



## Engender response to *Building a Fairer Britain: Reform of the Equality and Human Rights Commission*

### Introduction

Engender is a membership organisation working on an anti-sexist agenda in Scotland and Europe to increase women's power and influence and make visible the impact of sexism on women, men and society. In our work, we clearly recognise the multiple identities that women have. We have a large number of organisational members, who work in Scotland on issues around women's inequality.

Our three strategic priorities are women's poverty, violence against women, and women's political representation.

Engender currently receives funding through the Equality and Human Rights Commission's grants programme, to work with communities of interest to research and articulate their lived experience of gender blind or neutral policy and practice and engage with public bodies in seeking remedy.

We welcome the opportunity to respond to this '*Building a Fairer Britain: Reform of the Equality and Human Rights Commission*'. We particularly welcome the UK Government's statement in the foreword of the consultation that 'equality and human rights are fundamental to building a strong economy and a free and fair society,' and the importance of a statutory Commission to tackling the inequalities that persist.

In the development of recent equalities policy in the UK, there has been considerable emphasis placed on the idea that individuals have multiple identities. This work has included, through the establishment of a Commission working across strands, the creation of statutory spaces that acknowledge the intersections of identities. While Engender values the possibilities for

intersectional, cross-strand working offered by the establishment of the Commission, there have been clear organisational and governance challenges in its creation. Despite this, significant valuable work has been delivered by the Commission in Scotland, which is not reflected in the consultation document. Indeed, the fact that the Commission operates separately in Scotland, with additional governance structures in the form of the Scotland Committee, has not been addressed in the consultation.

The consultation document acknowledges that there have been management difficulties within the Commission, but proposes structural changes which may strike at the heart of the Commission's purpose to address these. The measures that the UK Government is consulting on appear to deviate from the spirit of the foreword, in 'clarifying' the Commission's role by narrowing the aspirations for it. It is of great concern to Engender that this would seem to provide the Commission with only legalistic levers to deliver equality and fairness, as our experience tells us that a more nuanced regulatory function is required to tackle some of the 'wicked problems' that persist.

## Core functions

### Proposal one

Proposal one suggests that Section 3 of the Equality Act 2006 ('the Act') is repealed. This section sets out the overall purpose of the Commission, by articulating a vision for the type of society that the Commission's work should effect. This section signals an intent to create a Britain that is fair and just, with dignity and respect for individuals.

Removing this section would seem to suggest that the UK Government no longer retains a vision for a Britain in which individuals are not limited by prejudice and discrimination, and diversity is valued. This seems at odds with the foreword's language around 'promot[ing] equality of opportunity and greater freedom for all.' This again reflects the lack of attention to the EHRC's specific nature in Scotland. In Scotland the use of 'vision' as a statement of policy intent is used in the Scotland Act and in the 'outcomes' focus of national and local government. This facilitates to statutory and voluntary bodies to work with common 'purpose' and has indeed defined the way that civil society has engaged with the EHRC in Scotland in progressing the equalities agenda in Scotland.

### Proposal two

Proposal two suggests that section 8 of the Act is significantly amended to refocus the Commission's core equality functions away from, for example, 'promot[ing] understanding of the importance of equality and diversity' (existing s.8(1)(a)), and towards 'promoting awareness of equality legislation' (proposed s.8(1)(a)). This is not merely a semantic shift.

While access to legal remedy for individuals who have experienced discrimination is important, we know that a completely legalistic approach is not enough to deliver substantive equality. Women have had *de jure* protection from sex discrimination in employment since 1975. *De facto* equality has been more elusive, with 30,000 women losing their jobs as a result of pregnancy each year. The work that the Commission's predecessor, the Equal Opportunities Commission, did to raise awareness of pregnancy discrimination, and to encourage the NHS to discuss pregnancy and work with newly pregnant women, was outwith the function of 'promoting awareness of equality legislation'. It was, however, extremely important, in terms of progressing the discussion about leave for parents. Arguably, the UK Government's current consultation on parental leave has been partly facilitated by this earlier work done by a previous Commission.

Resolving the structural barriers to individuals and families achieving a balance between work and family life is a complex endeavour. It requires creative thinking and multi-disciplinary analyses. It is right, Engender believes, that the EHRC be adequately equipped to continue to contribute to the debates about work-life balance, and other intensely challenging policy problems.

It is also important that the Commission is, in line with the Hampton principles for modern regulators, able to identify 'the few businesses that persistently break regulations' and ensure that they 'face proportionate and meaningful sanctions'. It is difficult to identify, from the proposed amendments to section 8 of the Act, how the full range of regulatory powers the Commission currently has are intended to be applied to the private sector. Where there are structural issues that are common to a whole area of the economy, such as the issue of equal pay in the financial service sector<sup>1</sup>, it is critically important that the Commission retains the powers to investigate these and facilitate action to address them.

