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The new Commission for Equality and Human Rights

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ABSTRACT

Legislation to prohibit discrimination on the grounds of gender and race was introduced in the UK during the early 1970s and recently expanded to include those with disabilities. However, legislation was not enough to ensure that individuals and groups could exercise and protect their rights, and consequently a number of different commissions were established by the UK Government, namely the Commission for Racial Equality (established 1976), the Equal Opportunities Commission (established 1970) and the Disability Rights Commission (established 2000). The remit of these commissions was to investigate those aspects of life in which discrimination occurred, and either seek redress for those affected or work with other bodies to bring about improvements. In addition these commissions have needed

to be responsive to the changing nature of UK society. Inherent in such change is the recognition that the particular differences of socially marginalised groups may place their members outside the remit of the existing commissions. Alongside this recognition there has grown an increased understanding of the concept of human rights and the subtle ways in which discrimination can occur. This paper explains current Government proposals to amalgamate the existing commissions into a single Commission for Equality and Human Rights.

Keywords: Commission for Equality and Human Rights, disability rights, equal opportunities, racial equality

Introduction

The European Charter of Human Rights is based on the idea that all people are born free and equal regardless of any distinguishing characteristics they may possess by way of their race, ethnicity, gender, age or ability. Each individual thus has a fundamental right to freedom from unwarranted and unwanted interference – a right that cannot be set aside to allow the interests of other people, however well-meaning they may be, to take precedence. Specific articles within the charter serve to further emphasise this point by stating the rights of those groups that have traditionally experienced social marginalisation and inequality. These groups include children, the elderly and those with disabilities. Gender and racial equality are also addressed. Thus the complex range of human differences is to be respected and protected rather than penalised or reviled.

Such notions of equality are fairly recent additions to Western European thinking. The Declaration of Human Rights (United Nations, 1948) was developed principally in response to the Nuremberg trials and the discovery of Nazi atrocities. The European Charter was based on this declaration and has become part of the conditions of membership of the European Union (EU). Over the years, the protection of fundamental human rights and freedoms has required, and continues to require, constant attention and clarification in response to increased understanding of human diversity and changes in society. If it is to keep abreast of such changes then each state within the EU must regularly review its legislation and policies to ensure that these uphold current knowledge and thinking about human rights. In the UK such a review has led to changes under which the different bodies currently

responsible for human rights will be amalgamated into a single Commission for Equality and Human Rights (CEHR) in 2006. This article explores the Government's proposals for this single commission, the nature of the response, the proposed timetable and the likely consequences.

Background

Historically several different bodies in the UK have undertaken the protection of human rights.

The Equal Opportunities Commission (www.eoc.org.uk)

The Equal Opportunities Commission (EOC) is an independent, non-departmental public body, funded primarily by the UK Government and which reports to the Equality Minister. The EOC was set up to work towards the elimination of sex discrimination through the implementation of the Equal Pay Act 1970, the Sex Discrimination Act 1975, and subsequent legislation. It uses its powers of enforcement to investigate organisations and areas of life where sex discrimination is persistent, and publishes the outcomes as reports and statistics. The EOC is also able to take particular cases of sex discrimination to court in order to establish principles. For example it has acted as a pressure group to change laws relating to rights of pregnant women at work and sought to establish the principle of flexible working hours.

The Commission for Racial Equality (www.cre.gov.uk/about/about.html)

The Commission for Racial Equality (CRE) was set up as a publicly funded, non-government body under the 1976 Act to tackle racial discrimination and promote racial equality. The CRE provides advice and information to persons who believe they have suffered from racial discrimination. It also works with public bodies and other organisations to promote equal opportunity policies and practice, runs campaigns to raise awareness of race issues and makes sure all new laws take full account of race relations legislation. The CRE can also, in exceptional circumstances, support a specific case to court.

The Disability Rights Commission (www.drc-gb.org)

The Disability Rights Commission (DRC) replaced the National Disability Council 2000. The DRC is an independent body established by the Disability Rights

Commission Act 1999 and has the functions of eliminating the discrimination faced by disabled people, and promoting equality of opportunity. The DRC aims to resolve disputes through mediation, but it may bring cases to the courts and thereby a body of case law on the rights of disabled people is being established. The DRC also provides information and advice to employers about how to meet their responsibilities under the Disability Discrimination Act 1995.

