

Fairness For All: A New Commission For Equality And Human Rights Response of the Scottish Council of Jewish Communities to the White Paper

As the representative body of the Jewish community in Scotland, we broadly welcome the proposal to establish a single commission with responsibility for equality and Human Rights. We agree that there could potentially be great benefits in such a body in providing a coherent and effective approach to cross-strand working, tackling the issue of multiple discrimination, developing a structure in which the new equality strands are able to draw on the experience of the existing commissions, and in confirming the relationship between equalities and Human Rights.

We do, however, have a number of major concerns about the proposals as set out in the White Paper.

Legislation

We note that 'the commission will be operating within a framework in which discrimination legislation affords different levels of protection to different groups' (Appendix C) and are very concerned that there is no intention to bring in a single Equality Act to harmonise and simplify this situation. The current legislation, summarised in Appendix A, provides for different levels of duties and powers of enforcement for each of the equality strands, and, will inevitably lead to a hierarchy of equalities, in which some strands are distinctly more equal than others.

The inconsistency of the current legislation is clearly demonstrated by the fact that two religions, Judaism and Sikhism, are regarded as races whilst other religions are not. As a result of this anomaly Jews and Sikhs are covered by the Race Relations Act, and are thus protected from discrimination in the areas of goods and services as well as of employment, whilst members of other religions enjoy only the more limited protection of the 2003 employment legislation.

The lack of a clear and straightforward legislative structure will also make it considerably more difficult for the CEHR to issue 'high quality, user friendly information and advice to individuals on their rights under discrimination and human rights' law' (paragraph 7.12) and this may lead to public disillusionment and loss of confidence in the CEHR.

We understand the concerns of the existing commissions that there should be no regression, and strongly support their contention that there should be no loss or dilution of their existing powers and duties. On the contrary, we would strongly urge that legislation should provide for upward harmonisation of the equality strands ensuring that there is indeed 'Fairness for All'.

We would also draw the Government's attention to the provision in Schedule 5 of the Scotland Act for the Scottish Parliament to encourage 'equal opportunities and the observance of equal opportunities requirements' throughout Scottish public sector bodies across nine rather than six equality strands, and urge that there should be no regression in this respect due to the narrower remit proposed for the CEHR in the White Paper.

Keeping discrimination and human rights legislation under review

We welcome the CEHR's 'responsibility to keep discrimination legislation and the HRA under review' and 'to consider the effectiveness and adequacy of these statutes' (paragraph 3.34). We recommend that this remit should be extended specifically to include advising government on the introduction of a single Equality Act and that government should make a commitment to act on this advice as a matter of urgency.

We note that the CEHR will 'be able to give Ministers advice or make proposals on any aspect of current or proposed law that relates to any part of its remit' and welcome the

commitment that the CEHR's role 'will not be confined simply to discrimination legislation and related good practice' (paragraph 3.36). This will be vital if there is to be a genuine 'embedding and mainstreaming of equality and human rights' (Appendix B paragraph 39b).

Governance

We note the recognition of the importance of representativeness among Board members in providing that one member 'has, or has had, a disability'. Whilst it is clear that a Board of '10-15 members' (paragraph 5.4) cannot be representative of all groups we would stress the importance of appointing a diverse membership.

Whilst the strands have much in common, the establishment of a disability committee 'to ensure continuity of relevant expertise and experience' (paragraph 10.13) acknowledges the importance of specialist knowledge, and we would emphasise that this applies not only to disability, but to all of the strands equally. We note that the 'CEHR Board will have the power to establish committees to.....ensure the CEHR is able to make the best use of others' expertise and experience.....[and] engage with key communities of interest' (paragraph 5.14) and we recommend that advisory groups should be established that not only reflect the existing commissions, but also raise the profile of the new strands.

Enforcement

We are concerned that the White Paper appears to minimise the CEHR's role of enforcement. Whilst we fully recognize the value of promotion, investigation and conciliation, we believe that the CEHR must have credible powers of enforcement if it is to be effective in ending discrimination and breaches of human rights.

The existing commissions have used legal cases very effectively, and these have been the means of significantly advancing the equality agenda. We are apprehensive that the CEHR may be unduly limited in this regard by the requirement for 'enforcement actions.....[to be] sparing, and limited to strategic interventions' (Appendix B paragraph 61).

It is, however, true that the CEHR will not be able to support every individual who wishes to pursue a discrimination or human rights case through the courts, and we are concerned that there should be clear signposting of other agencies who are able to support people in this regard.

Funding

Whilst we welcome the commitment to 'make available further funding in the coming year to continue support for raising awareness and providing information and advice' in connection with the strands of religion or belief and sexual orientation (paragraph 10.7) we are concerned that the majority of references to cost in the White Paper are in connection with potential savings.

Whilst it is no doubt true that the running costs for a single body would be significantly lower than those of six separate Commissions (Appendix B paragraph 19), it must be remembered that there are at present only three Commissions. If the new strands are not to remain at the bottom of a hierarchy of equalities there will need to be adequate initial funding to set up equivalent structures, support and enforcement mechanisms to those transferring from the existing Commissions. We are concerned that this is not referred to among the 'one-off costs in establishing the new body', indeed the only one-off cost mentioned is 'drawing the three current Commissions into [the CEHR]' (Appendix B paragraph 46).

