethnic backgrounds.
- To monitor the way the Race Relations Act is working and recommend ways in which it can be improved.

2. The CRE's primary goal is to create an integrated society. We have defined an integrated society as being based on three inter-related principles:

- *equality*—for all sections of the community—where everyone is treated equally and has a right to fair outcomes;
- *participation*—by all sections of the community—where all groups in society should expect to share in decision-making and carry the responsibility of making society work; and
- *interaction*—between all sections of the community—where no-one should be trapped within their own community, amongst the people they work with or the friendships they make.

3. This submission covers five main areas for the Committee to consider:

- The wider policy context around equality.
- Specific comments upon the Equalities Review.
- Issues of Data collection and measurement.
- Legal and Institutional Issues.
- The relationship between Equalities, Integration and Cohesion.

THE POLICY CONTEXT

4. The CRE believes it is crucial that achieving greater equality is seen as a national priority as the consequences of inequality are detrimental for the whole of society and not just those who experience it.

5. Britain has a number of longstanding, well-established ethnic minority communities. Pre and post-war migration from Ireland, the Caribbean and the Indian subcontinent brought a rich cultural diversity to UK society and built on previous waves of inward migration.

6. It is clear that Britain is currently undergoing significant demographic and socio-economic change. Recent increases in the size of the UK population, rises in life expectancy for many communities and falling fertility rates have begun to change the nature of British society. A key driver of this change has been the changing nature of inward migration to Britain over the last decade. In particular, recent migration from sub-Saharan Africa and the accession states of the expanded European Union has considerably increased the ethnic diversity of Britain. At a local level, these communities have been drawn to parts of the UK, which have not previously experienced significant migration and settlement.

7. These recent waves of migration have added to the existing cultural diversity of communities and have required local public authorities to rethink the way that they provide services in order to meet the needs of these different communities. A number of major British cities are now moving towards becoming "majority minority" cities over the course of the next decade.

8. At the same time, there is an increased understanding of the polarisation between the most affluent and most deprived parts of society. Again, race equality and integration are key to these discussions.

9. Any analysis of deprivation and socio-economic change must take into account the experiences of different ethnic minority communities. There is a wealth of evidence which underlines the nature of ethnic minority experiences in the UK. Perhaps most starkly, in 2003, ODPM established that 70% of people from ethnic minority communities live in the 88 most deprived wards in England.¹³

10. There is considerable evidence to underline the centrality of race equality in the fight to address longstanding inequalities.

11. A challenge for all those working in the equalities field is to develop a coherent public policy framework for equality, supported by detailed practical recommendations. This involves considering how best to combine economic efficiency and social justice, ensuring greater equality in an era of rapid internationalisation and globalisation.

12. We are faced with both long-term structural inequalities and new, rapidly changing challenges such as migration and ethnicity, demographic change and the emerging debate over the importance of “happiness”, or subjective life satisfaction. The traditional social contract of full employment, a welfare state and secure pension arrangements was primarily designed for a society that was largely homogenous and a workforce that was even more so.

13. At the same time the creation of devolved government in Scotland, Wales and Northern Ireland has created a new context, in which policies relating to equality are made at different levels. For example, while the Race Relations Act (RRA) is reserved to Westminster, many of the areas in which progress needs to be made to advance race equality, such as education, housing and justice are devolved to the Scottish Parliament. The result is increasing policy innovation and divergence.

14. Since devolution the CRE has experienced a number of examples of policy falling through the gap between Whitehall and the devolved administrations. Initiatives such as the Public Service Agreements (PSAs) and the Ethnic Minority Employment Taskforce were intended to advance race equality across Britain. However lack of clarity, issues of ownership and significant gaps in equality data in Scotland meant that these initiatives have not had their desired effect across all areas of Britain.

THE EQUALITIES REVIEW

15. The CRE supports the conclusions of the Equalities Review that there exists a detrimental debate regarding the definition of equality for the purposes of public policy. As the Panel suggests, this undermines attempts to win wider popular support for some equality policies and legislation, and it becomes almost impossible to make a robust case for prioritising action on one equality issue over action on another.

16. Furthermore, by stressing a strand-specific approach to combating inequality, we believe that the argument of the benefits for wider society of greater equality is in danger of being lost. This in turn may weaken the basis for garnering wider public support in favour of achieving equality. Equality is currently seen through a prism of minority rights, with strands competing against one another for limited resources or legislative privileges. Measures to address inequality are seen as helping some individuals or groups rather than benefiting society as a whole. This not only hampers the cause of greater equality but is also damaging to issues of community solidarity and cohesion.

17. If the case for measures to increase equality is to be persuasive and command public support, we must not allow what separates people to be more important than what unites them. Too much emphasis on strands and minority rights risks making equality a fringe issue in the political discourse.

18. Furthermore, we also believe that a strand-only focus has perhaps blinded policy makers to the fact that those initiatives that frequently have the greatest impact on combating inequality have been mainstream policy developments such as Sure Start and the New Deal, rather than measures targeted at individual groups or strands. In many of these cases however, the impact of mainstream measures on race equality goals are not assessed. It is imperative that equality is seen as a goal for the whole of public policy and not just specific aspects of it, and that mainstream initiatives measure their impact across all ethnic groups, rather than just focusing on whether quantitative headline figures have been met.

19. There are also more invisible and subjective aspects to persistent inequality which are harder to identify and measure. One example is the low aspirations and expectations which have huge potential effects on equality outcomes, as becomes increasingly clear in the research on the education of ethnic minority children. Others are the perception of being unsafe or vulnerable to crime and the insecurity which comes with the realisation of not having the same life chances. Insecurity and risk are clearly important contextual factors that affect more than just equality and are commonly thought about in relation to community relations and good race relations. Context features and the feelings these generate within groups influence the nature of interaction and participation profoundly. They are also fundamental in explaining how vulnerability is caused and how trigger periods might shift over time.

¹³ Social Exclusion Unit, *Taking Stock and Looking to the Future: Emerging Findings*, March 2004, p 9.

20. There is also a danger that the CEHR and policy makers more generally concentrate simply on reducing gaps between groups without looking at the wider social and economic inequalities in society. The Commission believes that it is harder to reduce disparities between groups in an environment where there are gaps and low social mobility overall. Furthermore, the benefits of generating more equality between traditionally excluded groups will be lessened in a society that is still unequal, even if that inequality is allied to social status rather than race, gender, disability etc . . .

MEASUREMENT AND DATA

21. The Commission believes that an urgent priority of both Government (including the Scottish Executive and the Welsh Assembly) and the CEHR should be to ensure that there is a consistent approach to data collection, analysis and evidence-driven policy development and service delivery. The failure of individual departments to collect sophisticated ethnicity data will dramatically undermine the ability to deliver a programme to systematically tackle inequalities across UK society.

22. It is essential that departments disaggregate the perceptions and experiences of different communities. Ethnic minority communities should not be viewed as a homogeneous block; their needs and experiences of public services are very different. Failure to fully disaggregate and to establish precise patterns of need will significantly undermine the drive to tackle inequalities. An intelligence-led approach is required at all stages of the review.

23. Departments will also have to consider how they collect data across nations and regions, where sample sizes may be small. For example the Labour Force Survey does not enable a detailed breakdown of inequalities by ethnic group across every region and nation in Britain because in certain areas the sample sizes of some ethnic groups are too small to provide a complete picture. Where detailed ethnicity data is not currently collected, departments, in line with the legal requirements of the race equality duty (RED), should put in place systems which ensure that such data is collected in the future.

24. The Commission shares the concerns of the Equalities Review Panel that currently we have insufficient and inconsistent data across Government. We therefore recommend that significant steps are taken to look at how data collection and monitoring can be improved across Whitehall and the devolved administrations. In doing this, it is important that we identify the data that is needed and can provide context for policy-makers. We must also identify how data is going to be used. For instance, DfES has an excellent collection of data but makes far too little use of this in its policy-making process.

25. One thing to be considered is whether the CEHR, as one of the primary users of data, needs to be given direct access to governmental data so that it can independently assess progress on equality and diversity in the public and private sector.

26. Measurement should be seen as a way of tracking progress or being a trigger for intervention rather than determining policy. Clearly, there will always be a link between the two but the range of potential indicators of equality is so wide that any measurement index cannot hope to be exhaustive and so it should be explicitly acknowledged that it is indicative of wider trends within society.

27. The key should be to identify the evidence and look for the policy levers and then find ways of measuring their effectiveness. Defining methods for measurement before considering the levers for change could significantly limit the scope of those levers. Additionally, measurement will be key in evaluating the effectiveness of the levers used and should be designed with these in mind.

28. The 10 point framework for assessment set out in the Equalities Review is a good starting point but cannot be seen as definitive.

29. In particular, the Commission believes that a key element that is missing from this list is cohesion or social solidarity. In the context of the Commission's integration agenda, we believe that this element is crucial in terms of creating a more equal society and wider public support for equality.

30. To help assess the impact of policies towards an integrated society, the Commission is developing a model of integration indicators. This model starts by defining what an integrated society is. It defines the social outcomes in eight areas that the Commission deems essential to its development and provides a basket of indicators to measure progress in these areas. It further indicates where the necessary data can be retrieved from, if available, and highlights absences where there is a lack of data.

31. The model defines three cross sector outcome areas: political participation and governance, inclusion and solidarity and finally, well-being and cultural capital. It further suggests five strategic quality of life areas: education, employment, health, housing, safety and justice.

32. Any measurement framework is an aggregation and certain aspects of equality will not be explored unless they can be inspected, developed and discussed by independent bodies such as universities, trade unions and NGO's. In searching for a common framework, we must not become too rigid and it is important that there is space for contestability in conceptualising equality.

33. We believe that any measurement template, whatever its final contents, needs to be pursued through unifying equality legislation.

34. The CEHR will have an important role to play in securing independent analysis and discussion taking place that complements, explores and potentially challenges data. It is important that this is seen as a priority for the new Commission.

35. The CEHR should also not confine its research agenda to hard data. The qualitative side of research is as important as the quantitative. While it is vital to track progress in reducing inequalities, it is equally important to explore the reasons behind some of the persistent gaps.

THE LEGAL AND INSTITUTIONAL ISSUES

36. The Commission has for a number of years campaigned for the inconsistencies and uneven standards with Britain's various anti-discrimination legislation to be rectified. The Discrimination Law Review is a welcome step in the right direction, and we fully hope and expect that Britain will ultimately have a new, and hopefully also a clear and powerful, Single Equality Act by 2009.

37. We would wish to see a Single Equality Act that is clear and accessible to individuals, as well as containing strong powers for the enforcement of non-discrimination rights and of equality standards generally.

38. From our own experiences as a regulator of the Race Equality Duty, we feel that such an act requires strong and powerful equality duties. However, it is vital that such duties require practical action and positive equality outcomes, including through the important sphere of public procurement. New equality obligations must build upon the strengths and shed the weaknesses of the existing public duties.

39. Strong enforcement arrangements for bodies such as the CEHR to use are essential. These should enable enforcement action to take both soft and hard forms, ranging from general inquiries into problem areas and mediation in individual cases at one end of the spectrum, to investigations with binding recommendations, action plans and general court action at the other end.

40. We would also recommend appropriate, effective and genuinely dissuasive sanctions and remedies in all cases litigated under the SEA. Victims of unlawful discrimination and/or harassment should be compensated appropriately and sanctions should as far as possible be preventative as this will lessen the likelihood of repetitive discrimination and harassment.

41. We have recommended that protection against unfair discrimination and harassment is widened to include not only claims on the traditional grounds of race, sex, disability etc., but also to enable victims to get redress for the reality of multiple discrimination and/or harassment, such may be suffered by Black Women, or children from Gypsy & Traveller communities.

42. The issue of how to redress persistent inequalities and disparities is always going to be contentious and the Commission believes that much further work on the advantages and disadvantages of any particular scheme needs undertaking before we can arrive at a universal opinion. However, we would welcome flexible, broad and powerful arrangements for measures that seek to eliminate or lessen historic race-based disadvantage. This could include, where appropriate, relevant positive action measures. Importantly, this is not the same as positive discrimination and we believe that this debate is often hampered by confusion of the two terms.

43. We have concerns nonetheless that insufficient consideration is being given to the issue of the practical access to justice for victims of unlawful discrimination or harassment. This should entail genuine access, locally and nationally, to informed advice on the merits or weaknesses in the complaints, as distinct from the necessary, but not sufficient, advice facilities of telephone helplines and websites. This "gap" is especially problematic as the SEA will cover an unprecedented range of non-discrimination matters, spanning many grounds.

44. Additionally, whilst it is recognised that there is some limited provision for group litigation in existing Employment Tribunal Regulations and Civil Procedure Rules, we regard it as appropriate that the Green Paper invites comments on the sufficiency or not of these existing provisions. Indeed, we think that specific consideration for "class-type" actions to secure appropriately broad protection for named and unnamed groups of persons suffering unlawful discriminatory treatment is required.

45. Finally, we are concerned that current thinking does not say very much about the relationship between equality duties and the private sector. The latter is the employer of the vast majority of Britain's workers. We think further discussion on how to improve the performance of the private sector is merited, particularly on whether we need tailored equality obligations.

46. While devolution settlements in Scotland and Wales have created new contexts within which work on equality and human rights must operate, the current equality commissions have all struggled to achieve high quality cross border delivery. The arrangements set out in the Equality Act include establishing offices

in Scotland and Wales, appointing one board member with specialist knowledge of Scotland and one with specialist knowledge of Wales and establishing a Scotland and a Wales Committee, and are a solid starting point. However, it is harder to see how they will enhance current arrangements in Scotland and Wales, or how they will enable effective interplay between the Britain-wide and devolved levels of the CEHR.

47. If the CEHR is to be a strong and effective champion for equality and human rights across Britain and to produce an authoritative “state of the nation” report, it will need robust systems and processes in place in order to integrate not only different equality perspectives but also different devolved perspectives that recognise gaps in the existing evidence base; different starting points and, at times, the need for country specific work within the context of overall GB objectives, such as anti-Englishness and Welsh language issues.

48. The equalities commissions have identified a number of systems that the CEHR could consider adopting to ensure the organisation deals more effectively with the challenges and opportunities of being a cross-border public body. These include using a formal framework for inter-country relations; appointing a devolution champion at senior level; implementing matrix management; defining a clear level of autonomy for national office and consistency in data collection and measurement.

EQUALITIES, INTEGRATION AND COHESION

49. The CEHR clearly presents an opportunity to build on the recommendations of the Equalities Review to view equalities issues beyond the traditional, strand-specific, approach.

50. However, the Commission has built a developed notion of integration in recent years as a more effective way to view persistent inequality and also tackle some of the connected social issues such as segregation and exclusion from the decision-making process. The Commission remains concerned that issues of cohesion might become marginalised by an over-concentration on equality.

51. It is vital that the richness of the Commission’s integration agenda is maintained and not sacrificed for an anachronistic view of equality as being the sole driver.

52. There is clearly a strong overlap between issues of equalities and cohesion. However, we should also not forget the differences. The work currently being completed by the Commission on Integration and Cohesion should be seen as an important factor in the debate over the future of equality and in terms of influencing the policy agenda of the CEHR. We would urge the Government, devolved administrations and CEHR to look at this just as much as the Equalities Review in determining priorities for action.

53. One area that will require further exploration is how the existing guidance on community cohesion might fit into any proposed statutory requirements, such as the one to be introduced for schools from September, to have a duty to promote community cohesion. The Commission believes it is important that any guidance on cohesion complements the existing race relations requirements rather than adds another tier of bureaucracy to frontline service providers.

54. This work fits most explicitly with the “good relations” duty that CEHR will have responsibility for, building on the existing requirement to promote good race relations. The nature of the challenges around cohesion and integration were integral to the fact that good relations is specifically identified as focussing on race and faith issues. Therefore, while the wider equalities agenda will increasingly move towards a multi- and cross-strand approach, issues of cohesion may well require a focus on race and faith.

BACKGROUND PAPERS¹⁴

55. We have made a series of contributions to issues related to equality in recent months. Key aspects have been summarised in this submission. However, for ease of reference and in case more detailed consideration is required, we are attaching a number of these as appendices. These are:

- Appendix 1—CRE Submission to the Comprehensive Spending Review.
- Appendix 2—CRE Submission to the Commission on Integration and Cohesion.
- Appendix 3—CRE Technical Note for the Discrimination Law Review.
- Appendix 4—Joint Statement from CRE, DRC and EOC on the Equality Duties.

¹⁴ Not printed.

Memorandum by the Commission for Equality and Human Rights

1. THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

1.1. The Commission for Equality and Human Rights (CEHR) will come into operation on 1 October 2007. The Commission's draft vision and mission statement (currently under consultation) sets out its remit and ambitions as follows:

Our vision

1.2. A Britain at ease with all aspects of its diversity, built on fairness and respect for all.

Our mission

1.3. The Commission for Equality and Human Rights is the independent advocate for equality and human rights in Britain. The CEHR aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.

1.4. The CEHR will challenge prejudice and disadvantage, and promote the importance of human rights. The CEHR is a statutory body established under the Equality Act 2006. It will enforce equality legislation on age, disability and health, gender, race, religion or belief, sexual orientation or transgender status, and encourage compliance with the Human Rights Act 1998.

1.5. The CEHR will work to bring about effective change, using its influence and authority to ensure that equality and human rights remain at the top of agendas for government, employers and society. It will campaign for social change and justice.

1.6. The CEHR will act directly and by fostering partnerships at local, regional and national levels. It will stimulate debate on equality and human rights. It will give advice and guidance, including to businesses, the voluntary and public sectors, and also to individuals.

1.7. The CEHR will develop an evidence based understanding of the causes and effects of inequality for people across Britain, and will be an authoritative voice for reform.

2. INTRODUCTION

2.1. The CEHR is pleased to see that the CLG Committee is carrying out an inquiry into Equality, and is grateful for the opportunity to submit evidence. This is a timely moment for such a review, as equality and human rights stand at a crossroads. The Equalities Review was published in February; the Discrimination Law Review is expected very shortly and the CEHR will open for business in October. The Scottish Commission for Human Rights is also being established, and in Wales there are new duties on the Assembly.

2.2. As the CEHR will not be fully operational until October, the evidence set out here should be considered preliminary. The timescales for this inquiry also mean that it has not been possible to seek the ratification of the Board for this response. Despite these caveats, we hope that the Committee finds this memorandum useful in its deliberations.

3. ISSUES FACED IN THE ESTABLISHMENT OF THE NEW COMMISSION FOR EQUALITY AND HUMAN RIGHTS

Context

3.1. In September 2006, Trevor Phillips was appointed Chair of the CEHR. Subsequently, another 12 Commissioners were appointed to the Board in December, with the Scotland Commissioner joining in March. A further round of recruitment for another four Commissioners was recently concluded, and the Secretary of State is expected to announce the final members of the CEHR board shortly.

3.2. The Chief Executive (who is also a Commissioner) took up her post in March and was this week confirmed as Accounting Officer. The recruitment for her Senior Management Team is underway.

3.3. The CEHR's full complement of strategic and operational leadership is therefore expected to be in place around mid-summer. At that stage the organisation will be equipped to address key issues such as organisational design, business plans and budgets for the transition period and beyond, and a draft strategic plan.

Priorities

3.4. The CEHR's mandate rests on the principle that equality and human rights are not minority concerns. The CEHR comes into being as the guarantor of standards of decency and fairness in our society; and as a guardian against injustice in the way we are treated by others and by the institutions in our society.

3.5. It will be an advocate for groups of the disadvantaged, but it has to be more. It has to be a change maker for the whole of society, using both its leadership role and its legal powers to build a society that recognises the worth of all people, and ensures that no-one is excluded by cause of gender, sexual orientation or race, religion or belief, age, or disability. It is to be expected that class, caring status, and other markers will also be significant for the Commission.