Human rights

On 2 October 2000, the articles of the European Convention were incorporated into the laws of the UK through the Human Rights Act 1998. No commission was established to oversee the implementation of the legislation, and this function has been placed on the Department of Constitutional Affairs, which has established a Human Rights Unit. The absence of a Human Rights Commission has been seen as a shortcoming of the human rights legislation.

UK Government proposals: fairness for all

In its sixth report, the Joint Committee on Human Rights recommended that human rights and equalities functions should be integrated within one body (House of Lords and House of Commons Joint Committee on Human Rights, 2003). Following these recommendations the Government announced in October 2003 that it was preparing a white paper on the establishment of a new Commission for Equality and Human Rights. This white paper, *Fairness For All* (Department of Trade and Industry, 2004), was published as a consultation document in May 2004 and proposed the replacement of the EOC, the CRE and the DRC by a single Commission for Equality and Human Rights (CEHR). It was argued that the changing social and demographic context of the 21st century had created a need for new powers, duties and tools that would be available to the new CEHR to make it effective in tackling inequality and abuse of human rights. The amalgamation of the existing commissions would bring many important benefits that would enable the CEHR to address the full spectrum of human rights and ensure that lessons learned and principles established in one field were shared across the board. This meant that the new commission would, in addition to taking over the roles of the EOC, CRE and DRC, work with members of diverse groups that are not currently protected by specific legislation, such as that pertaining to disability rights. This would facilitate the development of a more coherent and integrated approach to

equality and human rights based on core principles and values (Box 1, Box 2, Department of Trade and Industry, 2004). The functions of the new CEHR were to focus on promoting equality for all by promoting an understanding of diversity and human rights, encouraging the development of good working practices and working towards elimination of discrimination (Box 3).

A task force was set up in December 2003 to advise the Government on the role, functions, priorities and activities of the proposed CEHR. The task force is composed of representatives of the existing equality commissions including those from the fields of sexual orientation, religion or belief, and members with a particular interest in human rights. The A steering group will be set up to manage the planning and implementation of the CEHR that will include the passage of the CEHR Bill through Parliament, the establishment of a shadow CEHR with the transition commissioners, one from each of the existing commissions, and the launch of the commission itself, at the end of 2006, when it will take on its full statutory

Box 1 The benefits of a single Commission for Equality and Human Rights

- A strong and authoritative champion for equality and human rights
- A cross-cutting approach
- A benefit to individuals seeking advice
- Better equipped to tackle discrimination on multiple grounds
- A single access point for employers and service providers
- More effective at promoting improvements to the delivery of public services
- A coherent approach to enforcing discrimination legislation
- Able to promote good relations among different communities
- Identifying and promoting creative responses

(Department of Trade and Industry 2004)

Box 2 Commission for Equality and Human Rights: core principles

- Leadership
- Partnership
- Working with voluntary and community sectors
- Openness and transparency
- Strategic operation
- Effectiveness
- Efficiency

Box 3 Functions of the Commission for Equality and Human Rights

- Encouraging awareness and good practice on equality and diversity
- Promoting awareness and understanding of human rights
- Promoting equality of opportunity between people in the different groups protected by discrimination law
- Working towards the elimination of unlawful discrimination and harassment
- Promoting good relations among different communities and between these communities and wider society
- Keeping relevant legislation under review
- Acting as a centre of expertise on equality and human rights

and operational responsibilities as the existing commissions are wound down.

Response by existing commissions

The three commissions, in preparation for the debate on a single equality body, commissioned a paper in the summer of 2002 as an independent contribution to the discussion (O'Conneide, 2002). In addition the commissions have published their own separate responses to the proposals.

The Equality Opportunity Commission

The EOC initially welcomed the plans to give public sector bodies a duty to promote equality for women and men, seeing this as the most significant change in sex equality law in the 30 years since the Sex Discrimination Act came into force (EOC, 2004a). However, the EOC remained concerned about resources, the narrowness of existing legislation and the limits of existing powers. In particular, it argued that equality is not simply a question of preventing sex discrimination, it requires provision of support, especially for parents and carers so that the existing disparities in income, pension and career prospects will be reduced. Thus the CEHR must be able to tackle all the causes of inequality, including the impact of caring, and will require a broader spectrum of enforcement tools than the EOC has at present. In addition, the EOC proposed a different name for the CEHR, The Equality and Human Rights Authority, to convey the idea of an active, executive body rather than one focused on deliberation (EOC, 2004b).

