

SUBJECT: REFORM OF THE EQUALITY AND HUMAN RIGHTS COMMISSION

JOINT REPORT OF THE CHIEF FIRE OFFICER AND PERSONNEL ADVISOR

1 INTRODUCTION

- 1.1 The purpose of this report is to inform Members of the Governments' proposals to reform the Equality and Human Rights Commission (EHRC).

2 BACKGROUND

- 2.1 The EHRC was established in October 2007 and replaced the Equal Opportunities Commission, Commission for Racial Equality and Disability Rights Commission.
- 2.2 In taking over the work of the aforementioned public bodies, the EHRC inherited a broad remit which included responsibility for promoting equality and tackling discrimination in respect of age, sexual orientation and religion or belief, promoting good relations between groups and providing institutional support for human rights. It was tasked with taking a cross-cutting approach to equality and human rights issues and given new powers and duties.
- 2.3 The government continues to support the need for an independent equality regulator and national human rights institution. However, although the EHRC has carried out some important work since its creation, it has struggled to deliver against its policy remit and provide value for money for the tax payer.
- 2.4 The current Government believes that the breadth of the EHRC's remit, errors made in the process of setting it up and the transition agreements put in place by the previous government, have contributed to the underperformance of the EHRC to date. Therefore the decision was taken to retain the EHRC but to reform it substantially.

3 CONSULTATION

- 3.1 In March 2011 the Government Equalities Office published a consultation document 'Building a fairer Britain: Reform of the Equality and Human Rights Commission'.
- 3.2 The consultation document sets out the government's plans to reform the EHRC to ensure it no longer undertakes non core activities, which could be carried out more cost effectively by others.
- 3.3 An overview of the proposals for reform outlined in the consultation document is set out in section 4 below.

3.4 The Chief Fire Officer has responded to the consultation exercise on behalf of the Authority as the closing date was 15th June 2011 as indicated below. Those which are not agreed have been highlighted.

4 KEY PROPOSALS FOR REFORM

4.1 The Governments' vision for the EHRC is that it should become a valued and respected national institution, focusing on its core role as a strong, modern equality regulator and UN-accredited National Human Rights Institution.

4.2 The EHRC should champion equality and human rights law, work strategically with a wide range of partners to build capacity, hold government and others to account for their performance on equality and human rights and build and use a strong evidence base. The reforms also set out how the EHRC needs to ensure it safeguards and uses public money wisely.

4.3 The Government proposes legislative and non-legislative reforms in three key areas:

- To set out more clearly the EHRC's core functions as an independent equality regulator and National Human Rights Institution;
- To stop non core activities and, where appropriate, make alternative provision, where they can be done better and/or more cost-effectively by Government or other civil society/private sector providers; and
- To clarify the EHRC's relationship to Government and strengthen further its governance and systems to provide greater transparency, accountability and value for money.

4.4 Below, for the information of Members, are the Governments' detailed proposals for reform:

4.4.1 Proposal One – Repealing the General Duty

The Government proposes to repeal the general duty at Section 3 of the 2006 Equality Act intended to set the societal context within which EHRC should carry out its functions. However, it is the Governments' view that it has no specific legal function and does not help to clarify the precise functions the EHRC should carry out as an equality regulator.

It is believed that the general duty creates unrealistic expectations – both positive and negative about what the EHRC, as an equality regulator and public body performing certain EU and human rights functions, can achieve.

4.4.2 Proposal Two – Amending the equalities duties to clarify EHRC's core equality functions

The Government considers that the core functions the EHRC should carry out as an equality regulator and the activities it should undertake to fulfil these functions are as follows:

- (a) Promoting awareness of equality legislation, so that individuals, employers and others understand their rights and obligations;
- (b) Working in partnership with organisations to highlight good practice and build their capacity to eliminate unlawful discrimination, advance equality of opportunity and foster good relations;
- (c) Monitoring compliance with equality legislation and, in partnership with civil society organisations, holding Government and public bodies to account for their performance on equality, for example on their compliance with the new Public Sector Equality Duty (PSED);
- (d) Intervening to address non-compliance including by bringing or supporting individuals to bring strategic text cases to clarify and enforce the law;
- (e) Maintaining a robust evidence base to inform and drive improvements in equality practice and against which progress towards a more equal society can be monitored; and
- (f) Helping the government to evaluate and monitor the effectiveness of the Equality Act 2010.

Currently, Section 8 of the Equality Act 2006 contains some duties that are very broad in nature and do not equate to specific regulatory functions that the EHRC must carry out.

The Government therefore proposes to remodel EHRC's statutory equality duties so that they better reflect the list of functions set out in paragraphs (a-f) above.

4.4.3 Proposal Three – Supporting the EHRC to enhance its focus on human rights

The human rights duties set out in Section 9 of the Equality Act 2006 were formulated to capture the functions set out in the UN's 1993 Paris Principles which establish competence and responsibilities of National Human Rights Institutions (NHRI). These duties set the framework for the EHRC to define and fulfil its human rights remit and meet the requirements of its NHRI.

The Government therefore does not consider that these duties need to be amended. It believes however, that by narrowing the overall breadth of the EHRC's remit will enhance its capacity to develop and deliver a programme to promote and protect human rights.

4.4.4 Proposal Four – Removing the EHRC's good relations duty (Section 10)

The Government has concerns about the value for money of some of the work done to date particularly in relation to the EHRC's strategic grants programme which funds voluntary sector organisations to promote good relations. It is also concerned about the potential for overlap and duplication between the social and educational activities carried out by the EHRC and work done by local authorities, schools and a range of voluntary organisations.