3.6. The CEHR will be a completely new organisation, which will be more than the sum of its parts. It will draw on the experience, expertise and existing talent of the heritage equality commissions and other relevant bodies, but it will take a fresh approach that is consonant with the equalities and human rights climate of 21st century Britain.

3.7. Human rights will be an invaluable dimension at the Commission's disposal, providing a framework both in setting its priorities for action and enabling it to target disadvantage that does not necessarily fit a pre-existing "equality" category. The main focus will be on developing a human rights culture that has resonance among the public and that speaks to them about dignity and public service standards.

Key challenges

3.8. The most immediate challenge faced by the CEHR is the ambitious timescale for launch and delivery. In line with this timescale, the focus of the Transition Team for the CEHR has been to set up the infrastructure required for the Commission to open for business on 1 October. The main areas of work have been accommodation, IT, transfer of staff, transfer of assets/due diligence, transfer of knowledge, governance arrangements, and the core services of a helpline and website.

3.9. The Commission will also need to develop a strategy that strikes the right balance between drawing on areas of activity identified by the existing Commissions and other relevant bodies, and developing a distinctive approach for the CEHR.

3.10. There will be a challenge in the bedding-down period to maintain current levels of service within a completely new organisation and to sustain the momentum of important work currently being carried out by the Commissions.

3.11. In addition there is a weight of expectation on the CEHR. We face the expectations of parliament, government, the three existing equality commissions and the broader equality and human rights movement.

3.12. What will make or break the CEHR is how it meets the expectations of the general public: those who face the daily grind of disadvantage and confront the sharper thrust of injustice; and also those who do not suffer directly, but who want Britain to be a more equal, more just and fairer place.

3.13. For the CEHR to deliver effectively on its mandate, its independence, as set out in the Equality Act, needs to be supported.

3.14. Under the Act, the Commission should be under as few constraints as reasonably possible in determining its activities, timetables and priorities. But it is wholly accountable to the Secretary of State and government in its use of public funds. This level of independence, which is quite unprecedented in the existing commissions, will be crucial for guaranteeing the Commission's credibility, and for ensuring that it serves the nation and not the government of the day.

Business planning

3.15. An Interim Business Plan will cover the first 12 months operation of the CEHR. It will set out the activities to be undertaken by the CEHR in pursuance of its statutory duties, in line with the vision and ambitions articulated by Commissioners at this early stage in the organisation's development. The plan will include:

- The best examples of work carried out by the existing equality commissions and other relevant organisations, informed by a "best practice audit" currently being completed by consultants.
- Activities designed to ensure that the momentum created by the existing Commissions is not lost, including key services such as the helpline and website.
- Some new work across all areas of equality, distinctive to the CEHR as a new organisation.
- Activities to promote human rights, especially to transform the tone of public debate on human rights.
- Work required to set up the Commission's external relationships, including the infrastructure for a number of advisory groups beyond the formal Committee structure.
- Fulfilling statutory duties—eg grants and casework.

- Resource and budget allocations to deliver the Business Plan taking into account due diligence and staff transfer arrangements.

3.16. The plan is under development and the Board is expected to consider a first draft in late June.

3.17. The first “steady-state” Business Plan will be produced in line with an agreed set of strategic priorities for the CEHR, and will take over from the Interim Business Plan after a full consultation process.

- The “Steady-State” Business Plan will be grounded in a Strategic Plan, also subject to public consultation.
- This Business Plan is likely to cover much of the same ground as the Interim Business Plan; however it will benefit from a greater degree of strategic oversight and will be informed by consultation.
- In contrast to the Interim Business Plan, which will be especially concerned with ensuring continuity of service and the “build-up” of the CEHR’s role, this will represent the “lift-off” of the CEHR as a fully-functional body.

3.18. The Board is expected to consider a draft set of strategic priorities in late June, which will lay the foundations for the Strategic Plan.

Staffing arrangements

3.19. The CEHR has TUPE obligations to staff of the existing Commissions. It is also imperative that the new Commission incorporates the talent and knowledge represented by these staff, as well as newcomers with expertise in other areas where appropriate.

3.20. The existing Commissions have provided an “early exit” scheme offering staff who do not wish to join the CEHR the opportunity to take voluntary redundancy on compulsory terms. The outcome of this scheme in terms of financial liability and numbers of staff remaining with TUPE rights is now being assessed.

3.21. An “assimilation” (job-matching) process has been agreed with the existing Commissions and recognised unions. Once the organisational design has been agreed, the process of matching staff to roles within the new Commission will commence. The process is already underway for one part of the CEHR—its helpline service—to ensure that current levels of service are maintained from day one.

3.22. The organisational design for the CEHR is under development and has been discussed at a high level by the Board. A detailed organisational design will be considered by the Board in late June. This will be subject to amendment by the incoming Senior Management Team, although this will not delay the job-matching process, which will take place in phases. It is also to be expected that the organisational design will be relatively “plastic” in the first year of operation so that the CEHR is able to respond to changing needs.

Office locations

3.23. The CEHR is pursuing an accommodation strategy to secure premises in London, Manchester, Cardiff and Glasgow (plus a small presence in Edinburgh). A lease has been signed for an office in Manchester, and the London and Glasgow offices are under offer. Premises in Cardiff are being sought, and a fallback position using offices of the existing Commissions has been agreed.

4. THE GOVERNMENT’S ROLE AND RESPONSIBILITIES IN TAKING FORWARD THE RECOMMENDATIONS WITHIN THE EQUALITIES REVIEW

4.1. The CEHR Board intends to formally consider the Equalities Review and, in particular, the government’s response to it, after October 2007. In the meantime, however, a group of Commissioners had a preliminary informal discussion about the Equalities Review in May.

4.2. Commissioners agreed that the findings of the Equalities Review would be a useful guide to the CEHR’s work. There was also broad agreement on the value of the definition of equality set out in the Review; although Commissioners recognised the need to also consider good relations and the balance between the individual and the group.

4.3. The workplace, indicated in the Equalities Review as a key priority, was seen as a good starting point for the CEHR because it reverberates throughout people’s lives.

4.4. There was strong support for better measurement, focussed on outcomes.

4.5. Commissioners consider it essential for government and politicians to be visibly supportive of the agenda set out in the Equalities Review and to take on its recommendations as their responsibility. Parliamentary advocates would be of particular value to ensure that the issues were seen as a priority.

5. THE POSSIBLE CONTENTS OF THE DISCRIMINATION LAW REVIEW AND A SINGLE EQUALITY BILL

5.1. As no Green Paper for the Discrimination Law Review has yet been published, it has not yet been possible for CEHR Commissioners to discuss this issue. This evidence is therefore entirely based on our preliminary responses to the proposals set out in the Equalities Review.

5.2. It is essential that the opportunity is seized to take a global view of equality and implement measures that truly address disadvantage, rather than only “tidying up” existing law or focussing too narrowly on discrimination (which is only one, albeit critical, component of inequality and disadvantage).

5.3. The single Equality Act that results from the Discrimination Law Review should:

- focus on a simpler, more coherent framework;
- facilitate action to help groups as well as individuals (the latter having been the traditional focus of discrimination law and other relevant legislation). The more recent “positive duties” have begun a move away from that focus, and there is a need to reinforce that trend; and
- promote institutional reform to increase equality.

5.4. Government and Parliament should seize the opportunity presented by the Review to simplify and focus a new integrated duty on the outcomes it is intended to achieve rather than the processes in place—taking away hurdles that currently exist and making sure the focus is on results. And, in line with the focus on outcomes, the duty should revolve around narrowing equality gaps.

5.5. The Discrimination Law Review should include consideration of how inequalities faced by carers and children can properly be addressed by discrimination law, and how protection against discrimination in the provision of goods, facilities and services can be extended to all grounds.

5.6. The Discrimination Law Review should propose the repeal of existing legislation that limits positive action (to measures such as targeted advertising of posts, special training and work experience opportunities, and so forth); and that it proposes to include balancing measures in a new single Equality Act, consistent with the wider possibilities under EU law (which would include, for example, the ability to take action in recruitment and progression).

5.7. Such changes would need to be supported by statutory guidance, setting out that, before taking such action, organisations should ensure they are able to:

- provide clear evidence of need, supported by data on persistent inequality in a specific case—such as recruitment or access to services—and evidence of efforts already made which have not been successful; and
- ensure, in the sphere of recruitment, that any balancing measures include a requirement that all candidates pass a test of competence.

5.8. Organisations would also have to set a reasonable time-limit and review the use of the measures regularly against progress made. This approach should be introduced initially with a requirement for organisations to submit applications to the CEHR for approval, with final permission for exemptions resting with the Secretary of State.

Memorandum by The Fawcett Society

BACKGROUND

1. Fawcett is the UK’s campaign for equality between women and men. Our vision is of a society in which women and men enjoy equality at home, at work and in public life. We make real differences in women’s lives by creating awareness, leading debate and driving change. We work for changes in policies, structures, processes, cultures and practices that lead to real improvements in women’s lives. We are aware that women are not a homogenous group, but have many other aspects to their identities, including their age, ethnicity, sexual orientation and religion or belief, as well as any disability. We strive to campaign for women in all their diversity.

2. The Fawcett Society’s work is relevant to the inquiry’s terms of reference for a number of reasons:

- a. CEHR: Fawcett was appointed to the DTI’s Task Force on the CEHR which developed options for the body including its role, functions, priorities, governance arrangements and structure. Fawcett is a long-standing member of the Equality and Diversity Forum (EDF) which has played a leading role in developing “cross-strand” thinking on discrimination legislation and a single equality body, now the CEHR, since January 2002. Fawcett created and maintained the Equalities Coalition, a broader network of equality and diversity organisations interested in influencing proposals for a single equality act and a single equality body.
- b. Equalities Review: Fawcett was appointed to the expert Stakeholders’ Reference Group of the Equalities Review which scrutinised the terms of reference of the review, as well as its conceptual frameworks, evidence and initial conclusions. Fawcett provided additional expert evidence to the

Review on gender and on the intersection of gender and race via written submissions to consultations. Fawcett was invited to provide further expertise on the issue of “representation” through an expert seminar and an interview.

- c. DLR and Single Equality Bill: In addition to its work with the EDF and the Equalities Coalition, as well as its submissions and responses to the various stages of the Equality Bill’s development and the DLR, Fawcett commissioned a review of legal options for reform to tackle the gender gaps in pay and employment as part of its submission to the DLR call for evidence. The final report and executive summary are appended to this memorandum for your reference (entitled Gender Equality in the 21st century: modernising the legislation).

A. ISSUES TO CONSIDER IN ESTABLISHING THE NEW CEHR¹⁵

- 3. Issues to consider can be grouped into four categories: remit, role, resources and relationships.

Remit

4. In order for the CEHR to meet its aims as outlined in Section 3 of the Equalities Act, especially around dignity, worth and respect for human rights, it will need to ensure it is able to target all of the key areas of society where discrimination, disadvantage and inequalities manifest. This will therefore include an adequate focus on the private sphere.

5. The traditional approach to eliminating inequality is from within the public sphere, meaning that disadvantage and inequalities that take place in private (such as domestic violence and unequal gendered divisions of domestic labour) have historically been overlooked. Yet we know that inequalities experienced in the home affect women’s experiences in the public sphere. For example, additional care and domestic work mean they are less able to compete with men on an equal footing in the workplace. And victims of violence will be affected by health and other issues that will limit their abilities to fully participate in society. In addition, inequalities within the home, where violence is an extreme example, undermine women’s rights, dignity and worth. Most relevantly, it is the combination of inequalities in both the public and private sphere that result in women’s inequality.

6. The new positive duty to promote gender equality is an important step towards harmonising the protection available to women experiencing discrimination on various grounds. Unfortunately it is limited to the public sector which only accounts for a fifth of workers.¹⁶ The private sector experiences very similar problems with respect to gender equality as the public sector, and in some cases faces even greater challenges. Women still make up only 10.35% of FTSE 100 directors for instance, which represents an increase of less than 4% in the last five years.¹⁷ The CEHR’s ability to reduce inequalities in society would be greatly enhanced if its remit included the private sector where the majority of the population works.

Role

7. The CEHR is in some ways being treated as the panacea for the persistent inequalities we face. Its ability to deliver on its promised potential will depend at least in part on its ability to adequately fulfil all of its many functions. The issues or methods it chooses to prioritise will be heavily scrutinised, as will the process by which they are selected. Only by apportioning the correct weight to different areas of its work will it be able to meet or exceed expectation. There are two roles in particular that it will need to prioritise.

8. The CEHR must use its enforcement powers, including formal powers of investigation, and it must use them creatively and with tangible effect. It must also take a strategic approach to enforcement work. This should include reviewing whether existing equalities legislation is adequate for its tasks, and supporting strategic litigation that deepens equality outcomes including by championing individuals’ cases.

- 9. The CEHR will need to properly enforce the existing and any new positive duties.

10. The CEHR will also need to find a way to exercise a campaigning role. This role will include campaigns for culture change across society such as targeting men about their roles at home since we know that legislation on its own is insufficient for eliminating inequalities and discrimination. Selecting which issues and methods for this work will be another challenge as will the credibility risk associated with making unpopular or unsuccessful choices. In particular, it will be essential that the CEHR concentrate its efforts on the elimination of discrimination rather than focusing too heavily on the promotion of awareness of equality.

¹⁵ Fawcett’s response to the Government white paper “Fairness for All” is included as an appendix.

¹⁶ ONS 2005: <http://www.statistics.gov.uk/cci/nugget.asp?id=1292>

¹⁷ Page 6 of The Female FTSE Report 2006: <http://www.som.cranfield.ac.uk/som/research/centres/cdwbl/downloads/FTSE2006full.pdf>

Resources

11. The CEHR will need to be at least as well resourced as the best resourced of the three existing Commissions on equality currently is.

12. The CEHR will in turn need to have enough resources to resource the partners it will rely on to meet its objectives. The CRE in particular is a good example to follow because of its grants function for capacity building work with Race Equality Councils. The fact that the EOC lacks similar resources for instance has led to a crisis in the women's sector at a time when demand for services is particularly high.¹⁸ And women's organisations are a key vehicle for fulfilling the CEHR's aims. They can campaign for women's rights, provide evidence about persistent inequalities and disadvantage especially for "hard to reach" groups, have insights into the real-life experiences of different groups of women that service providers need when formulating their plans, fill gaps in service provision until service providers meet the need, and act as a barometer for how new initiatives are working for individual and groups of women.

Relationships

13. The CEHR will need to find a way to successfully manage relationships with a very wide range of organisations. In particular, it will need to be able to gain from the expertise of organisations that are expert, but which may have particular constraints. Some of the most authoritative women's organisations on violence against women, for example, are severely under-resourced and generally operate at a grassroots level.

14. The CEHR will need to improve on its record of engaging and learning from its stakeholders if it is to remain credible. Almost none of its stakeholders will have the resources to spend days in consultation meetings that do not provide returns on investments or which do not maximise the expertise offered or the time donated.

15. Most obviously, the CEHR will be pressed to find ways of ensuring that stakeholders from different "strands" are equitably engaged. Related to this will be how cross-strand work is managed, what mechanisms are put in place to resolve disputes between different forms of discrimination, and how different stakeholders are "fairly" consulted, especially those with experience or knowledge of multiple discrimination. The gender sector does not currently have a dedicated resource through the committee structure which means other ways to ensure relevant expertise is harnessed will have to be found.

B. THE GOVERNMENT'S ROLE AND RESPONSIBILITIES IN TAKING FORWARD THE EQUALITIES REVIEW RECOMMENDATIONS

16. The Equalities Review makes a strong case for "targeted action on persistent inequalities" (recommendation 5). It further argues that "there is a case for introducing time-limited, proportionate, balancing measures" where the pace of change on equality is found to be unacceptably slow (p 120). The Fawcett Society has found that the only way to significantly increase the numbers of women in parliament is to use positive action measures, such as all-women shortlists.¹⁹ Moreover, Fawcett's research has found that more women in Parliament ensures that women's equality remains a political priority. Fawcett has extensive expertise in this area and can provide the Inquiry with evidence illustrating why all-women shortlists are an effective method of furthering women's equality.

17. There are currently only two ethnic minority women MPs. Only three Black women MPs have ever been elected and there has never been an Asian woman MP. At the current rate of change, it will take more than three centuries before the House of Commons reflects the British population of ethnic minority women.

18. The current rule on all-women shortlists is due to expire in 2015. Fawcett believes that it should be extended for a further fifteen years to allow political parties to make sufficient use of the system. Take-up until now has been patchy and slow as political parties take stock of the impacts and benefits of the system. More time is needed to allow the process to bed down.

19. The Equalities Review names "physical security, including freedom from violence and physical and sexual abuse" as one of its ten dimension of equality. Fawcett's Commission on Women and the Criminal Justice System has found that women victims of violence such as rape and domestic violence are being let down by the system. In particular, more work around prevention, support and ensuring justice for victims is needed. Fawcett strongly believes that the best way to meet the needs of women victims of violence is for the Government to develop a national integrated violence against women strategy. Fawcett's more complete recommendations and supporting evidence can be found in the Commission's annual report. This year's will be published in July.

20. The Government needs to demonstrate its commitment to equality by embedding equality work within all of its work, targeting sufficient resources appropriately and developing appropriate machinery to ensure that:

¹⁸ Please see <http://www.whywomen.org.uk/> for more information.

¹⁹ <http://www.fawcettsociety.org.uk/index.asp?PageID=51>

- a. Equality is prioritised, including within the budgetary process;
- b. Efforts are coordinated so that, for example, new policies on immigration do not undermine progress on human rights;
- c. There is parity of treatment for different “strands” as well as human rights;
- d. Relevant bodies, whether Government departments, commissions, non-departmental public bodies or advisory groups, or statutory agencies, are sufficiently resourced and supported in their work;
- e. There is parity of treatment for all living in the UK rather than the current system of dissimilar rules, opportunities and standards for different categories of people, especially non-citizens; and
- f. Mainstream processes such as the Comprehensive Spending Review and associated PSAs and indicators pay due regard to equality.

C. THE POSSIBLE CONTENTS OF THE DLR AND A SINGLE EQUALITY BILL

21. Fawcett has made a number of recommendations on both the DLR and the Single Equality Bill, some of which have been enclosed as appendixes.

22. Fawcett’s submission to the DLR’s call for evidence discusses:

- a. The need to simplify and harmonise the current framework of gender equality legislation;
- b. How to ensure the Single Equality Act is effectively enforced;
- c. The role that employers should play in tackling gender inequalities; and
- d. How the onus can be shifted from individuals enforcing the law, and how they can be supported in taking cases.

23. Despite thirty years of legislation, there is still a significant gender pay gap of more than 17%. Women working part-time and some groups of ethnic minority women face even larger pay gaps. Fawcett believes that if the gender pay gap is to be significantly narrowed, equal pay audits must be mandatory for all public and private sector employers. Where discrepancies are uncovered an equal pay action plan must be prepared and published.

24. The DLR should provide a definition of discrimination which provides for the possibility of discrimination on multiple grounds and/or a specific mechanism for dealing with multiple discrimination in the Single Equality Act.

25. Both the DLR and the Single Equality Bill should bring the equalities and human rights fields closer together to ensure the relationship between them and their relative institutionalisation within the same or separate bodies is coherent and provides parity of coverage for all living in the UK, whether citizens or not.

Memorandum by the Confederation of British Industry (CBI)

1. The CBI is pleased to respond to the Communities and Local Government Committee inquiry on equality. Employers recognise that the one resource in today’s knowledge economy that gives sustainable competitive advantage is the skills, understanding and experience of people. Accordingly, employers are committed to equal opportunities and to achieving greater equality and diversity in order to make the best use of all talent available. They recognise the business case for diversity and inclusion, and the business community supports positive action in appropriate circumstances.

2. The terms of reference of this inquiry are wide ranging and this CBI response concentrates on the following areas:

- the CBI is supportive of the Commission for Equality and Human Rights and urges a partnership approach
- the CBI welcomes the common sense approach taken by the Equalities Review
- a convincing case for a major reform of Equality legislation has not been made.