The Commission for Racial Equality

The CRE's initial response to the white paper favoured the proposed new commission. The CRE took the view that race is an issue in every aspect of daily life and, consequently, racial issues are as diverse as the population of the UK. Therefore, if the new body had the power, the resources and the will to take a strategic approach to human rights and equalities, and vigorously address racial issues, then the CEHR was to be welcomed (CRE, 2004). However, this position was subsequently changed when the chairman of the CRE, Trevor Phillips told the Trade Secretary Patricia Hewitt, that a merger of the commissions into a single body at a time when racial issues were at the top of the political agenda would be a mistake (Baldwin, 2004).

The Disability Rights Commission

The DRC published its response to the white paper on 28 May 2004 and added further comments in a subsequent press release (DRC, 2004a,b). The DRC welcomed the recognition by the Government of the importance of the legislative agenda on disability and saw the proposals as indicating an understanding of the distinctiveness of disability rights. However, the DRC emphasised the importance of a firm commitment to enforcement not just on equality but on human rights, and highlighted the danger that the very broad remit described in the white paper will lead to a loss of focus and impact. To offset this there was a need for a specialist, well-resourced disability unit within the new commission. In addition, the DRC argued that current anti-discrimination legislation contained many discrepancies when examined across different fields such as employment, education, vocational training and transport, and that the situation is further complicated by whether or not there was an associated statutory public duty. Consequently, the DRC pressed for harmonised equality legislation to be set in place before the new commission was established, in order to prevent rancour and division.

Overall comments

Integration within a single body does not necessarily ensure co-ordination, co-operation, unity of outlook or proper representation. There is a danger that the vast scope of the agenda for the new commission could lead to areas of discrimination and inequality, which at present are well represented and pursued by the separate commissions, being neglected and overshadowed by the pressures of the larger groups. It is also possible that those from different fields of discrimination might end up speaking inadequately on

behalf of victims in other spheres. Those who are vulnerable to the various forms of discrimination must have the opportunity to speak up for themselves rather than being represented by those, who, while extremely sympathetic, have not personally suffered from, nor are personally vulnerable to, a specific form of discrimination. There is also a danger of internal fighting between the different equalities elements in the commission. Critical to the success of the new organisation will be the issue of resources and how these are allocated between the equalities groups. Specifically there are concerns about whether the CEHR will be able to continue to fund local action groups, whether it will be as effective as the current commissions in establishing legal precedents through pursuing landmark cases, and whether it will vigorously pursue the enforcement of legislation and effect changes in society's attitudes.

Conclusions

In practice the success or failure of the new CEHR will be seen in the extent to which UK is transformed into a non-racist, non-discriminatory, non-sexist society in which human rights are upheld and respected, and where cases of discrimination and abuse of human rights are speedily and effectively resolved through the courts or alternative dispute mechanisms. It is hoped that the performance of the CEHR will be monitored, and that the Government would be prepared to return to the present situation, if it proves that some groups need to have separate representation because their particular needs, rights and concerns are not adequately protected or met by an organisation with such a huge agenda. Obviously resources and their effective use will prove to be a key element in the extent to which the CEHR succeeds in achieving its vision. It is also hoped that the Government is not thinking in terms of saving money by having one commission rather than three separate bodies, since it will not necessarily follow that one single commission can repeat the work of the existing bodies with smaller resources. 2006 is some considerable time away and the existing commissions must continue to fulfil their functions and represent their clients for several years. Hopefully the fact that their end is in sight will not become a demoralising factor, and they will continue with their work with their existing enthusiasm unaffected, as evidenced by the fact that the DRC is about to initiate a major piece of research on the access of those with disabilities to healthcare. However, concerns remain. In a letter to *The Times*, the Labour MP Keith Vaz (2004), in opposing the creation of a single equality body, stated 'this is the wrong time, the wrong place and the wrong country to start marginalising the

race issue'. Time will tell whether or not his fears and those of other critics are well founded.

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CONFLICTS OF INTEREST

None.

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