The Chief Fire Officer suggests that this should not be removed all together. The good relation function theoretically is sound however as this is costly perhaps this could be reduced and a more sophisticated assessment process with clear criteria and better accountability to ensure those who are most in need of funding would still be able to access this and therefore a reduced impact to the service user.

The Government believes that the promotion of good relations between its citizens is important hence bringing about the new PSED which came into force in April 2011 and the EHRC will be responsible for regulating that duty. It also believes that the EHRC will be most effective in promoting good relations by concentrating on its regulation of the new PSED.

4.4.5 *Proposal Five – Repealing the EHRC’s power to make provision for conciliation services*

The EHRC has a power to make provision for conciliation in non-employment cases, as a means of securing compliance with the law without resort to the courts. However, there is a risk of duplication in terms of the EHRC’s role and the range of mediation service available such as the National Mediation Helpline.

The EHRC’s conciliation work has not been cost effective to date: costs for this service were nearly £5,000 per case in 2009-10 – this is much higher than the average cost per case of other mediation services.

For these reasons the Government is considering whether the EHRC’s power to make provision for conciliation services should be removed as part of the process of focusing it on its core functions.

The Chief Fire Officer considers that there is some provision through alternative sources for some cases however this creates significant cost issues as funding is also being cut to the support from other organisations. Therefore if the commission cease to do this, there is some doubt as to who could provide this service potentially leading to the most vulnerable people in society not being able to afford to have their issues heard and this would further breed inequalities.

4.4.6 *Proposal Six – A new system for equality and human rights information, advice and support*

In order to inform the Spending Review 2010, the government began a review of the EHRC’s provision of equality information, advice and support.

The review concluded that the EHRC’s helpline was not cost effective when compared with alternative providers and did not help inform its regulatory functions. It was also not well known amongst either the public at large or other advice-giving bodies which has prevented such bodies from making effective referrals to the EHRC’s helpline.

The review also found that the EHRC’s grants programmes were poorly administered, and in the case of the strategic grants programme, poorly targeted leading to the qualification of the EHRC’s accounts.

In light of the above findings the Government has decided to stop funding the EHRC to deliver these activities at the end of March 2012. It will not however, make any changes to the amendments to the EHRC's statutory framework.

The Government Equalities Office proposes to deliver a new system of equality and human rights information, advice and support which will be citizen focused and cost effective providing value for money.

The Chief Fire Officer considers that the closing down of a very busy helpline which handles over 60,000 calls per year is a significant issue. The idea that these can be transferred out and taken up by other organisations is probably an unrealistic one. There would be a lack of knowledge and consistency and set up and training costs, which will need funding from some source.

4.4.7 Proposal Seven – Supporting Social Action

Whilst the EHRC's strategic grants programme was not particularly effective, the Government does believe that supporting voluntary and community groups with a focus on tackling discrimination and delivering equality is important. It therefore proposes to replace the EHRC's strategic grants programme with a more focused funding stream to support civil society organisations that work to promote equality and human rights.

- 4.5 The EHRC has not been able to demonstrate that it is delivering value for taxpayer's money, resulting in the qualification of its first two sets of accounts. Whilst some progress has been made, acknowledged by the Auditor-General among others, further steps are necessary to improve the EHRC's use of taxpayers' money, increase its efficiency and effectiveness and secure appropriate accountability both to the Ministers and Parliament. There are a range of both legislative and non-legislative measures (summarised in Section 5 below) which are proposed to achieve this.

5 SUMMARY OF LEGISLATIVE AND NON-LEGISLATIVE REFORMS

5.1 The key legislative reforms proposed are:

- A statutory requirement for EHRC to lay an annual business plan before Parliament enabling Ministers to ensure that the business plan provides sufficient detail as to how the EHRC intends to spend its budget;
- A statutory requirement for EHRC's Chair and CEO to have regard to using public money efficiently and effectively;
- To make explicit that the Secretary of State may impose a financial sanction, where EHRC can be shown to have mis-spent taxpayers' money;
- To make clear that as a publicly funded body EHRC is subject to government public expenditure restrictions.

- 5.2 The key non-legislative changes already being implemented are measures to:
- Achieve the Budget reductions, set out in Spending Review 2010, including through a move to shared 'back office' services;
 - Improve corporate governance, including work to refine the Framework document setting out EHRC's responsibilities in managing public money;
 - Increase accountability for the EHRC's operational performance against its business plan and its financial management, by making clear the financial consequences of mismanagement.

6 APPROACH TO REFORM AND NEXT STEPS

- 6.1 The Government believes that a combination of legislative and non-legislative reform will ensure that the EHRC and Parliament have a clear and shared view about the nature and extent of the EHRC's role.
- 6.2 Where legislative change is desirable, powers to make the relevant regulations have been included in the Public Bodies Bill currently before Parliament. It is expected that consultation on draft regulations would take place this summer.
- 6.3 Implementation of non-legislative reform proposals, including the changes necessary to meet the budget reductions set out in the Spending Review, has already commenced.

7 RISK MANAGEMENT

- 7.1 Risks associated with the proposed reforms have been incorporated in the Authority's response to the consultation exercise.

8 FINANCIAL IMPLICATIONS

- 8.1 There are no financial implications in relation to this report.

9 EQUALITY AND DIVERSITY IMPLICATIONS

- 9.1 The equality and diversity implications are detailed in the content of this report.

10 HEALTH AND SAFETY IMPLICATIONS

- 10.1 There are no health and safety implications in respect of this report.

11 RECOMMENDATIONS

- 11.1 Members are recommended to:
- a) Endorse the content of this report;
 - b) Receive further reports as appropriate.

BACKGROUND PAPERS

The under mentioned Background Papers refer to the subject matter of the above report:

- HM Government, 'Building a fairer Britain: Reform of the Equality and Human Rights Commission', March 2011.