THE CBI IS SUPPORTIVE OF THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS AND URGES A PARTNERSHIP APPROACH

3. The CBI supported the Commission for Equality and Human Rights (CEHR) through the consultation and parliamentary process and members are keen to see the new equality body as a fresh start and chance to build trust between the CEHR and the business community. CBI members want the CEHR to be approachable as a source of information and advice on equality issues and to have a business-friendly approach so that it can engage with employers effectively.

4. Our priorities for the CEHR are clear—it is vital that the new CEHR provides high quality advice for business on diversity issues, support when employers inadvertently get things wrong, and applies enforcement action only as a last resort.

5. It is essential for the success of the CEHR that it understands business concerns and issues and can communicate effectively with employers. This means having members on the CEHR board who have the credibility to represent businesses' wider interests and who can act as a voice of business. The CEHR must be able to start from the integrated, “one-stop-shop” approach that has been its selling point. CBI members hope that the CEHR will help the move away from a silo mentality and towards the holistic approach to equality and diversity that is good practice in most private sector companies, particularly larger firms.

THE CBI WELCOMES THE COMMON SENSE APPROACH TAKEN BY THE EQUALITIES REVIEW

6. The CBI welcomed the Equalities Review final report, which identifies the many and complex causes of inequality in our society and has positive recommendations for tackling disadvantage in the areas of education, health and criminal justice.

7. The Review recommends ten steps to achieving greater equality, including improved guidance and advice on equality legislation and greater emphasis on outcomes as opposed to bureaucratic processes. Government should exercise care when taking forward the Review's recommendations, in particular in the following areas:

- an integrated equality duty for the public sector which could provide an effective lever for equality
- active measures which extend the scope for positive action, and
- labour market monitoring which can lead to tick box compliance.

An integrated equality duty for the public sector could provide an effective lever for equality

8. The Equalities Review's final report recommends a new “Integrated Duty” on the public sector, covering all six equality strands. This will mean that all public bodies will have a duty to promote equality across all strands.

9. The individual statutory equality duties currently placed on public sector employers require them to ensure that equality criteria are included in all public procurements. Where a private sector company delivers a public service on behalf of a public authority, the authority remains responsible for meeting the equality duties and must ensure that the external supplier meets any relevant requirements on its behalf. Contractors will, for example, have to consider the way in which they serve the public, employ people or more generally carry out their work, with the different needs of women and men, disabled people and ethnic minorities in mind.

10. A public authority may also include monitoring obligations in its contracts to fulfil its specific duty to gather evidence on its equality performance. The evidence it may require from contractors could include:

- examples or copies of equality or equal opportunities policies
- instructions to staff setting out arrangements for advertisements, recruitment, and extracts from staff handbooks
- copies of grievance and disciplinary procedures
- copies of leaflets for customers, and
- other materials that show the contractor's commitment to equality and equal opportunities.

11. CBI members have expressed concern over how the duties work in practice in procurement. The current equality duties focus on processes, eg audits and recruitment targets. Such processes do not guarantee better equality outcomes and they have costs attached. Moreover, some authorities adopt a “lowest cost” mentality when awarding contracts. This negatively affects the competitiveness of companies that have gone to great lengths to make equality a central part of their bid but lose out on the basis of cost alone. The CBI has urged public authorities to be clear about the relative importance of equality criteria compared to other criteria in procurement.

12. Small and medium enterprises in particular can be placed at a competitive disadvantage. While some larger companies may be able to demonstrate that they fulfil equality contract conditions, it can be very difficult for SMEs, who make up the vast majority of employers in the UK. Indeed, SMEs are unlikely to have the financial resources and specialised HR departments and are already overwhelmed by the plethora of laws and regulations.

13. Responding to these concerns, the Equalities Review recommends a “flexible” integrated duty that allows public authorities to concentrate on the equality issues relevant to them, and to focus on outcomes rather than processes. It would then be up to individual public authorities how they use this and what they focus on, recognising that, for example, a council in Cornwall might wish to focus on different aspects of equality from those identified by a council in Bradford. The Discrimination Law Review (DLR) will consider in detail how to implement this in legislation. One of the key questions will be to whom public bodies are accountable for their performance on equality and how this is implemented.

14. The CBI believes that procurement could be an effective lever for equality if it encouraged public authorities to achieve better outcomes for users. There are issues about making sure public sector procurers have the right skills to take this approach. Some of our work in public services has looked at the possibility of setting up secondments between the private and public sector to improve understanding of the procurement skills needed to deliver on this agenda.

15. The CBI understands that the Government is being encouraged by equality groups to go further than the Equalities Review recommendations and to either extend the public sector equality duties to the private sector, or to introduce legislation prohibiting discrimination in procurement generally. The CBI believes that public sector procurement duties must command confidence and be seen to work effectively before consideration is given to their extension—not least because of the costs and bureaucracy involved.

16. If the process were extended to cover all procurement within the private sector, SMEs would be hit the hardest—both as purchasers and suppliers of goods and services. The paperwork required to support such a system is likely to be complex and voluminous, placing yet another regulatory burden on small firms and encouraging a focus on process rather than on achieving real equality outcomes.

CBI members have concerns about extending positive action

17. The Equalities Review’s report acknowledges that many institutions are increasingly taking positive action by training and encouraging applications from under-represented groups. To speed up progress in achieving equality, the report suggests that there are circumstances where the scope of positive action should be extended.

18. The CBI has previously voiced concerns over a possible extension of positive action as it could lead to considerable burdens. For instance, “affirmative action” in the US is a more extreme form of positive action, which includes numerical goals. This type of approach would lead to businesses having to undertake costly and exhaustive statistical monitoring of their workforce and the labour pools from which they recruit.

19. Whereas such an extreme approach may not be desirable, there may be benefits to extending the scope of positive action within the limits of EU law. CBI members have said before that the line between positive action, which is lawful, and positive discrimination, which is not, is a very fine one. Employers who might want to take positive action to increase the diversity of their workforce are often confused about how to go about doing this without falling foul of the law. While larger employers are typically able to take positive action, confident that they are acting within the law. Many firms, particularly SMEs, need better support and guidance to understand what they can do to encourage under-represented groups to take up job opportunities.

20. The Review proposes that all public and private sector organisations should be able to apply to use active measures. Employers would be able to apply to the CEHR for permission to take active measures to address a specific equality deficiency in their organisation, for a time-limited period, with the request signed off by both the CEHR and possibly the Secretary of State. It was also noted that applying to the CEHR for permission to engage in positive action (as is proposed by the Equalities Review) could result in companies having to provide detailed statistical evidence which would be an excessive burden on business.

21. Likely examples here are specific active measures to recruit more Muslims into the security, on the basis that this is in the public interest in fighting terrorism and is not likely to be achieved quickly enough by other means. The CBI has supported this approach, as there is a clear public interest and the measures are specific, time-limited, voluntary and a last resort.

Labour market monitoring can lead to tick box compliance

22. The Equalities Review recommended that Government should provide employers with data about their local labour market so that employers can aim to ensure their workforce properly reflects that market. Northern Ireland, where statutory monitoring in the private sector on religion has been in place since 1989, has been cited as a successful example helping to bring greater equality. However, the Report stresses that the aim was to help companies to achieve their own equality targets, not to introduce quotas.

23. CBI members have said before that requiring businesses to undertake costly and exhaustive statistical monitoring of their workforces and the labour pools from which they recruit adds little value for either employers or prospective employees. Huge amounts of Government resources would be necessary to establish a comprehensive data framework, and could lead to employers adopting a “tick box” approach without necessarily delivering increased diversity. Such an approach could distract attention from other issues specific to an individual company—for instance, an under-representation of ethnic minority employees in senior posts.

24. Employers would prefer the CEHR to provide integrated and accessible guidance, advice and support for employers on how to comply with the law. Employers also need assistance on how to overcome practical barriers such as the lack of applications from particular groups.

A CONVINCING CASE FOR A MAJOR REFORM OF EQUALITY LAW HAS NOT BEEN MADE

25. The CBI believes there may well be areas where legislation needs “tidying up”, however, a complete overhaul of all regulations and equal opportunities Acts into one new Act and associated regulations risks creating an industry for lawyers and excessive emphasis on bureaucratic compliance. Employers and lawyers will have to comb through every aspect of company policy and practice to make sure that they comply with minor modifications, all in the name of “tidying up”. The CBI believes that this could be a damaging distraction from the real work of raising standards of equality and diversity in ways that add value for employers and employees. In SMEs, the lack of HR specialists will mean that valuable time will be directed away from, say, efforts to attract ethnic minority recruits or to improve the quality of part-time work.

26. The DLR was launched to examine concerns about inconsistencies in current anti-discrimination legislation and to create a clearer and more streamlined framework, which it was thought would produce better outcomes for those who experience disadvantage. If the DLR is to add value for employers and disadvantaged employees, it must take into consideration the practicalities of managing equality and diversity on the ground. Any review of existing legislation must:

- respect the Better Regulation Principles of proportionality, consistency, transparency and targeting to avoid overburden of business
- lead to genuine simplification and avoid unintended, potentially damaging, consequences
- lead to improved support and advice for employers.

27. The CBI strongly believes that in some cases differences between strands are justified and should be retained; the case of disability shows this clearly. Disability differs from other strands of equality legislation and a radical reformulation of the law is not needed to help employers comply with legislation. We understand that the DLR team has not pursued proposals to extend the definition of disability to bring the approach closer to the other equality strands. This is welcome. Extending the definition of disability may “simplify” the legislation—but not in a way that employers would find helpful. Similarly the approach of “reasonable adjustments”—a sensible approach to disability—should not be extended to other strands. There are a number of other areas where members have real concerns.

28. Extending tribunal powers to make wider recommendations is unacceptable. The CBI does not believe that employment tribunals can or should get involved in good practice advice. Extending tribunal powers to allow them to make wider recommendations would have serious, unintended consequences. A tribunal cannot adequately understand the whole of the firm it is dealing with after hearing an individual case, which is likely to have been a one-off problem. It would be inappropriate for judges and tribunal chairman to speculate on policies and practices beyond those matters on which they had heard evidence.

29. Instead of focusing on possible increased employment tribunal powers, the Government should promote alternative forms of dispute resolution procedures and providing better advice and guidance for businesses. Where both parties see the benefits of coming to the table, conciliation can provide a cheaper, quicker and less adversarial method of dispute resolution. The parties are able to consider a range of solutions to the dispute, which are not always available through the tribunal system. And because it is less adversarial than a tribunal, this form of dispute resolution can also be advantageous in helping the employment relationship to continue. The CBI is considering how best to promote dispute resolution in the workplace as part of its response to the DTI review of the statutory regulations on disciplinary and grievance procedures.

30. There is no case for introducing group litigation orders in employment tribunals—the CBI sees no need to give employment tribunals the power to use group litigation orders. A procedure for consolidating tribunal claims already exists—cases based on the same, or a similar, set of facts and the same point of law can be consolidated at the request of one of the parties. This procedure allowing for claims to be consolidated renders the employment tribunal process more efficient and already provides ample opportunity for streamlining the handling of claims.

31. Those who favour the introduction of group litigation orders have argued that cases are currently separated out on “trivial” grounds, but have not provided examples of such grounds. If a ground is significantly important that employment tribunals currently treat cases differently because of it, it is not at all clear why it should be permissible to group such cases together using a group litigation order.

32. Claims of discrimination in goods, facilities and services (GFS) should continue to be judged by the County Courts—shifting responsibility for GFS cases to employment tribunals (or a new strand of “equality tribunal”) would set the standards for protection in GFS as high as in employment. This would be inappropriate. An employer is unlikely to make the same adjustments that would be made for a disabled employee in the case of one customer among thousands, and what is reasonable for an employer may not be a reasonable adjustment for a one-off customer with very particular needs.

33. CBI members accept that it can be difficult to bring a GFS case in the County Court. But addressing this means improving the accessibility and functioning of the County Court system, not making a fundamental shift to employment tribunals. The current division of cases between the courts and tribunals should be maintained; if necessary, County Court judges could be advised by appropriate lay assessors. This would provide additional support and expertise for County Court judges and facilitate the effective operation of the County Court system in GFS cases.

Memorandum by the British Institute of Human Rights

The British Institute of Human Rights (BIHR) is an independent charity with a UK-wide remit. Our focus is on the value of human rights ideas, laws and practice to tackle inequality and promote social justice. We have three main aims: (i) lead the development of a fresh and ambitious vision of human rights that encompasses the full range of internationally recognized rights and is relevant to everyone in the UK, especially the most marginalised people; (ii) build the capacity of other organisations to develop their own human rights practice that helps them deliver more effective services and campaigns; (iii) to influence people with power to make this broader vision of human rights an integral part of their policies and plans. We do a range of policy, research and influencing activities and we develop and deliver practical human rights supports (including information, consultancy and training) for voluntary, community and public sector organisations.

OUR MAIN ACTIVITIES:

- Undertake policy analysis and research.
- Influence and lobby national government and Parliament.
- Organise a range of events that stimulate debate on topical human rights issues.
- Provide a range of information and other resources (including briefings and toolkits).
- Develop and deliver consultancy and training for the voluntary and community and public sectors on both practice and policy.
- Lead and/or collaborate on demonstration and pilot projects across the voluntary and community and public sectors.

ISSUES FACED IN THE ESTABLISHMENT OF THE NEW COMMISSION EQUALITY AND HUMAN RIGHTS

The CEHR is to be a new statutory organisation with a wide-ranging brief. It could be thought of as a “fairness commission” for Britain, which is potentially relevant to everyone in society. The organisation’s website reflects this: “The vision for the CEHR is based on the Government’s view that equality is not a minority concern—it matters to every one of us”. The CEHR’s powers and responsibilities are clearly laid out in the Equality Act and in its transition phase the organisation is now looking at how it will fulfil these. This submission highlights some of the challenges and opportunities the CEHR has in developing its thinking and practice so that it can bring together its three agendas on equality, human rights and good relations and do so in a way that has a tangible impact on the most pressing inequalities, the most flagrant human rights abuses and the most worrying cohesion and community relations issues faced by people in Britain today. To most people in our society, human rights, equalities and good relations can seem abstract or alien concepts. The Commission has an important job to do in bringing them to life and we believe that human rights, as “something for everyone” can help to be an inspiring, unifying and practical force in this initiative.

USING HUMAN RIGHTS AS AN UNDERPINNING FRAMEWORK FOR WORK WITH DIVERSE EQUALITY INTERESTS OR “STRANDS”

A key challenge facing the CEHR is how to work across what have been, until now, separate equality “strands”. Human rights offer a unifying framework that not only provides a solution to this challenge, but also brings a fresh approach that will strengthen work on equality.

A human rights approach to equality is more ambitious and inclusive than the models that have dominated the equality movements to date. In addition to prohibiting discrimination, a human rights vision of equality encompasses fairness of treatment, dignity, respect and access to all the fundamental rights (including economic, social and cultural rights) which enable participation in a democratic society. Placing this vision at the heart of its work will extend the CEHR’s horizons in a number of concrete ways. It will allow the CEHR to:

- tackle the discrimination faced by many people on more than one of the grounds within the CEHR’s remit (for example older, disabled, black women);

- expand its equality work to cover groups not recognised by the 6 “strands”, including asylum seekers and refugees, and carers (see broader protection against discrimination offered by human rights discussed below);
- challenge treatment or public service provision that may be accessed equally, but which does not meet human rights standards (for example degrading or undignified conditions or lack of respect for family life); and
- show how its work is of relevance not only to particular groups of interest or identity, but to everyone with the UK, thus contributing to its work on good relations and positive cultural change.

This approach is supported by the Equality Act which obliges the CEHR to take human rights into account in its work on equality and diversity and good relations, thus recognising that human rights provide an underpinning framework for these other areas of work.²⁰

It is often forgotten that equality is a fundamental human right and that our anti-discrimination laws are a product of the international human rights movement and the prohibition of discrimination it championed and secured from the late 1940s onwards. The Universal Declaration of Human Rights famously prohibits discrimination on any grounds including “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (emphasis added). This broad prohibition, extending far beyond the six equality “strands” we recognise in the UK, is replicated in a range of human rights treaties including the European Convention on Human Rights.

For decades equality campaigners in the UK have focused on securing specific protection against discrimination for an increasing, but far from exhaustive, range of groups. In most cases, these protections have been achieved without reference to the broader human rights agenda.²¹ As a result, equality has come to be perceived by many as a “minority” concern and the broader vision of equality beyond anti-discrimination offered by human rights has been largely dormant in the UK until now. The creation of the CEHR restores the essential connection between equality and human rights in both institutional and practical terms. As the Lord Chancellor has explained, human rights are not “the icing on the top of the Commission’s equality cake”; they are “the key ingredient.”²²

Supporting the use of human rights based approaches “in practice”

Another key challenge the CEHR will face is demonstrating how a human rights approach can be used in practice to tackle inequality. International and emerging national practice suggests that the key lies in developing, with those who will use them, practical guidance and supports on using human rights based approaches.

In essence a human rights based approach is the process by which human rights principles and standards are made a reality in people lives: by using human rights as an explicit reference point in policy and planning, by empowering people to participate in achieving them, by making accountability clear and by prioritising the most marginalised or excluded. The impact of inequality on specific groups is thus a key focus of human rights based approaches; while the addition of extra dimensions including participation and empowerment means that practitioners are supported to do equalities work better.

Though human rights based approaches have been developed and used by a number of international organisations over the past few years (including the United Nations), they are very new to the UK. In this context a small but growing number of organisations and institutions in the public and voluntary sectors are piloting or developing human rights based approaches here, some with the support of BIHR, offering great potential for learning. For example, our new “Human Rights in Healthcare” framework was developed in partnership with the Department of Health and five NHS Trusts. Two of the five participating Trusts piloted human rights based approaches in the context of their work on equality, yielding valuable learning for the CEHR.²³

The CEHR is well-placed to take the lead on promoting and up-scaling this innovative way of working by providing information and support to other organisations interested in using human rights based approaches. This would be an effective way for the CEHR to discharge its statutory duties to encourage compliance by the public sector with human rights standards and to promote good practice in relation to human rights generally.

²⁰ Section 9 (4) Equality Act 2006.

²¹ There are some exceptions. For example, the Scotland Act 1998 adopts a broad approach to the grounds of discrimination that is inspired by human rights instruments. See Schedule 5 “Reserved Matters” L2 “Equal opportunities”.

²² <http://www.dca.gov.uk/speeches/2004/lc120504.htm>.

²³ The framework is available at http://www.bih.org/downloads/Health_framework.pdf.

Increasing the engagement of a wider range of actors in promoting human rights—in particular voluntary and community organisations (VCOs) who support the participation and voice of the most marginalised

To progress the CEHR's remit to support the development of a culture of respect for human rights²⁴ which benefits and is owned by all in society, the engagement of VCOs will be critical. This is particularly the case in ensuring that human rights take on a greater meaning for, and produce practical benefits to, the most disadvantaged and marginalised people and communities. VCOs play a key role for these groups in terms both of service delivery and representing their needs and issues.

Moreover, policies, services and programmes developed by the new CEHR, in particular its first strategic plan, will simply be more effective if they are informed by the very people they are intended to benefit and support.

However, compounding low awareness of human rights, there is currently widespread anxiety across the voluntary and community sector in relation to the role of the new CEHR. Many organisations are frustrated at perceived poor engagement during the transition period. BIHR has played a role in convening voluntary and community organisations to explore the challenges and opportunities presented by both human rights based approaches and their links with wider equality work within the new CEHR.

