

PROFORMA FOR EHRC REFORM CONSULTATION RESPONSES

The consultation closes on 15 June 2011. Please let us have your response by that date.

When responding, it would be helpful if you could provide the following information.

Please fill in your name and address, or that of your organisation if relevant. You may withhold this information if you wish, but we will be unable to add your details to our database for future consultation exercises.

Contact details:

Please supply details of who has completed this response.

Response completed by (name):

Position in organisation (if appropriate):

Name of organisation (if appropriate):

Birmingham Law Society – Employment
Law Committee

Address:

Contact phone number:

Contact e-mail address:

Date:

Confidentiality

Under the Code of Practice on Open Government, any response will be made available to the public on request, unless respondents indicate that they wish their views to remain confidential. If you wish your response to remain confidential, please tick this box and say why. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

I would like my response to remain confidential (please tick if appropriate):

Please say why

In what capacity are you responding (please tick if appropriate)?

As an individual

On behalf of an organisation

As an employer

Other (please specify)

Note:

- In addition to the completed proforma, you can also send other supporting information if you so wish.

Completed forms should be e-mailed to the following address:-

EHRC.reform@geo.gsi.gov.uk

If you are posting the form please send to:-

EHRC Reform Consultation Responses
C/O Louise Sutton
Government Equalities Office
Zone G10, 9th Floor Eland House
Bressenden Place
London SW1E 5DU

Thank you for completing this response form.

EHRC's core functions

PROPOSAL ONE – Repealing the General Duty

Question 1: Do you agree that Section 3 should be repealed?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

In the view of Birmingham Law Society – Employment Committee (“the Committee”), the Equality Act 2006 (“the Act”) should outline the key objectives of the Equality and Human Rights Commission (“the EHRC”). The Committee believes that the Act should contain a section which encapsulates the purpose of the EHRC and the principles on which it is based. As such, the Committee does not agree with a total repeal of Section 3. The specific legal function of section 3 is to underpin the fundamental aims of the EHRC to fight discrimination and protect Human Rights.

It is suggested by the Committee that the wording of section 3 be reviewed and amended to focus the EHRC on its core objectives. Currently, there is duplication of the general duty at section 3 and the Duties at section 8 of the Act. The Committee therefore suggests that section 3 be amended to specify the EHRC’s guiding principles and aspirations, which could be particularised in more detail at section 8 of the Act.

PROPOSAL TWO – Amending the equalities duties at section 8 to clarify EHRC’s core equality functions

Question 2: Do you agree that remodelling the duties at s.8 of the Equality Act 2006 to mirror the role and functions set out in para 1.9 of chapter 1 will help to focus EHRC on its core functions as an equality regulator? If not, what do you think EHRC’s core functions should be?

Please place a cross in the appropriate box

Agree Disagree Unsure

Please explain why -

Question 3: Do you agree with our proposal to amend the section 12 duty so that it:

a) specifies the aims and outcomes which EHRC is required to monitor progress against; and

b) requires a report every five rather than three years, to tie into the Parliamentary cycle and enable reports to capture meaningful change over time?

Please place a cross in the appropriate box

Agree

Disagree

Not sure

Please explain why -

PROPOSAL THREE – Supporting the EHRC to enhance its focus on human rights

Question 4: Do you agree that the proposals to focus the Commission on its core functions, as well as the measures set out in Chapter 3 to increase the Commission's accountability for its performance, will help the Commission fulfil its human rights remit? If not, what further changes do you suggest?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

The EHRC's major weakness to date has been that its remit is too broad – extending beyond its core role to, for example, operating a helpline and grants programme. Therefore, the Committee agrees that the proposals will allow the EHRC to focus on the work that really matters, where it alone can add value. At present, vagueness in the Act, for example, the duty to “promote understanding of the importance of equality and diversity” has led to the EHRC undertaking a wide range of activities that are not regulatory in nature, including running summer camps for young people.

Problems with financial controls mean that each set of the EHRC's accounts have been qualified since its creation, and it has struggled to deliver value for money. As such, the Committee agrees that the EHRC should be made accountable for spending taxpayers' money. However, the Committee has concerns that the budgetary cuts will impact on the EHRC's ability to enforce Equality law. In addition, the Committee is concerned that the removal of funding to regional offices will adversely affect grass roots organisations that rely on the support and advice of the regional office. Clear legislative framework is needed to ensure transparency and effective enforcement in the private sector.

