

Human Rights NGOs Framework Response

Consultation on Structure, Functions and Powers of a Human Rights Commission

Issued by the Joint Committee on Human Rights

On 19 March 2003 the Joint Committee on Human Rights published its report, *The case for a Human Rights Commission*, the culmination of its inquiry into whether or not there is a need for an independent body charged with the protection and promotion of human rights. It also issued a consultation document setting out questions to prompt further thought from a wide range of organisations. The undersigned human rights NGOs are pleased to be able to submit a joint framework response to the Committee which reflects our views on the principles involved. It is anticipated that individual NGOs may also submit their own detailed responses to the consultation.

We welcome the JCHR's recommendation that a human rights commission be established. We also agree with the JCHR's conclusion that, in view of the Government's consultation on a single equality body, an integrated equality and human rights commission is the preferable structural option. As the JCHR notes, the option of separate commissions is a viable alternative and we have debated the advantages and disadvantages of different structures in the past. For the reasons explained below, we are now of the view that if a single equality body is to be created, it must have a human rights remit. The priority for ourselves is to concentrate our thinking on how an integrated body can effectively bring equality and human rights together.

Because of existing arrangements in Northern Ireland and those which are proposed in Scotland, we restrict ourselves to consideration of the new commission's human rights functions in relation to England and Wales.¹ This response sets out some key principles that we think are fundamental to ensuring the effectiveness of such a commission.

Guiding principles

- 1) **Establishment of a single body.** We support the establishment of an Equality and Human Rights Commission which would have both equalities and human rights issues within its remit. The Human Rights Act treats equality as a fundamental human right, as do many international human rights treaties. But human rights have something else to offer: a holistic approach to equality. Rather than seeing only a

¹ This response also does not consider provision for children's rights in England and we await the report of the JCHR into the case for an English children's commissioner.

person's race, gender, age, disability, religion or sexuality, human rights treats people as whole human beings. The underlying value of human rights is its emphasis on the equal worth and dignity of each individual. This approach could be valuable to an Equality and Human Rights Commission.

Human rights practitioners share many common goals with our colleagues in the equality field. Two of these are particularly relevant. We want to ensure that people's human dignity is respected and valued at all times, and we want to ensure that the services public authorities provide respect people's specific and individual needs. On these grounds too it is sensible for equality and human rights to be brought together within one integrated body, ending the artificial divide between equality and human rights that has been created by the UK's current institutional infrastructure. We believe the inclusion of human rights in an Equality and Human Rights Commission would complement, not conflict with, its work on equalities issues.

- 2) **Mainstreaming human rights.** We believe that human rights should not be seen to be an additional "strand"; instead human rights should be mainstreamed throughout the commission and its work. In practice this would mean that every issue considered by the Equality and Human Rights Commission would be looked at from a human rights perspective as well as an equality perspective. We suggest that this will have little impact on the body's work in the private sector, but could be a powerful additional tool in relation to service provision. We suggest this approach because we think that human rights principles have a great deal to offer in helping to make equality a reality in Britain today. Many equality issues are also human rights issues, for example: the discriminatory use of DNR notices affecting older people or disabled people; sexual, religious or racial harassment; and the failure to provide appropriate support for disabled people who want to live independently. It must not be forgotten that the three new "strands" (age, sexual orientation and religious belief) have to rely on human rights standards in relation to improving service provision. Expectations will be raised that the single equalities body will be able to deal with such issues but implementation of the Article 13 directives alone will not enable this to happen.

There also exist human rights issues that do not necessarily involve discrimination but should fall within the remit of the new commission, for example: the treatment of older people and disabled people in residential care homes; access to medical care; domestic violence and problems facing the travelling community. It is of concern to us that debate around human rights has focused on its adversarial role rather than on an understanding of the essential role that human rights can play in improving the lives of substantial groups of people. In the absence of a body to promote human rights, there has been limited opportunity to make use of the good practice principles underlying the Human Rights Act, as the Government intended when the legislation was introduced. An integrated Equality and Human

Rights Commission could make this possible. Mainstreaming human rights would allow for a more coherent approach to equality, more effective promotion of good practice in relation to human rights and equality and a more efficient use of resources.

- 3) **Helping to balance competing rights.** Mainstreaming human rights would have an additional benefit: it could help to provide the “glue” that will enable a range of different equality areas to work closely together and resolve their differences. It is inevitable that, from time to time, there will be clashes of opinion between different equality strands, for example, a Muslim restaurant owner who does not want to allow a blind person to bring their assistance dog into his restaurant. We suggest that the principle of proportionality and the concept of balancing rights, both enshrined in Human Rights Act case law and decision-making, could be a useful tool in such circumstances, in helping to see where the balance of rights might be drawn, resolving disputes in a way which recognises the rights and dignity of both parties.
- 4) **A strategic approach.** We think it is vitally important for the Equality and Human Rights Commission to learn from existing institutions in the way it approaches protection for human rights. We can see much that it could learn from the existing equality bodies and are persuaded by their experience, particularly that of the longer established Commissions, that an effective way to make change happen is to ensure a focus on systemic issues and to promote issues of good practice widely across sectors; prevention is after all better than cure. We believe that the Equality and Human Rights Commission should always act strategically in relation to human rights, using a range of strategies and powers to tackle systematic human rights violations linking these to its work on equality where it is possible to do so.
- 5) **An approach to human rights which focuses on cultural change.** It will be important for the Equality and Human Rights Commission to think carefully about how it approaches human rights issues. We believe it should avoid a legalistic approach, working instead on showing how human rights are something which we all can and should uphold in our lives by promoting the values and principles that underpin human rights standards – many of which have strong roots in British society. Again we can learn much from the existing equality bodies’ track record in making equality relevant to the lives of ordinary people. There is a pressing need for an approach to human rights which emphasises the need for cultural change: this is something that NGOs alone can never deliver. An Equalities and Human Rights Commission, through education, issuing good practice guidance and undertaking other capacity building, has a vital role to play in filling this gap.

We hope to have more opportunities to participate in future debate, both with the Joint Committee on Human Rights and with our colleagues in the equalities

field, to discuss how we might move forward with this exciting opportunity in a way which makes equality and human rights real for us all.

This framework response is submitted on behalf of the following organisations:

Liberty

Justice

Charter 88

Bar Human Rights Committee

British Institute of Human Rights

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