In November 2006 we convened, together with the National Council for Voluntary Organisations, an NGO Summit on human rights and the voluntary and community sector. A key message emerging from this event was that although there is strong will and an appetite on the part of VCOs to use human rights based approaches and support the work of the CEHR, there is a significant human rights "capacity gap" in the sector with limited current supports to address this.²⁵

THE GOVERNMENT'S ROLE AND RESPONSIBILITIES IN TAKING FORWARD THE RECOMMENDATIONS WITHIN THE EQUALITIES REVIEW

We are encouraged to see the final Equalities Review report go some way to recognizing the connection in theory between human rights and equalities. Specifically the Review acknowledges the relevance and use of international human rights standards/principles as a means of "unpacking capabilities". However, the Review does not go on to look at what this framework would mean in practice for organisations. So we would be looking to the Government, the CEHR and others now to move this on a stage further, by looking at the practical implications of the theoretical approach that is outlined in the Review.

Memorandum by the Disability Rights Commission

1. INTRODUCTION

1.1 The Disability Rights Commission (DRC) was established under the Disability Rights Commission Act 1999. Section 2 of the Act places these main duties on the Commission:

- to work towards the elimination of discrimination against disabled persons;
- to promote the equalisation of opportunities for disabled persons;
- to take such steps as is considered appropriate with a view to encouraging good practice in the treatment of disabled persons; and
- to keep under review the workings of the Disability Discrimination Act (DDA) 1995.

1.2 The DRC has set itself the goal of "a society where all disabled people can participate fully as equal citizens". The DRC operates a range of well regarded information, advice and conciliation services for disabled people, employer and service providers; supports on average 50 new legal cases per year, including at the higher, precedent-setting level of the courts and tribunals; conducts Formal Investigations and reaches binding agreements with companies and other organisations to tackle and prevent discrimination; draws up statutory Codes of Practice and a wide range of guidance and promotional materials on disability equality; conducts publicity campaigns; and provides advice and recommendations to Government other relevant bodies. There are currently fourteen DRC Commissioners of whom ten are disabled, and some 205 staff of whom 35% are disabled. The functions of the DRC will be subsumed into the new Commission for Equality and Human Rights when it comes into operation in October 2007.

1.3 This memorandum is concerned with:

- the severity and special features of disability inequality (Section 2, pages 3–4)
- changes in the law which the DRC recommends should follow the Government's Discrimination Law Review (Section 3, pages 4–6)

²⁴ "[A culture] that fosters basic respect for human rights and creates a climate in which such respect becomes an integral part of our way of life and a reference point for our dealing with public authorities and each other." Joint Committee on Human Rights.

²⁵ The report of this meeting is available at <http://www.bih.org/downloads/NCVO.pdf>

- comments on the role and priorities of the Commission for Equality and Human Rights, including the role of its statutory decision-making Disability Committee (Section 4, pages 6–9)
- taking forward the Government’s Equalities Review (Section 5, pages 9–10)
- the role that the Department for Communities and Local Government can play by way of its own set of responsibilities and across Whitehall (Section 6, pages 10–11).

2. DISABLED PEOPLE AND INEQUALITY

2.1 There are over 10.5 million disabled people in Britain, including people with long-standing limiting illness. They have a very wide range of physical, sensory, mental and emotional conditions. The life chances of many disabled people have improved in recent years but the benefits have not reached people equally. There are new challenges, and some inequalities are growing. Inequalities experienced by disabled people remain severe in comparison with the non-disabled population, and this has a very wide impact—in families, friendships, communities, the economy and wider society.

2.2 Key examples include:

- Of all people in Britain without any formal qualifications, over one-third are disabled.
- Of all people of working age out of work, 40% are disabled .
- There are more disabled adults of working age living in relative poverty now than ten years ago, indicating that disabled people have not shared fully in the benefits of the sustained period of economic growth. Even when working, disabled people tend to earn on average 10% less than non-disabled people.
- Poverty is very frequently passed from one generation to the next. Of all children living in poverty, one in three has at least one disabled parent.
- The overall employment rate among disabled people has grown by about 1% per year, from 43% in 1998 to 50% in 2006 (compared with 80% for non-disabled people). The employment rate of people with mental health problems rose from 15% in 1998 to just 20% in 2005; and for people with learning disabilities stands at some 10%.
- Too many disabled, including older, people are excluded or left on the fringes of society, face inadequate social care provision, and often have unacceptably low expectations and levels of confidence in their ability to participate effectively.
- 1.4 million disabled people require adapted homes, with 329,000 currently living in unsuitable housing. On present prospects, such patterns are set to become still more prominent as Britain’s population continues to age.
- A third of disabled adults say that they don’t feel safe in their locality and almost a quarter say they have difficulty using police services.

2.3 While some aspects of inequality and rights with respect to disabled people are similar in nature to those applying to other disadvantaged groups, there are also major distinctive features. The latter include:

- The critical importance to disabled people of a fully accessible environment whether at work, in education and the health sector, securing goods and services, in transport and in their homes. To a far greater extent than for other groups, disabled people are not able to participate fully as equal citizens unless adjustments are made to the environment and appropriate support is available to them tailored to their particular impairments and circumstances.
- The Disability Discrimination Act differs from other anti-discrimination statutes in that it is not based on equal treatment (as for example between women and men or between black and white people). Instead, the DDA is concerned with establishing rights and obligations with respect to disabled people given the special nature of the disadvantages they face. Further distinctive features of the disability legislation are its provisions on requiring reasonable adjustments and allowing positive discrimination.
- The DDA started to come into force in 1996 with its final provisions only taking effect in December 2006. This contrasts with the Sex Discrimination and Race Relations legislation, which were introduced in the mid 1970’s. There is as a result considerable “unfinished business” to complete before the DDA can have its full impact.
- There are major barriers to participation and well being that are unique to disability, including those faced by people who are totally confined to their own or to care homes; or experiencing major sensory deprivation (for example those who are deaf, blind and without speech, whether singly or in combination), mental illness and severe learning disabilities.
- As well as intentional discrimination against disabled people, inadvertent discrimination can also be common, flowing from lack of awareness in the rest of society. There is a particularly strong wish among many disabled people to be actively involved in decision-making which affects them (summed up in the rallying cry “nothing about us without us”).

3. DISCRIMINATION LAW REVIEW (DLR)

3.1 The DRC welcomes the Government's commitment to a Single Equality Act. This represents an historic opportunity to produce a legal framework which is fairer, comprehensive and still more effective in promoting equality and countering discrimination. The DRC supports the general "levelling up" of equality law to provide equal protection for all those groups currently protected by the law (based on sex, race, disability, age, religion and belief, and sexual orientation).

3.2 Our chief concern is to improve the efficacy of the existing law—not only for disabled people but more generally. We urge in particular that the Government's eventual Green Paper on the DLR should address the following issues.

3.3 *Effective statutory equality duties*

The Disability Equality Duty on public bodies came into effect in December 2006. The overwhelming majority of public bodies have published their required Disability Equality Scheme. The DRC is in touch with the small remainder and will, if necessary, take legal action. It is already clear that the requirements of the Duty and producing a scheme has had significant beneficial effects in terms of integrating disability considerations into planning, policy and delivery as well as involving disabled people in the drawing up of the schemes.

3.4 The DRC is in favour of the Duty being extended beyond the current grounds of disability, gender and race to the other "strands", and of a requirement covering all the grounds that public authorities should set clear equality objectives with action plans designed to secure them.

3.5 The DRC would of course welcome changes that made it easier for public bodies to apply the Duty in full including effective equality schemes. However the DRC, as part of its wider common position on the future of the Duty with the Equal Opportunities Commission and Commission for Race Equality, would oppose any substantive weakening of the current legislation. In particular the requirement to produce a Scheme is valuable to the organisation in question and makes it more certain that real advances will be made in tackling disability inequality. This is for example shown in a recent study made by the DRC of a number of Whitehall departments. We would hope the CEHR will take a similar view.

3.6 Other particular changes that DRC would recommend are empowering inspectorates and regulators, especially new Public Service Inspectorates, to monitor performance against the Duty in their areas of responsibility, as well as clear direction in legislation on how public bodies should embed equality considerations into their procurement practices.

3.7 *Improved access to justice and sanctions*

There is evidence of extensive failure to observe the provisions of existing anti-discrimination legislation, particularly in relation to goods and services. A major problem is that disabled people and others simply find it too expensive and difficult to access legal redress in relation to services (such anti-discrimination cases are heard in the County Courts (Sheriff Courts in Scotland)).

3.8 The DRC supports the recommendation of the Parliamentary Scrutiny Committee on the DDA 2005 (which was also supported by leading disability organisations) that cases involving discrimination should be heard in the employment or similar new set of tribunals. No fees are payable in employment tribunal cases and the processes are more straightforward for all concerned

3.9 Compensation levels in the courts are relatively low and this too provides a disincentive to individuals pursuing their rights and to organisations observing their statutory obligations (who instead often seek confidential settlements of claims). In most cases, the compensation payment is around £1000. It cannot be right that it is frequently cheaper to flout rather than observe the law.

3.10 The DRC favours a higher and broader range of potential sanctions. For example, the Licensing Act 2003 should be amended to make it possible for pub licenses to be conditional on good access arrangements for disabled people. We believe that the tribunals and courts should be given the power to recommend to the defendant specific changes to their practices to help avert future cases.

3.11 *Strengthening the definition of disability and coverage of the DDA*

There are some adjustments to the definition of disability in the DDA as well as the scope of the legislation that would be particularly valuable:

- Clarification that it is unlawful to discriminate against people on the grounds that they are perceived to be disabled or (as in the case of carers or companions) associated with disability. The DRC believes that the EU Framework Directive already requires this to be reflected in domestic legislation.

- Protection from discrimination for anyone who has or who has had an impairment without the current requirement that the effects of the impairment must be substantial or long term. This would simplify legal proceedings and avoid any invidious differentiation between significantly and other disabled people.
- Extension of anti-discrimination provisions to all air and maritime services. Disabled people who are members of the armed forces should also have rights against unfair discrimination in employment without putting at risk the combat effectiveness of the forces. These areas are already covered in the other anti-discrimination statutes.
- Prohibiting discrimination against volunteers (volunteering is of major importance to disabled people as a means of involvement and as a step towards employment.)

3.12 The DRC understands that the Government may not now be able to publish its Green Paper on the DLR as quickly as originally planned. The DRC agrees that it will be better to get the terms of the Paper right rather than to rush it. The DRC also believes there is a case for Parliamentary Scrutiny of the proposed legislation in draft before a Bill is formally introduced.

4. COMMISSION FOR EQUALITY AND HUMAN RIGHTS (CEHR)

4.1 *The Disability Guarantee*

The DRC, while recognising the major potential of the CEHR, has had significant concerns whether the new body will be able to sustain the same focus and priority concerning disability as is the case under present arrangements. The risk is that, given the very wide ranging remit of the CEHR, the distinctive features of disability inequality and how to address them will be overlooked.

4.2 The DRC was therefore pleased when the Government introduced into the Equalities Act certain guarantees concerning disability within the CEHR. One member of the CEHR Board is specifically designated as the Disability Commissioner; this Commissioner will chair the CEHR's statutory decision-making Disability Committee; a majority of those appointed to the Committee must be disabled people; and the Committee must have available to it sufficient resources to carry out its tasks. The task now is to ensure these provisions are effective in practice.

4.3 *CEHR priorities*

The DRC fully recognises that the CEHR will not realise its full potential unless it takes forward various programmes and projects on an integrated basis across the various "equality strands" (gender, race, sexual orientation, disability, age, religion and belief). The DRC hopes that its own experience will be helpful here, having itself operated programmes concerned with key sectors of society (education, employment, health and social care, the physical environment and transport), as well as having been closely engaged in a range of issues that are also highly relevant to other strands and groups (including human rights, caring and independent living). The DRC also hopes the CEHR will drive ahead on successful implementation of the statutory equality duties on public bodies with respect to disability, gender and race.

4.4 The DRC in particular hopes that the CEHR, working in partnership with the full range of other organisations with a role to play, will help to take forward the recommendations set out in the Disability Rights Commission's Disability Agenda, published February 2007 [www.disabilityagenda.org].

4.5 Following extensive consultations with disabled people and their organisations as well as other stakeholders, the Disability Agenda identifies ten areas of public policy that are of special importance to disability equality and indeed, where the targets set for these policy areas are unlikely to be met unless the needs of disabled people are fully reflected in their delivery.

4.6 The policy areas are:

- Promoting a culture of equality and human rights.
- Bringing an end to child poverty.
- Increasing life chances through learning and skills.
- Participation, independent living and employment.
- Ending poverty and widening employment opportunity.
- Increasing democratic participation and active citizenship.
- Developing a social care system fit for the future.
- Tackling health inequalities.
- Meeting the future housing challenges in England and Wales, and in Scotland.
- Building stronger, safer communities.
- An effective evidence base.

4.7 The Agenda also recommends a wide ranging set of specific actions within each area.

4.8 The DRC furthermore believes the CEHR should sustain the high standards set by the DRC's award-winning Helpline and other information and advice services. The CEHR should use its legal powers to secure strategic gains in terms of ending systematic and persistent types of discrimination, to clarify the law and to secure justice for severely disadvantaged individuals who lack their own financial or other means of gaining redress. Human rights and the associated legislation are of particular importance for disabled people, and should also play major part across the full range of the CEHR's activities. The new Commission should have organisational and other arrangements that will enable it to operate successfully in the devolved contexts of Scotland and Wales. It should of course aim to be an exemplary employer, and should ensure that the people it seeks to serve are well represented among its staff.

4.9 *Ensuring an effective Disability Committee*

The DRC believes that, in addition to its focus on generic issues and those affecting a number of the strands taken together, the CEHR must retain a specific focus on disability if it is to carry out its remit in full. In particular the Disability Committee, working within the CEHR's overall remit and strategies, should be enabled to carry out effectively the functions that are required to be delegated to it under the Equalities Act in particular with respect to access to goods, services and facilities as well as education and transport. The Committee should help to design and oversee a substantial programme of disability-specific work that cannot be taken forward via the CEHR's other crosscutting activities. In addition to the functions delegated to the Committee under statute, this programme should cover among other things a major push on independent living, "right to life" issues as they affect disabled people, and continuation of a range of projects and actions inherited from the DRC including publicity campaigns, follow-up to Formal Investigations and ongoing legal cases, as well as legally binding agreements reached between the DRC and a range of companies and other organisations.

4.10 As required under the legislation, the Disability Committee should be enabled to actively influence the planning and methods of delivery of CEHR's other main activities. As provided for in the legislation, the Disability Committee should comment and advise on the full range of CEHR's activities which will have a bearing on disabled people. To fulfil its statutory role, the Committee will need not only adequate financial support but also expert staff support available to it directly and spread across the whole of the new organisation.

4.11 *Finances and scrutiny*

The DRC believes that the budgets allocated to the CEHR for its setting-up phase (£24 million) and annually thereafter (£70 million) may not be sufficient. Greater clarity on the CEHR's expenditure and financial plans would assist assessing the adequacy of these budgets.

4.12 The DRC very much wants the CEHR to succeed, and will be working to this end in the coming months. Given the importance and magnitude of the CEHR's tasks, its scope for providing leadership and the resources available to it, the DRC hopes that the Committee will continue to take a keen interest in the new body and its performance.

5. THE EQUALITIES REVIEW

5.1 The Equalities Review final report "Fairness and Freedom" was broadly welcomed by the Disability Rights Commission and represented a significant improvement on the interim report published in 2006.

5.2 It is welcome that the extensive disadvantages faced by disabled people and the slow progress being made on tackling them are both given high prominence in the report (especially in Chapter 2). It is helpful too that the report urges prioritisation and action in relation to some of the most persistent inequalities in employment, education, health and criminal justice, as well as targeting of public policy and other action in these areas at critical stages in the individuals' lives. These findings and proposals correspond with some of the core aims of DRC's Disability Agenda (paragraph 4.6 above).

5.3 The DRC welcomes further features of the Equalities Review report:

- Its emphasis on the importance of data collection at all levels of Government (and its agents) concerning performance on equality.
- The importance of full participation and involvement by the groups in question in public life and decision making.
- Drawing on "capability theory" as a means of assessing progress on equalities between different groups based on a wider and more diverse range of indicators than are usually used.

5.4 The DRC does however have some concerns about potential implications of the Review's recommendations in the context of the legislative change. The DRC's views on the Discrimination Law Review are set out in Section 3 of this Memorandum.

5.5 Despite its wide ranging coverage and recommendations, the final review report still appears to the DRC to a significant extent to be “work in progress”. The DRC hopes that, insofar as the CEHR takes forward the Review’s approach and findings as a basis for its own strategy, it does so in close consultation with the various strands and groups that were the subject of the Review.

6. DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT (DCLG)

6.1 Subject to any machinery of government changes in the coming months, DCLG has a critical role, as sponsor department of the CEHR and lead department across Whitehall on equalities more generally, in securing progress on disability and other areas of equality. The DRC hopes that DCLG will continue to work closely with the Department for Work and Pensions as the lead Department on disability as a whole and in particular with the Office for Disability Issues within DWP. On a wider front, the Department working with the CEHR should play a major part in ensuring that the next set of Departmental and inter-Departmental Public Service Agreements (PSAs) all include an effective equalities dimension, with a particular emphasis on tackling disability and other inequalities in such crucial areas as education, health and criminal justice.

6.2 Additionally, DCLG can make a major contribution through its other responsibilities and functions in particular in the areas of housing, planning, local government and promotion of thriving cities and communities. The Department has produced an encouraging disability equality scheme, covering its outward-facing remit and as a major employer, and the DRC hopes the Parliamentary Committee will keep DCLG’s delivery of this scheme under scrutiny.

Memorandum by the British Humanist Association

A. THE BRITISH HUMANIST ASSOCIATION (BHA)

The BHA represents the interests of the large and growing population of ethically concerned but non-religious people living in the UK. It exists to support and represent those who seek to live good lives without religious or superstitious beliefs and to educate about Humanism. Humanism is a non-religious worldview which holds that we should make sense of the world using reason, experience and shared human values and without reference to doctrine, dogma, or any supernatural forces.

The BHA has a history of deep commitment to human rights, equality, good relations and social cohesion, and an end to irrelevant discrimination. We advocate an open and inclusive society: one “based on the recognition that people have divergent views and interests and that nobody is in possession of the ultimate truth”.²⁶ We are a member of the Equality and Diversity Forum, and our chief executive was a member of the DTI’s CEHR steering group and the reference group for the Equalities and Discrimination Law Reviews.

B. THE EQUALITY STRAND OF “RELIGION OR BELIEF”

i. *Introduction*

The equality strand of “religion or belief” is a relatively new one—all UK legislation relevant to the strand has been enacted within the last ten years. In 1998 the Human Rights Act prohibited discrimination by public authorities on the grounds of religious or non-religious belief, in 2003 the Employment Equality (Religion or Belief) Regulations prohibited discrimination in employment and vocational training, in 2006 part two of the Equality Act prohibited discrimination in the provision of goods, facilities and services. In all these cases, the rights of individuals to equal treatment were curtailed in seriously concerning ways that we hope the committee will address (we list these in annex two and in section D below, we recommend that the Discrimination Law Review should remove these exemptions under any future Act), but the principle behind the legislation and most of the content has been very much welcomed by the BHA. This is not solely because of our general commitment to equality and human rights expressed above, but also because these protections explicitly apply to humanists and the non-religious.

ii. *The non-religious within the “religion or belief” strand*

Both the DfES’ and the DCLG’s guidance on part two of the Equality Act make it clear that both those with non-religious beliefs such as Humanism and the non-religious generally are protected. The development of case law under the ECHR had already established that a humanist’s Humanism qualified as a “belief” within the meaning of the term (see annex one for relevant case law). Indeed, this was taken for granted in one UK case²⁷ and in the 2005 decision of the Registrar General of Scotland that humanist weddings could no longer legally be held to be invalid.

²⁶ George Soros: appendix to *The Bubble of American Supremacy* (Weidenfeld & Nicolson, 2004).

²⁷ *re Crawley Green Road Cemetery*, Luton, St Alban’s Consistory Court: December 2000.