PROPOSAL FOUR – Removing the Commission’s good relations duty (section 10)

Question 5: Do you agree that we should remove the Commission’s good relations function, and the associated power at section 19? If not, why not?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

EHRC's Non-core activities

PROPOSAL FIVE – Repealing the Commission's power to make provision for conciliation services

Question 6: Do you think the Government should repeal the Commission's power to make provision for conciliation services, as part of the process of focussing the Commission on its core functions?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

Although conciliation and mediation are effective alternatives to litigation in various types of disputes, the Committee agrees that these means of resolving disputes are more suited to individual cases where there is no need to set a legal precedent. Often the public policy implications of decisions made on equality and human rights disputes mean that it is important for those decisions to have widespread impact.

In the Committee's view, parties involved should make the decision whether conciliation is appropriate in the circumstances, following guidance from the EHRC. If it is appropriate, the EHRC could refer the parties to an external mediator. This will dovetail with the Ministry of Justice's proposals to develop an alternative mediation referral service.

PROPOSAL SIX – A new system for equality information, advice and support

Question 7: Do you agree with the proposals set out to provide a new system of information, advice and support? If not, what changes to the system would you recommend?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

Question 8 What should a new citizen - focused, cost effective information and generalist advice service look like?

Please explain -

Question 9: How can government best provide public education on discrimination and human rights, targeted on the most disadvantaged groups?

Please explain -

Information on discrimination and human rights needs to be translated into concrete action at the national level. Human rights education needs to be more than a simple repetition of the various legal conventions with little explanation as to their relevance to ordinary people in their daily lives. The school system should remain at the root of making young generations aware of their rights and how to use them.

The government should give sufficient priority to human rights education in schools. There should be an emphasis preparing the pupils for the labour market whilst also developing life skills which would incorporate human rights values. Not only should the school provide the key facts about human rights and wrongs, but also focus on fostering values such as respect for others, non-discrimination, gender equality and democratic participation.

Extra efforts are required in order to ensure that minorities and disadvantaged groups are reached in human rights education programmes. This requires that basic materials are produced in relevant languages, teachers are recruited from within these communities and that the methods are culturally adapted. In addition, it is also important that human rights thinking and discussion is provided through the new media and technology.

Question 10: Is there anything that distinguishes discrimination cases from other cases eligible for civil legal aid that would justify further public funding for support?

Please explain-

Question 11: Do you agree with the proposal for the Air Transport Users Council (AUC), part of the Civil Aviation Authority (CAA), to provide the complaints handling service for disabled passengers in the future? If not, why not?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

PROPOSAL SEVEN: Supporting Social Action

Question 12: How could the new Government funding stream most effectively support civil society organisations to promote equalities, human rights and tackle discrimination?

Please explain -

Achieving greater value for money and accountability

Question 13: Do you agree with our legislative proposals to increase the Commission's transparency, accountability, and value for money?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

Our approach to reform & next steps

Question 14: Do you agree with our approach of legislative and non-legislative reform?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

Question 10

Is there anything that distinguishes discrimination cases from other cases eligible for civil legal aid that would justify further public funding for support? If yes, what form do you believe the support should take?

We feel that it is important that civil legal aid funding is maintained for discrimination cases in the employment field. As we understand it, through EHRC funding of local advice centres, claimants were also able to be represented at Tribunal. We believe that it is important that funding is provided to allow representation at Tribunal on discrimination cases, where appropriate. Often by providing representation, the case can be dealt with more speedily, thus tying up less Tribunal resource. Further many discrimination cases affect minority groups who are unable to afford quality legal advice and/or advocacy. The benefits of funding such cases may, in many cases, be far wider than achieving a remedy for that particular claimant but achieve the result of preventing discrimination to others within the group. This is particularly the case now that the Equality Act 2010 allows Tribunals to make recommendations that apply beyond the Claimant's own situation.

Question 13

Do you agree with our legislative proposals to increase the Commission's transparency, accountability and value for money?

We agree that the Commission should be able to demonstrate that it provides value for money, be transparent and accountable and that it is not unreasonable to require the Commission to demonstrate how it intends to spend its budget and measure its success. The ability of the Secretary of State to impose a financial sanction where it can be shown that the EHRC has mis-spent taxpayers' money could be quite subjective. Whilst it is important to have such a sanction, it is important that it does not curtail the Commission in its activities beyond what the potential sanction is intended to do, and perhaps some consideration should be given as to how this may be made more objective.

Question 14

Do you agree with our approach of legislative and non-legislative reform?

Using legislation and non-legislation reform to focus on the Commission on its core functions is sensible and we are in agreement with this proposal. We would hope that by providing a clearer definition on the Commission's role would enable it to be more effective, enabling it to adopt a more focussed approach and channel resources in a more concentrated manner. This may also have the effect of raising the Commission's profile amongst a wider audience.

