

dti

**FAIRNESS FOR ALL: A NEW
COMMISSION FOR EQUALITY
AND HUMAN RIGHTS**

White Paper

SUMMARY





The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

IN ASSOCIATION WITH:

DEPARTMENT FOR CONSTITUTIONAL AFFAIRS
DEPARTMENT FOR EDUCATION AND SKILLS
DEPARTMENT FOR WORK AND PENSIONS
HOME OFFICE



WOMEN AND EQUALITY UNIT

The Women and Equality Unit works to reduce barriers to social participation, improve legislative and institutional frameworks for equality and support economic opportunities for women.

Introduction

In October 2003, the Government announced its intention to create a single Commission for Equality and Human Rights (CEHR) to deliver a step change in how we promote, enforce and deliver equality and human rights, and help our society to meet the challenges of the future.

The White Paper Fairness for All: A New Commission for Equality and Human Rights published on 12 May 2004 sets out proposals to meet this task. These build on the discussions of the CEHR Task Force which is chaired by the Rt Hon Jacqui Smith MP, Deputy Minister for Women and Equality. This document is a summary of the proposals in the White Paper. We welcome comments on any aspect of these and details on how to respond, including the full text of the consultation questions in the White Paper, are set out in Annex A.

The role of the CEHR

The decision to create the CEHR marks a leap forward in the battle against discrimination. Equality and human rights matter to everyone – they are not minority concerns. Discrimination is wrong and simply has no place in our society. We need to create a culture of respect based on the equal value, dignity and worth of every individual.

Extending opportunities to all means removing unfair barriers. To deliver prosperity for all we must harness the skills and potential of every member of society, whatever their background.

The CEHR will help to achieve a fairer, more inclusive Britain through its responsibilities to promote equality and human rights across our whole society and provide institutional support for the full range of discrimination legislation¹. The creation of a single organisation with this role will bring

1 See Annex A

many important benefits. For the first time, there will be a body charged with promoting a culture of respect for human rights, both in the delivery of public services and as core values for society generally.

The CEHR will be better able to serve the individuals and communities it is charged to protect than could several separate bodies. It will:

- speak with a single, clear voice on equality and human rights matters;
- act as a more effective partner for business by acting as a single, consistent source of information and advice;
- serve individuals better, providing a single point of access for information, advice and guidance;
- through a cross-cutting approach, tackle barriers and inequalities affecting several equality strands, and promote strategic solutions;
- be better able to promote improvements in service provision within the public sector through embedding a culture that respects equality and human rights.

The CEHR will use its resources flexibly, avoiding duplication, and promote cross fertilisation of ideas and best practice. It will also provide the most efficient and cost effective way of providing support for all six equality areas (age, disability, gender, race, religion or belief and sexual orientation) as well as human rights.

The activities of the CEHR

The CEHR's core functions will be:

- i. **i. Encouraging awareness and good practice on equality and diversity:** working to develop and promote a better understanding of the causes of discrimination and bringing together work related to several different aspects of equality such as race and age will enable the CEHR to respond to the complexity of individual identities.

- ii. **Promoting awareness and understanding of human rights:** working to improve understanding of human rights principles in society generally and promote human rights good practice to the public sector in particular so that everyone can be confident of fair and decent treatment in the way that public services are delivered.
- iii. **Promoting equality of opportunity between people in the different groups protected by discrimination law:** providing information and guidance to individuals, businesses, education providers and the public sector and promoting change on strategic equality issues such as improving access to services for disabled people.
- iv. **Working towards the elimination of unlawful discrimination and harassment:** advising individuals on their rights under discrimination law and how to secure these, including how to bring legal proceedings, and taking strategic enforcement action when necessary.
- v. **Promoting good relations among different communities, and between these communities and wider society:** working particularly with those of different races, religions or beliefs to promote dialogue and understanding between different groups and communities.

The CEHR will also keep **discrimination and human rights legislation under review**, providing advice to the relevant Secretary of State where it considers that changes are necessary. It will act as a **centre of expertise on equality and human rights**, drawing together a strong evidence base on the barriers to equality, respect for human rights and full participation in society as a basis for fostering wider understanding the causes of discrimination.

The CEHR will inherit the CRE's role in respect of promoting and enforcing the **duty on public sector bodies** to promote equality of opportunity between people of different racial groups and will have a similar role in relation to the disability duty included in the Disability Bill which has been published in draft. Steps to implement a public sector duty to promote equality of opportunity between men and women will also be taken.