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<sup>1</sup> Equality and Human Rights Commission (2009) *Financial Services Inquiry: Sex Discrimination and Gender Pay Gap Report* of the Equality and Human Rights Commission EHRC: London

There is also a proposal that section 12 be amended to require the Commission to publish progress reports on a five year cycle, rather than a three year cycle, and that the section be amended to specify what the Commission should measure.

The exact meaning of this specification of unclear from the consultation document, but there is a concern that any framework, including the EHRC's own equality measurement framework, that is codified now, will be insufficiently inclusive of 'newer' protected characteristics, about which there will necessarily be less benchmarking data. Linking reporting to the Westminster parliamentary cycle increases the risk of equalities and the Commission being politicised, and again does not acknowledge the specificities of the devolved nations, in this case their electoral cycles. Engender believes that the equalities agenda is far too important to be politicised in this way and that reporting across elected governments offers an opportunity to acknowledge that the achievement of equality is an issue beyond party politics.

Engender would have some concern about an increase in reporting timescales, if this means that the Commission would only be monitoring progress against a range of indicators twice each decade. There is a balance to be struck in terms of setting reporting timescales, but we would suggest that if no progress is visible over the space of three years, then in the case of most indicators there has been insufficient effort applied to achieving the outcome being measured.

### Proposal three

The consultation paper puts forward Proposal three, in which the refocusing of the Commission will 'enhance its capacity to develop and deliver a programme to promote and protect human rights. Engender is very clear on the relationship between equality and human rights, but the consultation document is not and instead treats human rights as a separate 'strand' of endeavour. In seeking to remove section 3, which contains a clear articulation of the importance of the realisation of human rights in British society, the centrality of human rights to the Commission's purpose is somewhat obscured.

The consultation document is unclear on what the Government perceives the benefits to the Commission's human rights work will be, and it is difficult to comment on the Government's intentions for this work without any specific details. However, it may be useful to note that external agencies consider that there is scope for considerable additional work within the UK to effect the realisation of a number of rights. The UN Committee on Economic, Social, and Cultural Rights

specifically noted in its concluding observations of 2009 its disappointment that the UK lacks, *inter alia*, a national human rights plan of action. It also regretted ‘the statement made by the [UK] State party’s delegation that economic social and cultural rights are mere principles and values and that most of the rights contained in the Covenant [on Economic, Social and Cultural rights] are not justiciable [in the UK].’<sup>2</sup>

Domestic scrutiny of the EHRC’s human rights work has also drawn conclusions that this work could be enhanced. The Joint Committee on Human Rights’ evaluation of the EHRC’s work said that ‘in [the Joint Committee on Human Rights’] view, the Commission is not yet fulfilling the human rights mandate set out in the Equality Act.’<sup>3</sup> The consultation does not refer to this review, or set out how the proposed changes to the Commission’s structures will enable it to respond to the Committee’s conclusions.

#### Proposal four

Proposal four suggests removing the Commission’s good relations duty. It is unclear from the consultation document exactly what this will mean, as the ‘Map of Gaps’ work is cited in both 1.15 as a piece of work carried out to discharge the good relations duty, and at 1.18 as an example of work that might be done to regulate the new Public Sector Equality Duty. It is further unclear what the combined impact of the ‘refocusing’ of the Commission, and the removal of the good relations duty might be. The work that the Commission has done to identify existing inequalities, and progress to tackle these, in the form of the Triennial review has been valuable to Engender, and other NGOs, in helping to provide a robust evidence base for action.

### **Non-core activities**

#### Proposal six

Proposal six suggests a new system for equality and human rights information, advice and support. The details of this are not set out in the consultation paper,

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<sup>2</sup> Committee on Economic, Social and Cultural Rights (2009) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories* [E/C.12/GBR/CO/5] United Nations: Geneva

<sup>3</sup> Joint Committee on Human Rights (2010) *Equality and Human Rights Commission (Thirteenth Report of Session 2009-10)* London: The Stationery Office Limited

but it suggests that this will be delivered by the Government Equalities Office (GEO).

The consultation paper rightly observes that data from any helpline function should inform the EHRC's understanding of how inequalities are impacting on individuals across a range of contexts, including employment, housing, and education. It is difficult to see how such a link would be better made by removing the helpline function from the EHRC and locating it within the GEO.