Where inequalities for humanists and the non-religious persist, it is either because the legal equivalence of religious and non-religious beliefs has not been properly accepted by public authorities, including government, or because exemptions have been granted to certain bodies from equalities law which leave humanists and the non-religious unprotected. We recommend investigation of both these problems to the Committee.

iii. *Government's faith-based framework*

Even though the legal equivalence of religious and non-religious beliefs is established, the Government and its agencies continue to operate on the basis of "faith" too often and we are frequently disappointed by the use of the word "faith" in preference to the more inclusive "religion or belief" by Government (including for example, in the very exchange of letters between the Prime Minister and Ruth Kelly MP which established the DCLG):

With legislation now in place that makes the inclusive nature of this equality strand clear, we believe that the Government, and the DCLG in particular, should be encouraging the use of the new terminology, or at least making it clear that, where departments, agencies, working groups etc have responsibility for work engaging religions, they also have responsibility for non-religious beliefs.

In section C below we expand on how the CEHR can adopt this approach.

iv. *Exclusion in practice*

Our objections to the exclusion of the non-religious from Government's work around the strand is not merely principled or abstract—this exclusion effects real disadvantage. Full details of these can be found in the BHA's first and second submissions to the Equalities Review, references for which have been sent to the Committee.

C. WHAT THE CEHR NEEDS TO ADDRESS

i. *The need for CEHR to recruit expertise in "religion or belief" as relevant to the non-religious*

The CEHR will incorporate ongoing activities currently being carried out by the three existing equality commissions, and will inevitably employ a significant number of staff from the existing commissions. In these circumstances, it will be particularly important to ensure that, by a process of recruitment of appropriate additional staff with expertise relating to the "new strands", including the religion or belief equality strand, and providing training for existing staff, there is sufficient expertise relating to religion or belief issues within the staff complement. We are very aware that, even amongst discrimination lawyers (including those who specialise in "religious discrimination") and other equality professionals, there is very little awareness or understanding of equality issues as they affect people with non-religious beliefs, so a particular effort needs to be made to recruit people with this expertise and to ensure that staff training programmes are properly informed about discrimination against and exclusion of the non-religious. Like others, we anticipate that the CEHR will, wherever appropriate, take a themed approach to its equality and human rights work, rather than focussing on single strands, but this will still require the appropriate expertise within the various project teams that are established.

ii. *Relevance of human rights as underpinning the religion or belief strand*

We have been pleased to see that the CEHR team seems committed to the idea of human rights not as a separate strand but underpinning and integral to all its equality work. This is particularly important in relation to the religion or belief strand, where the application of human rights principles and law seems the most effective way of addressing issues about the absolute right to freedom of belief (including the rights of the non-religious and the right to change ones belief), and the right to manifest ones belief, which is qualified by the need to protect the rights of others. We hope that the CEHR will lead a public debate to establish as broad a consensus as possible about these issues, and one that can be used as the basis for CEHR's, and hopefully also the government's, approach when particular issues arise—as they undoubtedly will. It is essential that the non-religious are included in such a debate.

iii. *Concerns over appointment of commissioners and expertise across the religion or belief strand*

It is also essential that the CEHR Commissioners have appropriate knowledge and experience of all the equality strands and human rights; indeed this requirement is laid down in the Equality Act.²⁸ We are therefore particularly concerned that the appointment process for Commissioners has not only ignored the obvious need to ensure expertise relating to equality issues affecting the non-religious as well as the religious,

²⁸ Schedule 1, Part 1, Clause 2 of the Equality Act requires the Secretary of State to "have regard to the desirability of the Commissioners together having experience and knowledge relating to the relevant matters" and identifies discrimination on grounds of religion or belief amongst the "equality strands".

but has itself discriminated against the non-religious. The BHA has made a formal complaint to the DCLG about this and our letter is appended as annex three to this memorandum. As a result of this unsatisfactory process, the Commissioners together will have expertise on all six equality strands, but for religion or belief, will only have specific expertise relating to religion. Since this first group of Commissioners will determine the structure and organisation as well as the early priorities of the CEHR, this “oversight” will inevitably have a profound impact on the work of the CEHR for many years to come. It is worth noting that in the early stages of work towards the creation of the CEHR, when this work was led by the DTI, it was fully acknowledged that the process required expertise in issues relating to both religious and non-religious beliefs. Thus, when the DTI established the CEHR Task Force, religious and non-religious beliefs were included as a matter of course. When the much smaller CEHR Transition Steering Group was established the decision was taken to include two individuals for the religion or belief strand, despite the fact that there was only one person for each of the other equality strands and for human rights. This crucial understanding seems to have been lost when responsibility for the CEHR passed from the DTI to the DCLG and new Ministers, which was followed by an almost total change of staff in the CEHR Transition Team. We were particularly concerned to be told that, in a discussion about whether expertise relating to non-religious beliefs needed to be included in the Commission, the CEHR Chair had commented that this wasn’t an issue as most Commissioners are non-religious. If anyone had suggested that expertise relating to any of the other strands, age or gender for example, was not required because some of the Commissioners were older people, or women, this would instantly have been recognised as completely unacceptable. It is no more acceptable for non-religious belief.

iv. Need to engage stakeholders across the religion or belief strand

The Religion and Belief Consultative Group, co-founded as a reference group by the two people representing the religion or belief strand on the CEHR Steering Group²⁹, but now with a wider remit covering a variety of issues important to religion or belief organisations, is the only national organisation dealing with equality and related issues that we know of that includes both religious and non-religious belief organisations. The Group is hoping to develop a relationship with the CEHR, and we feel this would be of considerable benefit.

v. Regional and local work

The CEHR will need to bear the same considerations in mind in its work at regional and local level, and in its grant-making capacity. Although it is not yet clear how the CEHR will work in Scotland, Wales and the English regions, we are aware of equality bodies in these regions and nations that are gearing up with a view to working with the CEHR. These equality bodies include all six equality strands, but research commissioned by the CEHR Transition Team has confirmed that they all include religious and/or interfaith organisations to cover the religion part of the religion or belief strand but, (with the exception of Scotland where the situation has recently changed) currently exclude the non-religious. It is worth noting that these equality bodies also relate to regional government, and the non-religious are excluded here as well. The CEHR will need to ensure that its engagement with stakeholders at regional and local level includes the non-religious alongside the religious.

vi. Good relations and religion or belief

The CEHR will not only work on equality and human rights issues, but also on good relations, where the Equality Act requires it to “have particular regard to the importance of exercising the powers conferred by this Part in relation to groups defined by reference to race, religion or belief”. The CRE focused its good relations work on “race and faith” and the government, including the DCLG, has also focused its attention on relations between faiths, for example by support for the Inter Faith Network, with a complete disregard for the fact that the vast majority of such work excludes the non-religious. Our experience of working with Muslim groups and individuals, for example, has demonstrated the importance of dialogue between the religious and the non-religious, particularly in light of what seem to be growing divisions between many of the faiths on one side of the debate, and the non-religious (now commonly referred to by bishops and others as “aggressive secularists”) on the other. It is vital that the CEHR works across the whole of the religion or belief strand, and indeed other strands, in its good relations work.

²⁹ Mohammed Aziz, and our own Chief Executive, Hanne Stinson.

D. WHAT THE DLR NEEDS TO ADDRESS

i. *Single Equalities Act*

We would welcome the introduction of a single and integrated Equality Act. Such an Act will not only make all law as it relates to discrimination and equality readily accessible to service providers and employers, it will also represent a single charter for equal treatment which is better understood by people and around which a new culture of equality can cohere. It should include one overarching definition of equality and, except where there are genuine reasons for maintaining differences between grounds, we are in favour of harmonising protection “upwards” with no regression of the protection enjoyed by the individual citizen on any of the current grounds.

ii. *Positive duty*

Such a harmonising upwards would obviously include positive duties but here we add a proviso in the area of religion or belief. Although we believe that a duty not to discriminate is essential and that positive duties to promote equality are an important tool, we have concerns about how a duty to promote equality of opportunity would work for religion or belief in practice. Benchmarks for public authorities such as are used for race or gender, derived from the census, do not exist in any meaningful sense for religion or belief, not least because wildly differing answers will be given to the question of an individual’s religion depending on how it is asked,³⁰ and we do not see religion or belief as a characteristic that can be meaningfully treated as analogous to race or gender in this regard.

The mutability of religion or belief contrasts with the immutability of gender and race. In addition, religions and beliefs are almost impossible to categorise. Will we use “Christian” as our category of choice, or “Protestant”, “Methodist” etc (there are thousands of Christian denominations in the UK), “Muslim” or “Sufi”, “Shia” etc?

iii. *“Religion or belief” and employment*

We believe the fact that there is no provision in the Employment Equality (Religion or Belief) Regulations 2003 allowing NGOs to initiate proceedings on behalf of a complainant is inconsistent with the directive.

The test in the Employment Equality (Religion or Belief) Regulations 2003 to justify genuine occupational requirement is less rigorous than in the Directive and legislation on race and other grounds. We believe this is a serious infringement of the rights of people not to be discriminated against on the grounds of their religion or belief, particularly in view of the fact that large religious organisations are the most likely discriminators. Already there is DTI funded guidance from the Christian organisation Faithworks which advises organisations how even their coffee shop manager post can be reserved for a Christian. In our view, this is not what was intended by the law.³¹

We believe that the fact that the law prohibiting discrimination on grounds of religion or belief in Great Britain is subject to ss. 58—60 School Standards and Framework Act 1998³² is a serious infringement of the rights of people not to be discriminated against on the grounds of their religion or belief and is arguably inconsistent with the EU Employment Directive. We note that it is also not very good for schools—the most re-advertised head teacher posts are those with a religious requirement attached.

iv. *Exemptions from equality law*

There are currently too many exemptions from laws prohibiting discrimination on the grounds of religion or belief (listed in annex two) and we recommend that the DLR remove these.

We urge that the DLR look at the possibility of developing the idea of a “genuine service requirement”³³ in this area, rather than exempting whole classes of organisation from what should be universally applied principles of equality. A “genuine service requirement” could provide a test that depended on the nature of what was being done rather than the identity or beliefs espoused by the organisation providing it or the individual doing it, and so minimise the risk that too-wide an exception was being created.

We urge that the DLR looks at clarifying the law as it relates to public authorities, and specifically counter the decision of the courts in the Leonard Cheshire case,³⁴ which has undermined the intentions of parliament.

³⁰ Compare the 72% of “Christians” in the 2001 census with the 69% who professed no religion or never attended religious services in the recent British Social Attitudes survey.

³¹ See, eg Opinion no. 4–2005 of the EU Network of Independent Experts on Fundamental Rights: “Churches or religious organisations may not require from an individual working for them, but whose occupation presents no relationship to his or her religion or belief (for instance, a doctor in a catholic hospital), that he or she shares that religion or belief.”

³² <http://www.opsi.gov.uk/acts/acts1998/80031--m.htm#58>

³³ Perhaps on the Northern Irish model.

³⁴ In which the definition of public authority was narrowed in a way that is arguably inconsistent with the wishes of Parliament.

v. *The Human Rights Act and resolution of conflicts of rights*

We are very keen to see any Single Equalities Act premised on universal human rights, and the concept of equal treatment as a human right.

We urge the ratification of protocol 12 as a means of extending UK law on equality, and hope that the review will consider the benefits of ratification.

It is widely agreed that there are tensions between “religion and belief” and some other equality strands. There are also tensions within the strand, especially where organisations, charities, or schools connected with a particular religion or belief, operate to exclude or disadvantage individuals of different religions or beliefs. In both cases, these tensions or conflicting rights arise when organised religions, organisations with a religious ethos and/or religious individuals claim a right to discriminate against others on the basis of religious doctrine and/or the need to ensure that their followers are not offended. Art. 9.2 of the ECHR³⁵ is often quoted to justify this.

We see the promotion of non-discrimination as being an integral feature of our modern democracy and we note that religious freedom in the *forum externum*³⁶ of art. 9.2 of the ECHR can be limited to protect “the rights and freedoms of others”. We would recommend to the review team that the application of this principle may provide resolution in a number of cases where rights across strands, or indeed rights within the religion or belief strand, can appear to conflict. In particular we draw the review team’s attention to recent comments by Lord Nicholls:

But under article 9 there is a difference between freedom to hold a belief and freedom to express or “manifest” a belief. The former right, freedom of belief, is absolute. The latter right, freedom to manifest belief, is qualified. This is to be expected, because the way a belief is expressed in practice may impact on others . . . The manner in which children should be brought up is another subject on which religious teachings are not silent. So in a pluralist society a balance has to be held between freedom to practise one’s own beliefs and the interests of others affected by those practices.³⁷

We believe that limitation of the right to put into practice a belief that violates the right to non-discrimination of an individual on a protected ground will often be found to be legitimate in the context of article 9.2.

We would also recommend that, in drafting law to further equality and where rights may appear to conflict, some attention could be paid to where the historic disadvantage lies in any given conflict. Such an approach, we believe, could also be of potential value in resolving such conflicts.

Memorandum from the Mayor of London

1. INTRODUCTION

1.1 The Mayor of London welcomes this opportunity to provide evidence to the Communities and Local Government Committee. This submission briefly covers the three areas in the Committee’s terms of reference for its inquiry on Equality and includes specific information on the Mayor’s policy on procurement.

1.2 London is one of the most diverse cities in the world. Robust equalities legislation and adequate enforcement mechanisms are essential to ensure that all Londoners are able to contribute to London’s economic and social progress and share equally in London’s prosperity.

- 40% of London’s total population is from an ethnic minority group, with 29% from a black or Asian minority ethnic group.
- London contains 50 communities of more than 10,000 people born abroad. London’s population encompasses 300 hundred languages and 14 faiths.
- The average gender pay gap in London is wider than in the rest of Britain, at 23%.
- 28% of Londoners live in income poverty after housing costs are taken into account, with 39% of all London children and 51% of black children living in income poverty.

³⁵ “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

³⁶ “public space”.

³⁷ Lord Nicholls at paragraphs 16–17 in *R v Secretary of State for Education ex parte Williamson* [2005] UKHL 15.

- Disabled Londoners comprise 16% of London’s working age population, around 800,000 people, with 5% of the working age disabled in full-time education relative to 11% of non-disabled people and 50% of the disabled working age population economically active compared to 79% of non-disabled Londoners.
- London is home to the largest lesbian and gay population in Europe.
- Nearly 1.2 million people are aged 60 or over.
- Ten and a half per cent of London’s population are adult carers and 58% of them women.

1.3 Under the GLA Act, the Greater London Authority (GLA) has a duty to have “due regard to the principle that there should be equality of opportunity for all people” and regularly assess how effective its arrangements are in “promoting equality of opportunity” and the authority has responsibilities to meet the requirements of the full range of anti-discrimination and equality legislation. These requirements have informed the proactive stance towards the development of effective policies on challenging discrimination and inequality.

1.4 The Mayor believes that the opportunity presented by the Discrimination Law Review must be seized with a view to initiating a radical improvement of current equality and anti-discrimination legislation in Britain. The persistence of inequality and discrimination requires a detailed examination and understanding of the fundamental characteristics and weaknesses of existing legislation. The aim must be agreement on how these weaknesses can be addressed and how the law must concretely be reformed.

1.5 The Mayor believes that the Equalities Review was fundamentally flawed in its analytical approach and does not present a way of moving forward. He also has significant concerns that the Commission for Equality and Human Rights (CEHR) is not a good model for statutory equality machinery.

2. TERM OF REFERENCE 1: “TO CONSIDER ISSUES FACED IN THE ESTABLISHMENT OF THE NEW COMMISSION FOR EQUALITY AND HUMAN RIGHTS (CEHR)”

2.1 The Mayor supported amendments to the proposed structure for the CEHR when the Equality Bill was being debated in parliament.

2.2 Briefings from the Mayor circulated to MPs during the passage of the Equality Bill argued that: “Proposals for the CEHR must be amended to deliver a statutory body that is representative, inclusive and able to meet the equality challenges of the twenty-first century. To this end, the Bill should be amended to make it a statutory requirement that no less than one half of the Commissioners are women and no less than one quarter of the Commissioners are from a black or other ethnic minority background. Overall, no less than one half of the Commissioners should have personal or direct experience of one or more of the causes of discrimination or prejudice referred to in Clause 10 of the Bill—thereby covering all six strands.” And said that: “the lack of a representative structure will force different equalities strands to compete for profile and resources within a single body. All equalities strands should be treated consistently within the CEHR, with comparable and adequate governance and funding arrangements. Currently there are major inconsistencies. To correct this, there should be a Committee and Commissioner for each equality strand, mirroring the proposed arrangements for disability.”

2.3 The Mayor remains of the view that these weaknesses will be problematic for the functioning of the CEHR and is sympathetic to the gist of the questions on these matters raised by Committee members to the Chair of the CEHR at its session on 24 April. The Mayor believes these weaknesses should be addressed, with the appropriate legislative and non-legislative steps taken at the earliest opportunity.

2.4 The Mayor is therefore not in agreement with views expressed by the CEHR Chair in evidence to this Committee (24 April 2007) suggesting that what is called “strand” focus and expertise would mean it would “be biased in favour of the what I privately call the classic strands” with “the new mandate—age, sexual orientation, religion and belief would . . . be regarded as second class categories”. There is no evidence at all for this and to suggest grounds for mistrust between different groups facing discrimination is entirely inappropriate. Similarly the comment that “we do have to make a distinction between the interests of groups of people and the interests of organisations who are sometimes their advocates” and that there is a need to be careful not to respond “to the needs of the institutions that purport to speak on their behalf”, is an unfortunate slight on the work of representative and campaigning organisations. The Mayor believes that it is up to communities themselves to determine the organisations that represent them and that progress in challenging and overturning inequality is due to the ways in which communities, and their advocate organisation” have often demanded change.

2.5. The Mayor’s argument was and remains that if a single statutory equality body was to be introduced it was essential that it be supported by measures and structures to allow for representation, accountability and transparency in its work programme and budget allocation. Such provisions are essential requirements precisely to ensure that its work is even handed between different areas and needs, involves those with specific experience and expertise, and meets the needs and concerns of the communities who will be looking to the CEHR to uphold their rights. Without such provision how exactly will the Commission ensure that its work is appropriate to the priority issues of inequality and discrimination faced by the range of communities which fall under its brief?

2.6 Similarly there will be a need for expertise on both a cross strand and strand and area specific basis. In his evidence the CEHR Chair said that, “Part of the £24 million that was mentioned, a very large part, is going to be devoted to constructing a new body of staff, many of whom will be completely new to our business, and also training everybody—that is to say, including the staff who come from existing commissions . . . All our staff have to be able to work pretty much across the range of mandates . . . The expectation is that all our staff, whether they are in research, on help lines, dealing with strategic and policy wants and so forth, will work across the integrated mandate. They will not come to the CEHR simply to do what they did before or to fit in to a convenient silo.” Staff in all three existing statutory commissions represent a bank of experience, expertise and knowledge and this tone does not strike one as wise.

2.7 It is unclear that it is realistic or desirable for all staff to be able to work across the entire scope of the CEHR’s mandate. In the case of legal officers, for example, this would require expertise in six complex areas of anti-discrimination law, each of which is multifaceted, in addition to human rights law. Is it realistic to expect that officers will be expert in all the different areas of law and all its applications? It is not difficult to see how this could lead to a dilution in expertise.