The CEHR will need to work closely with a range of stakeholders to deliver these functions, including voluntary and community sector organisations, trade unions and employers and service providers in the private and public sectors. This commitment to **partnership working** will be underpinned by a duty to consult stakeholders on its strategic plan.

Delivering to key customers

The CEHR will tailor its delivery mechanisms for key customer groups to insure that information and advice and other types of support services are provided in the most appropriate and accessible way. For example, as well as providing advice directly to individuals through its helpline and website it will be important for the CEHR work in partnership with organisations such as Citizens Advice to provide support to **individuals**. It will also assist other front-line advice providers through services to clarify points of law and passing on up-to-date expertise on developing areas of law. The CEHR will have a strong, pro-active relationship with **private sector** employers and service providers, working in partnership wherever possible. There will be a strong emphasis on meeting the needs of **small businesses** which often prefer to receive information on compliance with discrimination law through trusted day-to-day advisers such as their accountant or lawyer. The CEHR will also seek to build close and constructive relationship with intermediary organisations and inspectorates for the **public sector** to embed equality and human rights as key values that underpin the way in which public services are delivered and to mainstream monitoring of compliance with discrimination and human rights law.

Regional arrangements

It is also proposed that the CEHR will have a presence in each of the nine English regions, for which options include working in partnership with other bodies, provision contractual arrangements or co-location with organisations such as Regional Development Agencies. This will help the CEHR develop

relationships with key customers in each area and respond to the wider movement to regionalised delivery of services.

Good relations

The CEHR will have a duty to promote good relations among the different communities protected by discrimination legislation² and between these communities and wider society.

This role will enable the CEHR to tackle issues of conflict and tension in communities, building on the role played by CRE in the communities divided on ethnic or faith lines. The CEHR will help lead the debate to foster shared values that underpin communities. Like CRE, the CEHR will be able to make grants to support local projects delivered by voluntary or community organisations. This will include continued support for local race work delivered by the Race Equality Councils as well as exploring opportunities to support work with other strands. Current levels of support for race equality work will be protected for the foreseeable future.

Scotland and Wales

Specific arrangements will be put in place in Scotland and Wales to ensure that the CEHR is equipped to respond to the particular needs of both countries, reflecting the new political context following devolution. These measures will include: the appointment of board members with special knowledge of Scotland and Wales to the CEHR board; the establishment of

² These groups are men and women; people of different racial groups; people who have or have had a disability; people of different sexual orientations; people of different religions or beliefs (including those who do not have a religion or belief); people of different ages; and people who intend to undergo, are undergoing, or have undergone gender reassignment.

CEHR offices and Scotland and Wales and; legislative provision for the establishment of a Scotland committee and a Wales committee to set priorities for and oversee the work of the CEHR in Scotland and Wales.

Tools to enforce the law

The CEHR will have a suite of legal tools that equip it to work strategically to secure change and improvement in specific areas and empower it to take targeted action to enforce the law where needed. It will be able to:

- i. Carry out **general inquiries** into issues of public interest related to discrimination, equal opportunities, good relations and human rights. The CEHR will be able to look at issues that affect two or more protected groups as well as focussing on single areas of equality. It will research problem areas in depth, identifying barriers to good practice and publishing recommendations.
- ii. Publish statutory **codes of practice** on complying with one, several or all areas of discrimination law. These will explain in clear terms the requirements of the law and how it works in practice and will be developed in partnership with employers and service and education providers. The CEHR will be able to develop these codes of practice for specific sectors or fields, covering all the relevant areas of discrimination and human rights legislation.
- iii. **Seek the court's permission to intervene in court cases** to provide expert knowledge and understanding which might assist the court in making a decision.
- iv. Work to challenge discrimination through strategic enforcement of discrimination legislation. It will have the power to **support individuals bringing cases** under discrimination legislation, in particular where cases raise questions of principle, flag up the need for legislative change or where the outcome might affect large numbers of people. The CEHR will be able to draw on human rights arguments in those

discrimination cases it supports and the Government is seeking views on whether the CEHR should be able to continue support for such cases if the discrimination argument underlying the case has fallen away.

- v. Arrange for the provision of **conciliation services** in disputes related to discrimination in the provision of goods, facilities and services (ACAS provides conciliation services for employment cases). This approach can offer a more accessible and less expensive alternative to litigation and tribunals
- vi. Tackle deep-rooted and systematic discrimination by carrying out **named investigations** into an individual, company or organisation that the CEHR has reason to suspect has carried out unlawful acts of discrimination or harassment. Where the CEHR finds that discrimination or harassment has occurred, it will be able to issue a **non-discrimination notice** requiring an action plan to be prepared which sets out what will be done and when to stop the discrimination taking place. The CEHR will be able to apply for a **court injunction** where it believes that further acts of discrimination or harassment will occur unless the person or organisation that has been investigated is restrained.
- vii. Where a person or organisation is willing to work with the CEHR they there will be scope for them to enter into a **binding agreement** setting out the steps that they will take to improve their practices. This would be an alternative to enforcement action.