Working with key stakeholders

We welcome the White Paper's commitment to 'working closely with key stakeholders representing the new anti-discrimination strands..... to develop effective mechanisms for ensuring their needs are met' (paragraph 2.6).

We note that 'The CEHR will clearly set out how, when and with whom it intends to consult' (paragraph 2.10) and believe it to be of the utmost importance that the key stakeholders are correctly identified and are regarded as representative by members of the appropriate strand. However, dialogue and consultation alone will not provide 'meaningful opportunities to shape the priorities and how [the CEHR] works' (Question 1). For this to take place there must be a commitment to demonstrate how the views of stakeholders are being taken into account in the running and development of the CEHR.

The voluntary sector

We support the commitment that the CEHR should 'recognise and value [the] expertise and experience [of the voluntary and community sectors] and develop a constructive partnership with them' (paragraph 1.34). The voluntary sector has developed considerable expertise that enables organisations to lobby effectively and to be a credible source of support and advice. Many of the CEHR's key stakeholders are from the voluntary sector, and whilst many are highly skilled few currently have adequate resourcing to develop the necessary capacity for effective engagement with the CEHR. We recommend that the CEHR's recognition of the voluntary sector should therefore include the provision of adequate resourcing for capacity building.

Human Rights

Whilst we welcome a recognition of the link between equalities and human rights we are concerned that the CEHR's remit with regard to human rights remains unclear. The White Paper states that 'the CEHR will promote awareness and understanding of human rights' (paragraph 3.9) and 'be active in helping to embed a culture of respect for human rights'. Other bodies will, however, operate in this area, and their relationship with the CEHR remains undefined. The Scottish Executive is committed to the establishment of a Scottish Human Rights Commission (SHCR) and unless there is a clear memorandum of understanding to define their respective roles there may be either unnecessary duplication between the CEHR and SHCR, or else important issues may slip through the net. The relationship between the CEHR and the Joint Committee on Human Rights (JCHR) is similarly undefined, beyond the statement that 'Responsibility for the scrutiny of proposed new legislation for compatibility with the Human Rights Act will remain with the JCHR' (paragraph 3.38).

The Scottish dimension

We welcome the recognition of the need for the CEHR to work effectively in a devolved context, and to 'reflect and be informed by Scottish and Welsh priorities and experience' (paragraph 9.3). We would point out that this is not only true of devolved issues. Reserved matters impact very differently in a devolved Scotland than they do in England, and it will be necessary for the CEHR to be aware of this when developing strategies and mechanisms at GB level.

We note with concern the proposal 'for the appointment to the CEHR Board of one Board member with special knowledge of Scotland'. Each of the existing Commissions currently has a Scottish Commissioner, so the White Paper proposal is for a considerable reduction in the level of representation even before taking into account the addition of the new strands and of human rights. We believe that on a Board of 10-15 members (paragraph 5.4) it would not be unreasonable for there to be two Commissioners with special knowledge of each of Scotland and Wales, and recommend that this is given due consideration.

If the CEHR is to have an effective presence in Scotland then 'provision for the establishment of a Scotland committee' (paragraph 9.4) will be essential. Membership of this committee should be broadly representative of Scottish society and of each strand in order to be able to speak authoritatively on issues of Scottish policy. We recommend that the

Commissioner(s) with special knowledge of Scotland should not be able to vote against the advice of the Scotland committee at meetings of the CEHR Board.

The Scotland Act

Whilst we support the wider duty for equalities that the Scotland Act lays on public bodies in Scotland, we are concerned at its implicit hierarchy of equalities which places religious belief at the bottom, included among 'other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions' (Scotland Act, Schedule 5, Part 2, Section L2). Religion plays an important part in the lives of many people in Scotland (67% identified themselves as having a religion in the 2001 census), and we are disturbed by this apparent attempt to sideline and minimise its value and importance. We look to the CEHR to counteract this impression by developing the appropriate support structures to enable the new strands, including religion and belief, to work on an equal level to that of the existing commissions.

Implementation and transition

Whilst we support the White Paper proposal for the establishment of the CEHR by the end of 2006, we would emphasise that this timescale is very tight, and point out that it will present difficulties for some groups. We agree that 'the skills and experience of staff in the existing Commissions will be a key ingredient in ensuring a smooth process from transition through to establishment of the CEHR' (paragraph 11.3) but believe it to be of utmost importance that representatives from all of the strands, new as well as old, and of human rights groups are involved during the transition period. We support the aim that there should be no regression from the powers of the existing Commissions, and note the particular arrangements in this respect for the establishment of a disability committee. We strongly support the statement that 'the CEHR's Board will be responsible for ensuring that its work and priorities are balanced across all the equality strands' (paragraph 10.21) and urge that steps should be taken to ensure that these arrangements do not lead to the government's commitment to the new strands being called into question.

Summary

The Scottish Council of Jewish Communities welcomes the vision for the CEHR laid out in the White Paper and believes that a single commission could deliver considerable advantages in terms of the equality and human rights agendas. We are, however, concerned that adequate consideration should be given to the CEHR's structure and mechanisms, and also to the way in which it will relate to other bodies and to individuals so as to ensure that it will be effective in promoting and protecting equality and human rights for all.