2.8 A further issue is that of access to justice and legal representation for individuals facing discrimination. The CEHR Chair told the Committee that, “We will take a very tiny minority of the cases that enter tribunals” giving a notional figure of ten cases (implicitly a year). There is a huge demand for legal assistance for individuals to challenge discrimination through the law. The Chair said that he would expect those cases not in this 10 “will be supported by trades unions, by individuals themselves, obviously not by legal aid but by other means and that our work will be concentrated on strategic cases.” Given the very high numbers of those seeking support to challenge discrimination this actually means that many people will be denied the necessary legal assistance.³⁸ There are also concerns that the government’s planned introduction of a national fixed fee for all legal aid work will lead to the problem of lack of access to justice, with complex discrimination potentially being hit particularly badly.³⁹

2.9 The issue of improving enforcement of the law and access to justice is therefore one relating to the establishment of the CEHR. Steps that could be taken include:

- for government to reconsider its planned reforms to legal aid, involving fixed fees and competitive tendering;
- allowing for all discrimination cases to begin in Employment Tribunals and renaming these as Equality Tribunals. Cost barriers to taking goods and services cases through the County Courts are a major limitation in access to justice and this demand is supported by the three statutory commissions, the Hepple Review, the Better Regulation Task Force Review of Anti-Discrimination Legislation, the Employment Tribunals, ACAS and others (subject to resources);
- allowing for representative legal actions so that third parties can effectively take legal cases on behalf of groups. This proposal is strongly supported, including by trade unions and like that on Equality Tribunals could be taken forward through the Discrimination Law Review; and
- Strengthening the range of remedies available to courts and tribunals so they more effectively deter discrimination.

2.10 Specifically with regard to London, a key issue arising is the arrangements for tackling discrimination and promoting equality in London. It remains to be seen what proposal the CEHR has for speaking to London’s needs with regard to equality, anti-discrimination and human rights. The Mayor has been clear that it is essential in London that equality and enforcement machinery reflects the principles set out above, and that have been advanced by the Mayor throughout the discussion on the CEHR. Those are for representative structures, an ability to focus as required on “strand” specific concerns and to organise to ensure the expertise this requires, accountability and clarity in programme and budget setting processes, and involvement of those affected by discrimination.

3. TERM OF REFERENCE 2: “TO CONSIDER THE GOVERNMENT’S ROLE AND RESPONSIBILITIES IN TAKING FORWARD THE RECOMMENDATIONS WITHIN THE EQUALITIES REVIEW”

3.1 The Mayor responded to the Interim Report of the Equalities Review to the effect that it was so flawed it should be withdrawn, and rewritten as a result of consultation led by a more inclusive and representative panel. The Mayor did not consider the final report of the Equalities Review to be fundamentally different and said in a press notice: “as was feared, the Equalities Review fails to recognise the social and economic factors that create inequality. It contains no systematic investigation into structural and institutional discrimination and suggests individual choice, not discrimination, is often the cause of inequality. If that approach was adopted it would result in the agenda for equality being pushed back many years, for example, certainly prior to the breakthroughs registered by the Stephen Lawrence Inquiry and MacPherson Report. Because it is based on a flawed analysis the Equalities Review also fails to recommend the range of legal

³⁸ Nearly 1,000 individuals a year contact the EOC’s Helpline because they believe they have been discriminated on grounds of sex in the provision of Goods, Facilities and Services alone (ie not including employment cases) while the DRC Helpline in the last quarter of 2005 received over 1,800 enquiries from individuals who claimed similar discrimination. Source: GFS Cases, County Courts or Employment Tribunals, Caroline Gooding and Alice Leonard, 2007.

³⁹ Source: Legal Action Group.

changes needed from the Discrimination Law Review to tackle discrimination and delivery equality. This report will also inform the functioning of the new Commission for Equality and Human Rights, a body that lacks statutory representative structures for the communities it is meant to support. This analysis will contribute to its problems, not address them.”

3.2 The key problem with the Equalities Review Report is its failure to investigate, measure and propose solutions to institutional discrimination. Misleading emphasis was placed instead on the impact of individual choice, cultural and personal factors. Its proposed definition of equality was extremely vague and did not refer to combating discrimination or structural disadvantage: “An equal society protects and promotes equal, real freedom and substantive opportunity to live in the ways people value and would choose, so that everyone can flourish. An equal society recognises people’s different needs, situations and goals, and removes the barriers that limit what people can do and can be.” The Mayor believes that this definition is of little use in the current discussion over how to significantly improve anti-discrimination law so that it combats discrimination, disadvantage, promotes equality and enforces the law.

3.3 The Equalities Review Report proposed an “Equality Scorecard” linked to this. This is presented as a new framework for measuring equality. In reality it would be light touch, excessively narrow and too vague, possibly leading to monitoring on some levels but not likely to lead to the kind of concrete action needed to tackle inequality.

3.4 In terms of the Discrimination Law Review, its approach is for a Single Equality Act that “simplifies” and “harmonises”—whereas the Mayor and many stakeholder organisations in the field want one that levels up, extends protections and ensures enforcement to a much greater degree than at present.

3.5 The Equality Review Report suggests two main important legal proposals in a positive direction, both in areas argued for by the Mayor:

- Supporting the case for a new law to embed equality in procurement. Government should ensure the proposal for a duty on public bodies to embed equality in the procurement process is contained in the forthcoming Discrimination Law Review Green Paper.
- The law should be changed to make more allowance for positive action. However, the report suggests a very limited approach and also suggests that applications of the law be subject to vetting by the CEHR. The Mayor supports the case for effective, stronger law on positive action and does not agree that the case has been made for the CEHR to have a vetting role on the law. Government should ensure strong measures to provide for greater use of positive action are included in the Green Paper consultation.

3.6 A third proposal is for an “integrated public sector duty covering all equality groups”. The Mayor supports the extension of positive duties to equality across all strands facing discrimination. Such provision must be structured so as to produce results. The Mayor is unconvinced that the approach on this question as set out in the Equalities Review is correct. It is important that any positive duty: be based on gathering and analysing evidence relating to discrimination and inequality; directing public authorities towards developing a clear and strategic set of equality objectives and implementing an action plan with clear aims for which they are publicly accountable, with the particular elements of the community who will be most affected involved in setting these objectives and priorities; mainstreaming equality into the new and existing work of public bodies; and being transparent and accountable, with public authorities required to publish annual progress made with their equality action plan and outcomes, and to set out their next steps and future ideas. An extended, integrated public sector duty of this type, with clear and understandable objectives and requirements, should be a proposal in the Discrimination Law Review Green Paper.

3.7 The Equalities Review Report made few other legal proposals, which is a lost opportunity to address the realities of discrimination and inequality. The sorts of changes that stakeholders have called for in order to more effectively challenge discrimination include:

- mandatory equal pay audits;
- workforce monitoring and data publication;
- positive equality duties for the private sector;
- extended and firmer rights to flexible working;
- non-discrimination rights for carers;
- comprehensively outlawing age discrimination in the provision of services, goods and facilities;
- extending the grounds for protection against harassment;
- narrowing the range of exceptions to anti-discrimination law and therefore improving the impact of the law;
- addressing the major problems of enforcement, including by allowing for representative legal actions;
- better access to legal advice or legal aid; and
- improving the remedial action courts may order and providing for equality tribunals to more effectively deal with all discrimination cases.

Government should ensure the Green Paper raises and consults on the range of legal changes for which stakeholders have been arguing.

3.8 Analytical problems in the report are the roots of its failure to appreciate the case for the range of legal change required. We can only cite a few examples here:

3.8.1 False contrasts are set up. For example: “why focus on inequality rather than poverty” when obviously poverty and inequality (and discrimination) are hugely inter-related. This inter-relationship is neglected in the sections on employment penalties when lack of paid work and low pay are determinants of poverty. Similarly the report says there is a need to “overcome the limitations of traditional interpretations based on equality of processes, outcomes and opportunities”, without substantiation and accompanied by polemics against “The old approach of a top-down state which pulls levers to improve outcomes for particular groups”.

3.8.2 There is a suggestion that legislation on direct discrimination has stamped it out and that it only remains to move on to indirect discrimination. However, direct discrimination is very much alive, as for example evidence on pregnancy discrimination shows.

3.8.3 On education: the Equalities Review Report maintains an emphasis on the “Home Learning Environment” set out in the Equalities Review Interim Report. This emphasis is preferred to addressing the key issue: that what takes place within schools affects the educational outcomes of children from diverse backgrounds. For example, the use of Foundation Stage Profile Assessments for pupils at the end of their Reception Year, drawing more on teacher observations, have been shown to damage black pupils who suffer more from lower teacher expectations than under the previous system of baseline tests. Under Baseline Entry tests, black pupils outperformed their white peers at the start of Key Stage 1. Observation-based Foundation Stage Profile reversed this pattern.

3.8.4 The continued emphasis on out-of-school factors by the Equalities Review Report is unhelpful and misleading, and it is not explained why such importance is placed on these elements while the wealth of evidence which contradicts this approach is ignored. The latter suggests that the root causes of underachievement, leading to further inequalities in life chances, have deep roots in many educational institutions themselves. This has been most recently borne out by the Department for Education and Skills’ (DfES) own report “Getting It. Getting It Right”, whereby an Internal Review Team looked in detail at the issues surrounding the disproportionate rates of pupil exclusions among black boys in particular. This DfES report highlights the following:

- a 2004 DfES study found that black Caribbean pupils are 3 times more likely to be excluded from school than white pupils;
- when Free School Meals (FSM) and Special Educational Needs (SEN) are taken into account, black Caribbean pupils were still 2.6 times more likely to be excluded from school than white pupils;
- black pupils are less likely to fit the typical profile of excluded white pupils (such as having SEN, FSM, longer and more previous exclusions, poor attendance records, criminal records or being looked after children);
- the report then emphasises that this evidence challenges the assumption that racial inequalities in education are merely a reflection of socio-economic inequalities in society. It makes a compelling case for the existence of an “X-factor”, related to ethnicity, which explains the exclusions gap. It also asserts that this supports what academic commentators (Blair, Gillborn etc), qualitative researchers and black communities have been saying for over 20 years: namely, that the education system treats black pupils differently to others.

3.8.5 The Equalities Review Report narrows women’s inequality in the labour market to their experience as mothers but even in this narrow field it does not propose more rights in law for flexible working, caring, against pregnancy discrimination or harassment. It expects the employment penalty for mothers with children under 11 to disappear by 2025 on the current rate of progress but gives no basis for this calculation. It implies that part-time jobs are necessarily a bad thing, when it is the lack of availability of better paid and senior part-time jobs that is a problem. It also says that “Women are crowded into mostly part-time jobs” when 40% of women working in the UK are part-time and 60% full-time.

3.8.6 Under “Publishing employment data”, the Equalities Review Report argues against a duty on the private sector to publish progress towards equality: “We do not think it reasonable at this point in time to extend to the private and voluntary sectors as a whole a duty to report on their achievements of equality outcomes”. And yet they expect that within five years “there will be an honest, transparent means of assessing the progress of the public, private and voluntary sectors in achieving a more representative workforce at all levels. Information will be readily available on a consistent basis.” As there is no explanation as to how this change will come about, the Mayor does not believe this estimate is realistic and believes that those employed and receiving services from either the public or private sector should be entitled to the same protection from discrimination by the law.

3.8.7 In a reference to London the impression is given that disadvantage only affects small areas. In fact London is the region with the highest rate of child poverty (affecting half of inner London children) and it contains half of the country’s black, Asian and minority ethnic population.

3.9 In addressing the terms of reference of the Committee “to consider the Government’s role and responsibilities in taking forward the recommendations within the Equalities Review” the Mayor believes:

3.9.1 the analytical approach of the Equalities Review does not provide a basis for going forward;

3.9.2 Government should take forward the small number of positive proposals in the Equalities Review Report—specifically with regard to procurement and positive action—and ensure that a proposal for an effective cross strand public sector duty of the general form set out here is a proposal for consultation in the Discrimination Law Review Green Paper;

3.9.3 Government should not be limited by the failure of the Equalities Review to consider an adequate range of the areas of discrimination and appropriate legal changes required, and therefore ensure the Discrimination Law Review consults of the full range of areas for change needed, including those suggested in this paper.

4. TERM OF REFERENCE 3: “TO CONSIDER THE POSSIBLE CONTENTS OF THE DISCRIMINATION LAW REVIEW AND A SINGLE EQUALITY BILL”

4.1 The Mayor wishes to underline to the Committee the terms of reference of the Discrimination Law Review, established by the Government in February 2005, which include:

- considering the fundamental principles of discrimination legislation and its underlying concepts;
- creating a clearer and more streamlined equality legislation framework which produces better outcomes for those who experience disadvantage;
- investigation of new models for incentivising compliance;
- considering a spectrum of enforcement options; and
- creating a fairer legislative framework with consistency in protection afforded to different groups.

4.2 The Discrimination Law Review was established to take forward a 2005 manifesto commitment to introduce a Single Equality Act within the lifetime of this parliament. That commitment was the result of recognition that current law was failing to tackle discrimination and deliver a more equal society. Current anti-discrimination law is a patchwork of varying rights, differing or non-existent depending on the basis and place of the discrimination, with many gaps in protection and inconsistencies in rights and enforcement.

4.3 It remains perfectly legal to discriminate on many grounds and areas: age discrimination in goods and services is legal; discrimination in immigration and nationality services is exempt from the law. Protection varies sharply depending on where the discrimination takes place: in the public or private sector; while at work or when trying to access a service. Problems in access to justice mean thousands of cases go unheard and unpunished. Weaknesses in enforcement mean that repeat discriminators are treated no more seriously than first offenders and are given little incentive to mend their ways. The Discrimination Law Review is an opportunity to address these problems—which mean that the law is failing many of the most vulnerable people in society.

4.4 Statistics on inequality show why the weaknesses in anti-discrimination law and its enforcement and promotion need to be addressed—and underlines the importance of the Discrimination Law Review. To cite only a few examples:

- The average gender pay gap in London is 23% (wider than the UK average of 17%). This average reflects that fact that many more men than women occupy higher paid jobs in London. However, the gender pay gap is not due solely to occupational segregation as demonstrated by the fact of an even wider gap within the highest income bracket, at 32%.
- 39% of children are in income poverty in London, but for black ethnic groups this goes up to 51% and for Pakistani and Bangladeshi groups it reaches 69%.
- Black and minority ethnic men in London are less likely to be in employment than white British males: 60% of Pakistani/ Bangladeshi men and 63% of black or black British men are in employment compared with 80% of men in white groups.
- Disabled children continue to face severe discrimination: only 60% of pupils with Special Educational Needs statements are placed in mainstream education but in English special schools 61% of pupils are not entered for any GCSE/GNVQs compared to four% of children in mainstream schools. In London, 43% of disabled people are in employment compared with 74% of non-disabled people. Disabled people are under-represented in managerial, professional and technical occupations relative to non-disabled workers. 42% of disabled workers were employed in these occupations relative to 54% of non-disabled workers. Disabled workers were particularly over-represented in routine and elementary occupations.
- Research carried out by the University of Cardiff (for Stonewall) in 2004 found that one in five workers still felt unable to reveal their sexual orientation, despite the introduction of the Employment Equality (Sexual Orientation) Regulations 2003, reflecting the need for requirements on private and public sector organisations to be subject to positive equality duties in relation to sexual orientation.

- Age discrimination legislation does not cover provision of goods and services, allowing ageism in the provision of health care, insurance and other parts of life to persist.
- Discrimination law does not cover carers as such, yet the disadvantage they experience is systematic. Many carers have difficulty combining caring with employment and need to work part-time: according to a national EOC survey, one in five carers had left or turned down a job because of difficulties combining it with their caring responsibilities. From April 2007 the DTI Regulation on Flexible Working extends the right to request flexible working to carers—although only of close relatives or people living in the same house, not for wider family members, friends and neighbours. However there are fewer part-time job opportunities in London. While carers on low incomes can claim a carer's allowance (under £49 per week) if providing care for 35 hours or more, this is set against any other income related benefits and London's higher costs are not reflected. There were over 600,000 people providing unpaid care in London, representing 8.6% of the population, on Census figures.
- A significantly larger proportion of Muslim residents lived in a socially deprived area than any other faith, based on respondents to the 2001 Home Office Citizenship Survey; Muslims aged 16–24 are achieving higher qualifications than older Muslims, yet younger Muslims in London still have lower levels of qualifications compared to their peers in the general population (Muslims in London report, GLA 2006).

4.5 The Mayor believes the Discrimination Law Review represents a once-in-a-generation opportunity to seriously improve anti-discrimination law so that it is coherent, comprehensive and effectively upheld and enforced. The Mayor believes that the approach should be one of systematically “levelling up”—taking the most effective models from existing anti-discrimination law and extending them across all strands. For example:

- The concept of “reasonable adjustment” in disability legislation requires employers and service providers to take the needs of disabled people into account. This principle could be usefully applied to other groups.
- The positive duties that have been introduced on race, disability and gender provide a basis on which a comprehensive, cross-strand, duty should be created. This needs to be effective and should not be a “light touch” duty. There is a need for a clear statutory framework for the duty, through which groups and enforcement bodies can hold public sector bodies to account.

4.6 The Mayor has been engaged in a consultation programme with a wide range of stakeholders on their concerns about inequality and discrimination. Furthermore research into international jurisdictions, inside the European Union and beyond, shows that there are many effective measures used elsewhere that UK law could draw from.⁴⁰ Similarly experience in Northern Ireland, with significantly different and stronger anti-discrimination law, provides a strong example of what is possible. There is also a great deal of existing research into the ways in which anti-discrimination law must change and how it could be much more effective and meaningfully enforced. Research such as that by Hepple is a resource for the Discrimination Law Review to draw upon.⁴¹

4.7 On the basis of this wide-ranging research and consultation, the Mayor believes that a Single Equality Act needs to:

- have a clear purpose: the aim of the law should be explicit and have the clear purpose of preventing structural discrimination and disadvantage;
- be comprehensive: ensure protection against discrimination covers all grounds and all areas of people's lives, within both public and private sectors, at work and in wider life;
- level upwards: the highest levels of legal protection should be standardised, building on the most effective forms of protection. The Equalities Review Report can also learn from other jurisdictions where effective legal models exist;
- promote equality as a positive duty: extending public sector duties across all strands facing discrimination in practical, meaningful, measurable, accountable ways, with publicly-available equality schemes; and propose how these values can apply in other sectors;
- protect the most vulnerable: such as by extending protection against discrimination to carers through a non-discrimination right in law, providing protection of the law to vulnerable workers and extending and strengthening rights to flexible working;
- take precedence: by removing or reducing areas currently exempted from anti-discrimination law;
- have meaningful tools to ensure change: such as mandatory equal pay audits, stronger mechanisms for positive action, monitoring and intervention to correct discrimination;
- ensure equality in procurement: through a mandatory duty on public bodies to promote equality through the process of procurement;

⁴⁰ Women in London's Economy report 2007, Chapters 3 and 4.

⁴¹ Equality: a new Framework: Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation, Hepple, Coussey and Choudhury, 2000.

- deliver an improved framework of enforcement: allowing for representative legal actions, a workable tribunal system for all types of discrimination cases and remedies to deter discrimination;
- ensure that people can access justice and effectively uphold rights through the legal process: by not reducing the potential to get legal support and allowing for third parties to take cases.

5. PROCUREMENT

5.1 The Mayor believes that a new statutory obligation placing anti-discrimination measures at the heart of the function of public sector procurement is essential to making progress across the public sector in this area.

5.2 Therefore the forthcoming legislation should explicitly state that the general duty applies to the procurement function, if public bodies are to join with the GLA to move the agenda forward through using their commercial/market power. This proposal—to extend the law on procurement—should be included in the Discrimination Law Review’s Green Paper for consultation.

5.3 A short paper setting out the Mayor’s policy on procurement in more detail is appended.

Memorandum by Help the Aged

1. INTRODUCTION

1.1 Help the Aged is an international charity working to free disadvantaged older people from poverty, isolation and neglect. Help the Aged campaigns for change in government policy, undertakes research into the needs of older people and provides local services in communities across the UK and overseas which alleviate hardship today and prevent deprivation tomorrow.

1.2 Help the Aged has a long history of working on equality and human rights issues, particularly as they relate to age. We have played a significant part in the debate leading to the establishment of the Commission for Equality and Human Rights, particularly as one of the founding members of the Equality and Diversity Forum. Our *Scrap It* campaign on age discrimination helped bring the issue to wider public attention, and we worked alongside Government and other stakeholders towards the institution of new law on age discrimination in employment and training. We have recently launched a new campaign, *Just Equal Treatment*, calling for legislation on age discrimination in the provision of goods, facilities and services, and a positive duty on public authorities to promote age equality. As part of this we have been working closely with teams undertaking both the Equalities Review and the Discrimination Law Review.