Locating a helpline within the GEO would also drastically impact on the quality of information, advice and guidance in Scotland. Scotland has a separate Government, legal system, education system, regulatory framework, and public sector architecture. In terms of equality regulation, the public sector equality duty in Scotland will be different from that in England, and will require different responses from bodies exercising a public function. At the moment, the England helpline of the EHRC does not offer advice, information or guidance to Scotland-based callers.

Paragraph 2.15 of the consultation refers to a 'programme of public education targeted to the most disadvantaged groups on their equality and human rights'. The details of this are entirely absent from the consultation document, and there is no consideration given to how this will operate in Scotland, given the Scottish Human Rights Commission's remit for public education on human rights, and, more broadly, the Scottish context.

Proposal six does not adequately take cognisance of the different structures in place in Scotland. It is clear to Engender that a separate, targeted provision of information, advice and support should be retained in Scotland. The Commission in Scotland seems to be the natural home for such a service.

### Proposal seven

Proposal seven suggests that the EHRC's strategic grants programme be replaced with a 'more focused funding stream to support civil society organisations that work to promote equality and human rights'. No further details of the funding arrangements are included within the consultation paper.

The proposal suggests that the EHRC and civil society organisations work in partnerships. Engender would concur with this approach, since that is the way we have worked regarding our current strategic grant. Engender uses the grant from the Commission to support community groups to effectively engage with public

bodies to ensure policy and practice are gendered, using the GED as a lever, and feed back the learning from this to the EHRC as case studies.

The Commission's own grant funding in Scotland has been used to support a range of civil society organisations at a time in which funding for equalities work generally has been reduced. The Commission in Scotland awarded these grants, although some management has been located in England. In Scotland, the strategic grants have been seen as a way of civil society and the EHRC investing in a shared agenda.

Engender has been a recipient of funding from the Commission, and this enabled us to do work that could not have been funded through any other source.

Engender's work with the EHRC through the strategic grants has indeed progressed the strategic agenda: first through a programme of work to explore the gendered nature of the other protected characteristics, thus deepening understanding of the impact intersections; the second to work with communities of interest to research and articulate their lived experience of inequality and engage with policy makers to lever change.

It is vital that, at a time of significant challenge for equalities-focused civil society organisations, adequate resourcing exists. It seems self-evident that allocation of grant funding, and grant management, both occur as close to the funded initiative as is practicable, so grant allocations and changes to funded projects can be made with knowledge of the local context. In terms of Scotland, it seems necessary for a proportion of any alternative funding stream to be located within Scotland. There is opportunity here to discuss the EHRC developing strategic partnerships with organisations, such as Engender, that can support them to achieve their objectives, particularly in raising awareness of inequalities.

A part of all equalities organisations' work is to influence Government around legislation and regulation, its role as a leader on equalities, and equalities activity that falls within its own scope and remit. Although many equalities organisations in Scotland are funded by the Scottish Government, and this funding is to be welcomed, independence from Government enables organisations to be clearer about the gaps between Government's aspirations and practice. The selection of an appropriate funding mechanism should take account of this challenge.

## Achieving greater value for money and accountability

The legislative changes proposed in the consultation document would ‘introduce a statutory requirement for EHRC to lay its Annual Business Plan before Parliament, and to give the Secretary of State a power over its form and timing’. It will also require the EHRC’s Chair and CEO to have specific regard to using public money efficiently and effectively.

The Paris Principles governing accreditation of National Human Rights Institutions (NHRIs) state clearly that ‘a national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.’ Independence is a clear underpinning feature of the Principles, and is directly referred to several times, including with regard to proscribing Government financial control, and in the establishment of its activity. The proposed legislative changes are not set out in detail, but it seems that there is some cause for concern that ‘better enabl[ing] Ministers, Parliament and the public to judge the value for money of EHRC’s activities and its success in achieving specified outcomes’ may include creating accountability mechanisms that compromise the EHRC’s ‘A’ status.

The consultation document describes, in broad terms, a number of governance changes that will ‘enabl[e] closer scrutiny by Government’. Although equalities legislation is reserved, its practical implementation touches on a number of policy areas that are devolved to the Scottish Government. The consultation document discusses increasing accountability to the UK Government, but does not consider accountability to the Scottish Government.

It is Engender’s view that the Scottish context is sufficiently different from that in England and Wales, to suggest that separate accountability is both desirable and necessary. Although equalities legislation is reserved, and a mechanism whereby Scotland’s views can be taken into account by an England-headquartered Commission is necessary, it seems appropriate that the Scotland elements of the Commission be accountable to the Scottish Parliament and/or Government.

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