Governance of the CEHR

The CEHR will be an executive non-departmental public body which is, and is seen to be, independent of Government. Its **Chair and Board** will be recruited in line with the requirements of the Office of the Commissioner for Public Appointments and the Chair's appointment will be approved by the Prime Minister. The CEHR board will have 10-15 members and will include

at least one person who has, or has had a disability, to provide some continuity with the current governance arrangements of DRC. The CEHR's Chief Executive will also be a member of the Board.

The Secretary of State who is responsible for appointing members of the board will be obliged to ensure that it includes a broad range of experience and expertise in the issues that fall with the CEHR's remit and the communities that it serves. This will ensure that the Board is genuinely diverse. The board will be expected to develop a common culture, rather than being a collection of separate interests and will need to develop and champion a common vision and purpose for the CEHR, providing effective leadership and decision-making.

The Board will have the power to establish **committees** to support or assist with any of its functions or provide advice. As a transitional measure, a disability committee will be established for the CEHR's first years of operation, which has authority in respect of setting strategy, developing policy and monitoring delivery for specific areas of CEHR disability work. This recognises that disability discrimination legislation, which is based on the concept of 'reasonable adjustment', partly differs from other discrimination legislation.

The CEHR will be **funded** through grant in aid provided by the Secretary of State of the sponsor Department. An announcement about which government Department will sponsor the CEHR will be made in due course.

Next steps

Legislation will be needed to establish the CEHR, and the Government intends to introduce a **bill** as soon as time permits. The new Commission will not be fully operational before the end of 2006 at the earliest. Planning for the transition of the three existing equality Commissions into the CEHR and the build-up of support for the new strands (age, religion or belief and sexual orientation) is currently being developed. Measures to support this will include the provision of funding in the coming year to continue support for raising awareness and providing information and advice in relation to the sexual orientation and religion or belief regulations.

The CEHR board will first be appointed in 'shadow' form to prepare for the full establishment of the body. Three **transition commissioners** who will be nominated by the chairs of the CRE, DRC and EOC from among their current commissioners will be appointed to the initial board to ensure that its work is informed at the outset by the experience and expertise of the existing Commissions.

Annex A

Background Notes

1. The key pieces of discrimination legislation that will be supported by the CEHR are:
 - The Equal Pay Act 1970;
 - The Sex Discrimination Act 1975;
 - The Race Relations Act 1976 (as amended by the Race Relations Amendment Act 2000 and the Race Relations Act 1976 (Amendment) Regulations 2003);
 - The Disability Discrimination Act 1995;
 - The Employment Equality (Sexual Orientation) Regulations 2003;
 - The Employment Equality (Religion or Belief) Regulations 2003.

2. Forthcoming amendments to discrimination legislations include:
 - The Disability Discrimination Act 1995 (Amendment) Regulations 2003;
 - The Draft Disability Bill that has currently been published in draft;
 - Regulations to amend the DDA in relation to further and higher education and;
 - The Employment Equality (Age) Regulations which will come into force in 2006.

3. The consultation questions asked in the White Paper are:
 - Q1. How can the CEHR ensure that all stakeholders have meaningful opportunities to shape its priorities and how it works? (p.27 of full published text).

 - Q2. We would welcome views on whether the CEHR should be able to continue support for cases which have drawn on both discrimination and human rights arguments, after the discrimination element of the case has fallen away. (p.42 of full published text).

- Q3. What other areas of activity should the CEHR support at local level to further its overall mission to promote good relations between different communities? (p.57 of full published text).
- Q4. We would welcome comments on the strategies for working with individuals, businesses and the public sector that are set out in this chapter. (p.59 of full published text).
- Q5. What other activities should the CEHR carry out at regional level? Is the mixed approach – contracts, partnerships and co-location – an appropriate way to develop the CEHR’s regional presence? (p.77 of full published text).

4. The deadline for responses to the consultation is 6 August, 2004. Responses can be submitted by letter, fax or email to:

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35 Great Smith Street
London SW1P 3BQ
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5. Additional copies of this document may be made without seeking permission. Printed copies of the full White Paper and versions of this summary in alternative formats can be obtained from:

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