2. SUMMARY

- Help the Aged warmly welcomes the committee’s decision to further investigate the Government’s work on equality. We feel that there is often a lack of scrutiny of this area, leading to a sense of low priority.
- We have warmly welcomed the progress that this Government has made in tackling key equalities and human rights issues, for example, in the introduction of anti-discrimination laws in the provision of goods, facilities and services for sexual orientation and religion and belief, and the development of new positive duties on public authorities for disability and gender.
- We have also welcomed the introduction of new legislation on age discrimination in employment and training, although we were disappointed that the Government waited until the very last minute to introduce this law, and then did so in a weakened form.
- We remain concerned that age discrimination is the “poor relation” of the equalities world—highlighted particularly by the continuing lack of legal protection against age discrimination, especially in the area of goods, facilities and services (where every other equality strand now has protection).
- Help the Aged wants to see the Government making a clear statement of its resolve to tackle age discrimination, through legislation and proactive work to target ageist attitudes and behaviours throughout society.

3. ISSUES FACED IN THE ESTABLISHMENT OF THE NEW COMMISSION FOR EQUALITY AND HUMAN RIGHTS

3.1 Help the Aged has warmly welcomed the establishment of the new CEHR. We believe that a single, integrated commission will be much better placed to tackle the real issues faced by people in their day to day lives—by breaking down the barriers between so-called equality “strands”.

3.2 However, we are concerned that the way in which the Commission is being established, and the climate in which it is doing so, will mean that age issues are neglected.

3.3 There is a real risk that the legacy of the three existing commissions—the Disability Rights Commission, the Equal Opportunities Commission and the Commission for Racial Equality—will dominate the agenda of the CEHR, particularly in its early stages. This is not just because the key issues which remain the focus of each of the existing commissions are well understood and well publicised (eg the gender pay gap, the poor employment position of those with disabilities and the high profile race and community issues), it is also because of the legal and practical requirements around transfer of staff, assets and expertise from these commissions to the new body. The CEHR will have to work hard to address these issues.

3.4 There is a further risk that amongst the new equality strands—sexual orientation, religion/belief and age—age will lose out. This is partly due to the considerable media and political attention focussed on issues around sexual orientation and religion/belief, particularly as a result of recent conflict, but also a product of the fact that the legislative position of age remains substantially weaker—with weak employment law and no ban on age discrimination in the provision of goods, facilities and services—giving the Commission less teeth in the area of age.

3.5 These factors are further compounded by the relatively quiet voice of older people in the equalities debate. Age discrimination is a relatively new concept in the public arena and older people have not been particularly vocal in their clamour for equality—in part because the language remains unfamiliar. This can lead to the impression that age discrimination is “less of an issue”; however, we believe that older people’s lack of powerful voice should not mean that they are overlooked in the fight against inequality—rather the contrary.

3.6 Help the Aged is concerned that any early indications of an apparent hierarchy of equality strands—a sense that some are more equal than others—will damage the ability of the CEHR to establish itself as a voice for equality for all. However, without equal legal protection against all forms of discrimination, it will be hard to combat this impression.

3.7 Help the Aged believes that it is vital that the Government addresses these issues, yet at present their resolve to do so appears weak (see below).

4. THE GOVERNMENT’S ROLE AND RESPONSIBILITIES IN TAKING FORWARD THE RECOMMENDATIONS WITHIN THE EQUALITIES REVIEW

The Equalities Review

4.1 The Equalities Review presented a very helpful analysis of the breadth of the equality challenge facing the UK. Whilst it was necessarily a very broad brush assessment of the issues, it brought out some key areas of action for the Government, which we believe must be taken forward.

4.2 First and foremost the Review highlighted the need for a Single Equalities Bill, which we wholeheartedly support. It particularly argued for a “strong, integrated public sector duty, covering all equality groups, with a focus on outcomes and not process”,⁴² which we are also keen to see. We comment on this in more detail below.

4.3 Secondly, the Review highlighted the need for much better collection and analysis of data across Government. Again, we believe this is a key issue. In the area of age there are significant gaps in the data collected, and also in how data that is collected is used. We believe that the current Comprehensive Spending Review, and the development of new Public Service Agreements, present an ideal opportunity to address these issues by revisiting what information would be needed to really know if age equality were being made a reality.

4.4 The Review also highlighted the problem of the confused state machinery that supports equality work at present, highlighting the need for a more consistent approach across Government; a view which was recently backed by Trevor Phillips, who said:

“we need. . . every lever that is possible to ensure that the whole of the Government’s machine is paying attention, is being measured and is being scrutinised on its performance in relation to fairness and equality and human rights”.⁴³

⁴² The Equalities Review, “Fairness and Freedom: The Final Report of the Equalities Review” (February 2007), page 115.

⁴³ Trevor Phillips (Chair of the CEHR), uncorrected evidence to Communities and Local Government Select Committee, 24 April 2007.

4.5 Help the Aged is concerned that current state machinery around Equality exacerbates the “poor relation” status of age and leaves us falling into the gaps between Government initiatives, and means that there is little focus on the issues around age.

4.6 Whilst the Department for Communities and Local Government holds much of the responsibility for equality—across race, faith, gender, sexual orientation, community cohesion—age and disability remain the responsibility of the Department for Work and Pensions. This arrangement is particularly concerning for age as an equality strand because, whilst the disability agenda is well resourced within the DWP with its own Minister and many staff, the age agenda is more of an “add on” to the pensions agenda. The position of age is further confused by the fact that responsibility for age legislation on employment remains with the Department of Trade and Industry, and human rights (a key area for older people) with the Ministry of Justice.

4.7 This fragmentation leads to increased complexity, a lack of clear, joined up messages from the top, uncertain modes of engagement, stop start funding from/for different parts of the machine and means that it is much easier for some voices to be heard in the wider equality debate—most of which lies with the DCLG—than others.

4.8 We believe that the Government must make clear with whom the equality agenda for age rests, and make a clear statement of its intentions and aspirations in this area.

5. THE POSSIBLE CONTENTS OF THE DISCRIMINATION LAW REVIEW AND A SINGLE EQUALITY BILL

5.1 Help the Aged has been extremely concerned by the ongoing delays to the work of the Discrimination Law Review and the expected Green Paper on Discrimination Law.

5.2 The review of discrimination law represents a key opportunity to address the current lack of legal protection against age discrimination, and it is therefore vitally important to the well-being of older people that it should progress.

5.3 We welcome the intention, through the Review and subsequent Bill, to consolidate existing equality laws. We believe that this would help to reconcile the differences and inconsistencies contained in current equalities legislation and would make the law simpler and more workable.

5.4 However, of central importance to us is also the work to build on existing legislation to afford equal protection to all groups against discrimination, wherever it occurs.

5.5 When the Government put through the Equality Bill—bringing in the CEHR, but also legislating for a Gender Equality Duty, and goods, facilities and services legislation covering religion and belief and also sexual orientation—Help the Aged (and other age stakeholders) argued that the gaps in the law around age should also be addressed. At that time Ministers made clear to the House that the question of protection for age would be addressed through the Discrimination Law Review. However, the ongoing delay in the emergence of the Review’s findings gives us concern that this resolve has now weakened. We believe that legislation on age discrimination in the provision of goods, facilities and services is vital and that the work on a Single Equalities Bill must now progress.

5.6 Individually and collectively, the impact of discriminatory practices on older people is profound.⁴⁴ As long as age remains the only equality strand without protection from discrimination in the area of goods, the message is clear: older people are second class citizens whose needs are less important than those of others.

5.7 Age discrimination legislation in the provision of goods, facilities and services, coupled with a positive equality duty for age, would prohibit the unequal treatment of older people in this area and send a clear signal to society that age discrimination in any context is unacceptable. It would also prompt the gradual elimination of discriminatory practices and empower older people to challenge ageism and discriminatory practices when they arise.

5.8 Without such legislation, Help the Aged believes that the significant progress already made in eliminating discrimination on the grounds of age—the Employment Equality (Age) Regulations 2006, the National Service Framework for Older People (2001), Fair Access to Care Services (2002), Age Positive and Opportunity Age—is significantly undermined.

Evidence of Discrimination in Goods, Facilities and Services

5.9 Recent studies have found that:

- More adults (29%) reported suffering age discrimination than any other form of discrimination⁴⁵, with 28% of respondents citing that they had experienced ageism in the last year;⁴⁶

⁴⁴ Help the Aged, “Everyday Age Discrimination: what older people say” (2004).

⁴⁵ Age Concern, “How Ageism is Britain?” (2005), a study carried out in partnership with the University of Kent.

⁴⁶ Age Concern, “Ageism: A benchmark in public attitudes in Britain” (2006).

- In the UK, 34% of people aged 65 years and above said that older people experience age discrimination in their daily lives. 73% of people more generally agreed that older people face discrimination on grounds of their age in everyday life;⁴⁷
- 40% of adults now think that age discrimination is a serious issue.⁴⁸

Examples of age discrimination in the provision of goods, facilities and services in both the private and public sectors, include:

- Car Insurance: increased premiums based on age (and not driving record), and refusals to quote for those aged 75 years and over;⁴⁹
- Travel Insurance: increased premiums based on age (often to the point that cover is simply unaffordable after a certain age), and declined cover;⁵⁰
- Disability Living Allowance: those aged 65 years and over who become disabled are not eligible to receive this allowance. They qualify instead for an Attendance Allowance, which takes longer to qualify for, is less generous and does not include any money to cover mobility costs;
- Social Care: levels of funding allocated to support older people, both in the community and in residential care, are less generous than for other age groups, rarely matching the levels of need;⁵¹
- Health Care: differential treatment based on age and not clinical need. For example, women over 70 years are no longer automatically called for breast screening, despite widespread evidence of a clinical need;
- Mental Health: certain, specialist mental health services are only available to those aged under 65 years, despite the fact that 40% of GP attendees, 50% of general hospital patients and 60% of care home residents are older people with mental health problems;⁵²
- Social Inclusion: the shortage of benches, seats and public toilets in public areas particularly disadvantages older groups and can lead to social isolation;
- Transport: design of vehicles, hard to read timetables and inaudible public address systems create discriminatory barriers to travel for older people.

5.10 We believe that consistent, robust law is urgently needed in this area. We recognise that such legislation would need careful drafting to avoid unintended consequences but, over the extended period of the Discrimination Law Review, much thinking has been done in this area and we believe that it is now time to progress.

5.11 As well as assisting many older people, a Single Equality Act would greatly assist the CEHR in its duties to reduce inequality, eliminate discrimination, strengthen good relations between people and promote and protect human rights. The present plethora of equalities legislation can only impede the CEHR in making progress in this area.

5.12 The proposed Single Equalities Bill is of vital importance to older people and the wider equalities agenda. It is vital that it is widely publicised, scrutinised, debated and supported as it goes forward.

Memorandum by the Inter Faith Network for the UK

INTRODUCTION

1. The Inter Faith Network for the UK welcomes the opportunity to provide a memorandum for the Committee in the context of its inquiry into equality.

BACKGROUND

2. The Inter Faith Network for the UK was established in 1987 to promote good relations between people of different faiths in this country. Its 133 member bodies include representative bodies of the Baha'i, Buddhist, Christian, Hindu, Jain, Jewish, Muslim, Sikh and Zoroastrian faiths; national, regional, local and other inter faith bodies; and educational and academic bodies specialising in inter faith relations.

3. The Inter Faith Network:

⁴⁷ Help the Aged, "Spotlight Report 2006: spotlight on older people in the UK" (2006).

⁴⁸ TNS Survey on behalf of Age Concern England, representative sample of 2113 adults in Great Britain, July 2006 (unpublished).

⁴⁹ Help the Aged and Age Concern, "Insurance and Age: Exploring behaviour, attitudes and discrimination" (2007), research undertaken by CM Insight and Andrew Smith Research.

⁵⁰ Help the Aged and Age Concern, "Insurance and Age: Exploring behaviour, attitudes and discrimination" (2007), research undertaken by CM Insight and Andrew Smith Research.

⁵¹ Research undertaken by Katbanna, Martin and Parker; Leicester Nuffield Research Unit for Help the Aged (2002). See also, Age Concern, "Age of equality? Outlawing age discrimination beyond the workplace" (May 2007).

⁵² Mind, "Access all ages" (October 2005).

- Works to raise awareness of the importance of good inter faith relations.
- Runs an information and advice service.
- Publishes materials to help people working in the religious and inter faith sectors.
- Holds meetings of its member bodies and sets up multi faith working groups, seminars and conferences to pursue particular issues in greater depth.

4. The faith community national representative bodies meet together for discussions on matters of common concerns in the Network's Faith Communities Forum.

THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

5. The Network has been involved since the adoption by the European Council of Ministers in December 2000 of its directive on discrimination in the fields of employment and training with the subsequent process which has now led to the establishment of the Commission for Equality and Human Rights. In broad terms the Network has welcomed the creation of this new organisation. In addition to making possible a more comprehensive and integrated approach to its agenda, it will provide a resource, in the absence of any pre-existing Commission in this field, for dealing with issues relating to the discrimination strand of religion and belief and the religion and belief dimension of its "good relations" work.

6. The Chair and Commissioners and some senior staff have been appointed to the CEHR but is only now beginning to build up its staff and is currently engaged in reflection and consultation on how best to discharge its responsibilities. Preliminary indications are that it intends to undertake a good deal of its work on a "cross strand" basis and there are sound arguments for doing so. At the same time, it is very important that the Commission should maintain units of expertise in the character and concerns of particular strands where there are pre-existing commissions whose work it will inherit (ie race, gender and disability), as well as building up fresh expertise in those areas for which there is no pre-existing commission (ie religion and belief, sexual orientation and age). This will be important if the different constituencies with which the Commission will be dealing are to have confidence in its capacity to understand and deal adequately with their concerns. It will also ensure that there is a knowledgeable port of call for those falling within a particular category to approach on a particular issue, even if this may then need to be dealt with by the Commission on a broader basis. We hope that the Committee will encourage the CEHR to take these requirements into consideration in structuring its organisation.

7. We have been encouraged by the assurances that have been given that the Commission wishes to develop strong procedures for consultation with different constituencies in line with the statutory requirement on this in the Equality Act 2006, and plans to develop a range of appropriate partnerships in its work.

8. Since the primary purpose of the Inter Faith Network is to build good relations between those who belong to different faith communities in this country, the Commission's work on "good relations", where it is under a statutory obligation to give priority to matters relating to race, religion and belief, is of particular interest. It will be important to ensure that there is clarity in the allocation of responsibilities for carrying out different aspects of community cohesion and "good relations" work between Government departments, the Commission, other public bodies and voluntary sector organisations. We look forward to more detailed discussions on this with the Commission.

TAKING FORWARD RECOMMENDATIONS FROM THE EQUALITIES REVIEW AND THE POSSIBLE CONTENTS OF THE DISCRIMINATION LAW REVIEW AND A SINGLE EQUALITY BILL

9. The Network has no observations to make at this stage on these matters.

Memorandum by JUSTICE

1. JUSTICE is an independent all-party human rights and law reform organisation. It is the British section of the International Commission of Jurists.

2. We have responded to the government consultations on the setting up of the Commission for Equality and Human Rights (CEHR), on the Equalities Review and on the Discrimination Law Review.

3. We are responding to this consultation because we are concerned that the slow pace of change in relation to the Discrimination Law Review and the proposed single Equality Act reflects less a desire to put in place the right provisions and rather more a lack of commitment and a reluctance to change. We therefore seek to set out in summary form the reasons why change is urgently needed and the reforms that are necessary.

EQUALITIES REVIEW

4. JUSTICE welcomed the findings of the Equalities Review as we consider that equality and anti discrimination provisions play an important role in countering “chronic and persistent inequalities” in the UK. Clearly, discrimination can prevent people’s talents and skills being fully utilised for the benefit of society and the economy.

5. Additionally, if anti-discrimination legislation is not to fall into disrepute and be dismissed as mere political correctness or tick box equality, they must achieve wide acceptance in Civil Society. So, the clear and unambiguous findings of the Equality Review on the extent of inequality in the UK need to be widely understood and taken into account.

6. While it does acknowledge that some progress has been made and we are now a more equal society than “at any time in living memory” the report’s survey of aspects of the equality landscape presents a very bleak picture. The report tells us, for instance, that:

- The average net weekly earnings of Bangladeshi men is half that of white men.
- In 2005, while 42.5% of all pupils received five or more A*-C grades at GCSE, only nine% of Gypsy/Roma pupil attained this result.
- The hourly gender pay gap for women is 17%, but for part time women it is 38%.
- Women’s average income in retirement is only 57% of the average for men.
- Disabled people are 30% more likely to be out of work compared to non-disabled people.

7. These statistics are a challenge to action for anyone interested in making a more equal society. The report makes clear that, contrary to popular belief, the situation for many groups is not improving or is improving far too slowly. It estimates, at the current rate of progress, that the time needed to eradicate critical inequalities severely challenges any complacency among policy makers and makes urgent action the only possible response.

8. For instance, at the current rate of progress the employment penalty will disappear:

For mothers with children under 11	in 2025
For disabled people	possibly never
For Pakistani and Bangladeshi women	definitely never

9. At the current rate of change we will . . .

Elect a representative House of Commons	in 2080
Close the gender pay gap	in 2085
Close the ethnic employment gap	in 2105
End the 50+ employment penalty	not in this lifetime
Close the disability employment gap	probably never

Future demographic changes, including increased numbers of people over 65, disabled people and people from ethnic minorities or mixed race, will make the challenges even greater.

10. The educational statistics are little better. Educational attainment gap at Key Stage 2 in English and Maths will be closed:

For Bangladeshi pupils	in 2010
For Mixed White and Black Caribbean pupils	in 2014
For Pakistani pupils	in 2017
For Black Caribbean pupils	in 2045
For Black African pupils	in 2053

11. JUSTICE considers that for these reasons urgent improvements to the underlying legal provisions need to be considered.

DISCRIMINATION LAW REVIEW AND A SINGLE EQUALITY BILL

12. Equality is a value of fundamental importance to a just society. A society based on equality and non-discrimination needs a single understandable set of legal provisions which will entrench these concepts. The law should reflect social values and so serve to strengthen them. But incomprehensible legislation is counter-productive. It undermines confidence in the rule of law as a mechanism and will be ignored. So it is important that equality laws are simple to understand and easy to use. We need a new Equality Act to bring the main provisions of equality law together in a clear, straightforward and comprehensible way. The new law would eliminate inconsistencies and ensure that each type of discrimination receives the same level of protection. Of course, the key to this is getting the content of any new Act right. It must entail common, clear standards that employers and the public can understand,

including consistent definitions of key terms and common and effective remedies. This would not prevent a single Equality Act having separate parts to deal with particular problems of any specific ground of discrimination.

What reforms are needed ?

- Incorporation of a purpose clause.
- Common clear standards that are easy for businesses and the general public to understand and implement. Consistency will aid compliance.
- Equality between issues.
- Extension of the public sector duty to promote equality to all types of discrimination.
- Consistent definitions of key terms.
- Common and effective remedies for each strand directed at prevention.

The law is too complex

13. The current discrimination laws are notoriously inaccessible and so complex that they would strain a tax lawyer. The law has developed in a piecemeal fashion. The discrimination acts of the 1970s have been added to and amended by a range of subsequent measures. A recent count identified 35 Acts, 52 Statutory Instruments, 13 Codes of Practice, 3 Codes of Guidance and 16 EC Directives and Recommendations that apply to equality law. This makes it hard for employers to keep track of their responsibilities—and even harder for the general public to understand the law.

14. The position has got even worse since 2000, when a University of Cambridge study concluded:

The statutes are written in a language and style that renders them largely inaccessible to those whose actions they are intended to influence. Human resource managers, trade union officials, officers of public authorities, and those who represent victims of discrimination find difficulty in picking their way through it all.

“Some are more equal than others”—equality law treats people unfairly

15. All this legislation has not worked to ensure equality of protection. Our equality laws set a very poor example since they are themselves unequal. They give more rights to some people than to others.

16. The current law has too many small exceptions that are different for each type of discrimination. So:

- partnerships of less than six people can still lawfully discriminate on grounds of nationality—but not on grounds of race or sex.
- in planning applications, race discrimination is prohibited—but it is not prohibited in relation to the other grounds for discrimination.

Definitions are inconsistent

17. Key terms are defined differently according to which type of discrimination is involved and the remedies victims receive vary depending on the reason for the discrimination.

- The definition of indirect discrimination on grounds of ethnic or racial origin is different from that of discrimination on grounds of nationality.
- The definition of direct discrimination on grounds of race is wide enough to encompass those who are subjected to discrimination because of their connection or perceived connection with race. But a disabled person can only benefit from the discrimination provisions in respect of their own disability.

18. Not only does this make no sense to people facing discrimination—it confuses employers and business. The only people who benefit are lawyers.

The current law is bad for business

19. Business needs a clear and simple regulatory framework. The law can provide a level playing field in which responsible employers know that they will not be undercut by those who ignore their legal obligations. Simplification of equality law would make it immeasurably easier to implement and manage—bringing savings on administrative and legal costs. The application of a clear equality law will enable businesses to maximise their markets to the mutual benefit of staff, management, shareholders and consumers.

20. So there is an urgent need to produce a new code to cover all of the grounds for discrimination, new and old—sex, race, disability, sexual orientation, religion or belief and age.

Multiple identities

21. Society is changing. There is now greater recognition of the multiple nature of our identities, the law needs to be able to encompass multiple discrimination. Multiple, or more precisely, intersectional discrimination occurs when a person experiences discrimination on more than one ground and the grounds interact with each other in such a way that they are completely inseparable. It currently has no remedy under UK law. This is because UK discrimination law requires a person wishing to claim discrimination to compare his or her treatment with someone not of the same sex/race/religion or belief/sexual orientation/age and the courts have rules that the comparison can only be with a single characteristic; not with an undivided combination of characteristics. Please see Appendix A for further details.

Purpose clause

22. A clear statement of the way in which equality legislation should be interpreted would assist its application. A modern law should both reflect current thinking and set new standards—by changing hearts and minds without the need for litigation. From today's perspective it is clear that both the Race Relations Act 1976 and the Sex Discrimination Act 1975 have been successful in doing this. A similar challenge faces an Equality Act. The title alone is not enough—an Equality Act must be valued for its universal application.

23. A single Equality Act with the elements that we have proposed could:

- Prevent unjustifiable discrimination that happens now and thus improve millions of people's lives;
- Provide equal protection from discrimination to all sections of the community;
- Help deliver better public services tailored to individuals' needs;
- Be easier for employers and others to understand and consequently aid compliance;
- Reduce the number of claims to Employment Tribunals because the law will require a greater focus on preventing discrimination; and
- Send a clear message that Britain values diversity and that everyone living here has the right to be treated fairly.

THE ROLE OF THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

24. The Commission for Equality and Human Rights (CEHR) was set up in recognition of the fact that, in the words of Patricia Hewitt, when she was Secretary for Trade and Industry:

As individuals, our identities are diverse, complex and multi layered. People don't see themselves as solely a woman, or black, or gay and neither should our equality organisations.

25. JUSTICE has always welcomed the setting up of the CEHR, however, at the time it was proposed we were one of many organisations, including the existing Commissions, who pointed out that single equality legislation should precede any single Equalities Commission. In the government's response to consultation they observed:

Although the White Paper made no proposals in relation to the harmonisation of equality legislation or the introduction of a single equality act, the great majority of respondents highlighted concerns about the disparate protection provided by the existing legislative framework.⁵³

26. The need for improved, simplified and consistent legislation in this field prior to the setting up of the CEHR was echoed in the words of Trevor Phillips in his evidence to you.

We should have had an equalities review, a discrimination law review, followed by a new Act, followed by the setting up of the new institution.

⁵³ DTI Fairness for All: a New Commission for Equality and Human Rights, The Government response to consultation, 2004, paragraph 76.

27. The CEHR would be much more effective if it can work with consistent, modernised legislation.

28. That concern over the lack of unified legislation continues and JUSTICE considers that this lack is likely to inhibit the working of the CEHR and to make it harder for businesses to put in place anti-discrimination measures. We are therefore worried about the persistent delays in the publication of the Discrimination Law Review Green Paper. This was first due to be published in July 2006, it was then delayed so that its publication could be tied into the publication of the final report of the Equalities Review which was published in February 2007, then a date in May was promised. This is not just a concern about the publication of a report this reflects worries that the construction of a new equality law fit for the 21st century is no longer a priority.

Memorandum by Age Concern

1. INTRODUCTION

1.1 Age Concern England (the National Council on Ageing) brings together Age Concern organisations working at a local level and 100 national bodies, including charities, professional bodies and representational groups with an interest in older people and ageing issues. Through our national information line, which receives 170,000 telephone and postal enquiries a year, and the information services offered by local Age Concern organisations, we are in day to day contact with older people and their concerns.

1.2 Age Concern is pleased that the Communities and Local Government Committee has decided to conduct an inquiry into equality at a key point in the development of policy in this field. We welcome the opportunity to submit evidence, which we have supplemented by appending additional material:

- Summary chapter of our recent report: *Age of equality? outlawing age discrimination beyond the workplace*, May 2007
- UN Guiding Principles for Older Persons

1.3 We will respond in turn to each of the issues raised in the Committee's terms of reference.

2. ISSUES FACED IN THE ESTABLISHMENT OF THE NEW COMMISSION FOR EQUALITY AND HUMAN RIGHTS (CEHR)

2.1 The establishment of the CEHR is a welcome development from the perspective of older people. As we said in our response to *Fairness for All*, the White Paper setting out Government proposals for a new commission:

“Establishing a single Commission for equality and human rights is essential for older people. It will provide machinery to make a reality of the new rights under the Equal Treatment Directive and the Human Rights Act. It will also promote age equality beyond the law, where the challenges are enormous, but so are the possibilities. By spreading a new understanding of fairness and equality in an ageing society, the Commission could trigger a seismic shift in the opportunities for older people . . . [it] will be able to develop an integrated approach to equality, human rights and cohesion, focused on individuals and relevant to everyone. Age equality, which affects us all, will play a key part in achieving this.”

2.2 Age Concern believes that during its first year of operation, the CEHR will need to convince the age sector, including older people and the organisations that represent them, that it has a clear vision of age equality and is committed to working towards it. This will present a challenge for commissioners and staff alike, given that the three existing equality commissions will—understandably—seek to ensure that current obligations are firmly embedded into the CEHR's programme of work. The size of the CEHR's budget will no doubt impose significant operational restraints. A further concern relates to the comparative weakness of legislative protection against age discrimination, creating an imbalance in the legal tools that are available to the new Commission. This is a point to which we return in Paragraphs 4.1 and 4.2 below.

2.3 As noted below, we welcome the definition of equality put forward by the Equalities Review in its final report. Within this over-arching concept, there needs to be clear understanding of the meaning of age equality and the CEHR should give early priority to agreeing on a definition—while recognising that this may need to evolve over time. As a starting point, it might be useful to consider the following working definition of age equality that we are using at present:

“An aspiration for every age group, age equality involves four linked principles and achieving age equality involves finding a balance between these:

- equal citizenship—people of all ages should have equality in their relationship with the state: the equal right to live independently; to be treated with dignity and to receive good quality services; and to have personal and collective choice and control to shape public services;

- equality of opportunity—people of all ages should have the same opportunities; for example, recruitment to jobs should be merit-based and there should be equal access to education;
- equality of outcome—where age is irrelevant, people of different ages should experience outcomes that are equal, for example, in accessing social care and treatment for mental health problems. Where age is a factor, preventable differences should be minimised; and
- respecting difference—securing age equality may mean recognising the diverse needs and aspirations of people of different ages and giving appropriate, rather than equal, treatment. For example, older people should be treated differently to allow them the choice to retire.

The concept of equality is closely linked to human rights and sits alongside other central human rights values such as dignity, fairness, respect and autonomy. Likewise, age equality is underpinned by human rights and, for older people, these include the framework of rights set out in the UN Guiding Principles for Older Persons: dignity, independence, participation, care and self-fulfilment.

2.4 The CEHR appears to be considering an approach that would position human rights as underpinning its work. This would emphasise the relevance of the CEHR to the whole nation by reference to people's common humanity, as well as providing a tool to help resolve tensions between equality "strands". We are pleased that the CEHR's draft vision and mission statement endorses the importance of human rights for the organisation. In the absence of goods and services legislation or a public sector duty to promote age equality, human rights has the potential to provide an invaluable legal safety net for older people, especially those who are reliant on public services. Human rights also present a significant but largely unacknowledged framework for driving up the standards of public services. In this context, the pioneering work of the British Institute of Human Rights provides a very useful model. We hope that the CEHR will give its full support to promoting a "human rights culture" within public services. We have two specific recommendations that we wish to make:

- the House of Lords is currently considering whether the scope of the Human Rights Act (HRA) should extend to independent care homes in the case of *YL v (1) Birmingham City Council and (2) Southern Cross*. If the decision in this case does not have the effect of extending the scope of the Act, we hope that the CEHR will use its powers under Section 11 of the Equality Act to advise the Government on the need to extend the legislation by statutory amendment as a matter of urgency
- under Section 9(2) of the Equality Act, the CEHR has a duty to promote awareness and understanding of other human rights in addition to the HRA. In this context, we would urge the CEHR to have regard to the UN Guiding Principles for older persons, which are appended to this memorandum. Although the principles are not binding on governments, they are designed to influence national policies on older people—a step that has already been taken in Wales.

3. THE GOVERNMENT'S ROLE AND RESPONSIBILITIES IN TAKING FORWARD THE RECOMMENDATIONS WITHIN THE EQUALITIES REVIEW

3.1 We have read the final report of the Equalities Review with great interest, and recognise that it has succeeded in advancing the debate around equality in a number of respects. We are pleased that it has made an impassioned plea for equality, supported by economic, moral and social arguments. We particularly welcome the Review's new definition of equality which is rooted in human rights principles and recognises the worth of every individual. The "Equalities Scorecard" that it has devised introduces an innovative and valuable framework for measuring equality across a wide range of dimensions, including longevity/health and participation—all of which are highly relevant for older people.

3.2 We accept that there will need to be a debate as to whether the ten dimensions that have been proposed for the Scorecard are the best choices. For example, there is an argument that "dignity" should be included as a separate dimension and there may need to be discussion as to whether some parts of the framework might be better combined—for example, longevity and health. We suggest that there should be an open debate about the relative importance of the different dimensions, with a recognition that the balance may need to change over the life course as needs and circumstances change. Likewise, there should be clear guidance about how priorities should be determined, as well as guidance for turning analysis of discrimination into action on the ground.

3.3 However, we believe that the basic approach taken by the Scorecard is the right one and we support the recommendation of the Review that the CEHR should use this framework as a basis for compiling its triennial "state of the nation" reports. We are also pleased that the Review has given its support to a single Equality Act to make the law simpler; and to an integrated positive duty covering all equality groups, with a strong emphasis on the role of public procurement and commissioning to further equalities goals.

3.4 Nonetheless, there are many ways in which the report has missed important opportunities in relation to age equality and older people:

-
- The Review does not call for legislation to outlaw age discrimination in goods, facilities and services as part of a Single Equality Bill. Similar legislation of course now exists for the other five equality “strands”. We deal with this point in the next section of our memorandum, but one consequence of the current imbalance in protection is that the CEHR will be equipped with fewer legal tools in relation to ageism and age discrimination.
 - The Review presents survey evidence suggesting low levels of prejudice against people over 70 and shows little understanding of the nature and extent of ageism. The research for the Review showed that people were least concerned about expressing prejudice towards Muslims and gay men and lesbians, and most concerned about being seen to be prejudiced against older people or disabled people. However, there appears to be no understanding of the nature of ageism as “benevolent” or patronising prejudice, or how this can lead to age prejudice being denied by perpetrator and victim alike. Nonetheless, ageism leads to real and persistent disadvantage for individuals and groups who are the focus of it. This is illustrated, for example, by the poor treatment of many older people by the NHS, acknowledged by the Department of Health as being rooted in deep-seated negative cultural attitudes towards older service users.
 - The final report of the Review has also perpetuated certain problems with its Interim Report that gave us cause for concern. The concept of “life chances”, which is biased in favour of early-life interventions over action later in life, still appears in the narrative of the report. It is clear that this approach has influenced the choice of “persistent inequalities” identified by the Review. These prioritise early years and education; employment; health; crime and criminal justice as areas requiring urgent action and are likely to inform the early work programme of the CEHR. The analysis under each of these headings makes very little reference to the inequalities faced by older people. We believe (and argued in response to the Interim Report) that there should be an analysis of equality that examines the extent to which “substantive freedoms” are maintained over the life course. This would involve seeking to prevent or reduce the harmful effects of “trigger events” whenever they occur in life. It would also focus on the inequalities that older people experience as a result of their age—for example, as a result of biological ageing; age-related institutional and attitudinal barriers; and cohort effects between generations. We believe that an “Equality Scorecard” approach would provide a useful tool for analysing the extent to which people from different backgrounds are able to maintain freedoms throughout their lives.
 - Although the report acknowledges that demographic changes, including an ageing population, are likely to have an impact on the nature of inequality, it is puzzling that the Review does not make specific recommendations in relation to problems that have a large part to play in perpetuating discrimination against older people; for example, elder abuse, and mandatory retirement ages. Our recent report, *Age of equality? outlawing age discrimination beyond the workplace*, contains many examples of the discriminatory treatment of older people by public service providers—treatment that has often been acknowledged as a problem by the Government. The Review also misses the opportunity of highlighting the importance of intergenerational contact in terms of addressing stereotypes and promoting community cohesion.

3.5 Although we recognise that the final report of the Equalities Review has made some important contributions to the debate on equality, we believe it is important for the Government to recognise its shortfalls when considering policy options for implementation. There is otherwise a danger that the existing bias towards the three established equality strands will be perpetuated.

4. THE POSSIBLE CONTENTS OF THE DISCRIMINATION LAW REVIEW AND A SINGLE EQUALITY BILL

4.1 Age Concern is calling for the Single Equality Bill to incorporate new legislation to outlaw age discrimination in goods, facilities and services, together with a public sector duty to promote age equality. We would expect these two legislative measures to complement each other, because, following the model of existing public sector duties, public authorities would be responsible for eliminating unlawful discrimination as well as “age proofing” every aspect of their work. If age discrimination in goods and services were to remain lawful, this would considerably weaken a public sector duty on age.

4.2 Our report, *Age of equality? outlawing age discrimination beyond the workplace*, sets out the arguments for extending the law, supported by wide-ranging evidence of age discrimination—including case histories drawn from a recent survey conducted by Age Concern. We hope that the Committee will find this report of interest. For ease of reference we have appended to this memorandum the summary of the report which sets out the case for change, and therefore do not repeat the arguments here.

Memorandum by the Department for Communities and Local Government

I am writing in response to your letter of 7th June requesting a note setting out the information Meg Munn promised the Select Committee at the evidence session of 5 June.

Questions 85–89

(a) Details of the amount of money spent by the Government on consultants in the establishment of the CEHR, including a full breakdown of amounts paid (and/or allocated) to specific consultancy firms with details of the names of all firms, with outputs and timeframes (Q85–89)

The following table set out the total amounts paid or allocated by consultancy type to establish the CEHR.

<i>Consultant Expenditure Activity</i>	<i>2005–06 £m</i>	<i>2006–07 £m</i>	<i>2007–08 £m</i>	<i>Total £m</i>
Recruitment	0.2	0.3	0.7	1.4
Organisational Development and HR	—	0.5	0.4	0.9
Property and Estates	0.1	0.1	0.2	0.4
Branding and business planning	—	—	0.3	0.3
ICT	—	0.4	—	0.4
Legal and Finance	0.1	0.1	0.1	0.2
Total	0.4	1.4	1.7	3.5

Consultants provided expert advice on the areas above at appropriate stages in the implementation of the Commission of Equality and Human Rights. A detail of the contractors and outputs is given at Annex A.

(b) *Details of the dates and Ministerial attendance at the inter-ministerial group overseeing the implementation of the CEHR (as referred to in Q103)*

Inter-Ministerial meetings have been running in their current format since March 2006. Meetings dates are as follows:

1 March 2006.
16 May 2006.
27 June 2006.
19 July 2006.
10 October 2006.
8 November 2006.
12 December 2006.
9 January 2007.
27 February 2007.
29 March 2007.
24 April 2007.

The next meeting is due on 25 June.

Meg Munn has chaired every meeting and each has been attended by Anne McGuire of the Department of Work and Pensions, Harriet Harman and subsequently Baroness Ashton of the Department for Constitutional Affairs now Ministry of Justice, Jim Fitzpatrick of the Department for Trade and Industry following Machinery of Government changes and Lord Adonis of the Department for Education and Science, or by an official on their behalf.

(c) *Details of the assumptions made and the basis for the budgetary allocation of £70 million and the start-up budget of £24 million for the CEHR (Q96)*

The start up budget of £24 million was based upon an estimation of the preparation and implementation costs for CEHR, including salaries for the implementation team, costs associated with organizational design, accommodation, establishing a new helpline and website, early exit costs and legal advice. Funding contributions were made by the Department of Work and Pensions, Department of Trade and Industry, Ministry of Justice and Communities and Local Government.

The suggested budget of £70 million for CEHR was based on high-level assumptions about CEHR activity and extrapolation from predecessor bodies. The relative increase on the legacy commissions' budgets reflects the expanded role of the Commission in:

- assuming responsibilities for tackling discrimination on the basis of age, religious belief or sexual orientation;
- taking on the overarching responsibility for promoting Human Rights and Equality;

Annex A

CONSULTANTS AND OUTPUTS

<i>Expenditure Type Consultants</i>		<i>Outputs</i>	<i>2005-06 £'m</i>	<i>2006-07 £'m</i>	<i>2007-08 £'m</i>
Recruitment	Rockpools	Advertising and Recruitment for Chair, Chief Executive and commissioners etc	0.2	0.3	
Recruitment	Whitehead	Recruiting for top team(Directors etc	—	—	0.5
Recruitment	Barkers	Statutory Committee	—	—	0.1
Recruitment	Barkers	Helpline	—	—	0.1
			0.2	0.3	0.7
Organisation development	Ernst & Young LLP	Organisational development work	—	0.5	—
Organisation development	Towers Perrin	Organisational development work	—	—	0.4
			0.0	0.5	0.4
Property and Estates	King Sturge	Due diligence on existing estates and fees to identify premises and fit out in Glasgow, London & Cardiff	0.1	—	0.1
Property and Estates	Drivers Jonas	Due diligence on existing estates and fees to identify premises and fit out in Glasgow, London & Cardiff	—	0.1	0.1
			0.1	0.1	0.2
Branding and Business Planning	35 Communications	Branding of the CEHR	—	—	0.3
			0.0	0.0	0.3
ICT	SAIC	ICT Audit and IT infrastructure	—	0.2	—
	SAIC	Helpline—Channel Strategy	—	0.2	—
			0.0	0.4	0.0
Legal and Finance	PWC	Due Diligence	0.1	—	—
	Field Fisher Waterhouse	Due Diligence, Assimilation and general CEHR issues	—	0.1	—
	Field Fisher Waterhouse	Due Diligence, Assimilation and general CEHR issues	—	—	0.1
			0.1	0.1	0.1
TOTAL			0.4	1.4	1.7