



AHRB Research Centre for Law, Gender and Sexuality

**RESPONSE TO THE DTI'S WHITE PAPER -
'FAIRNESS FOR ALL:
A NEW COMMISSION FOR
EQUALITY AND HUMAN RIGHTS'**

August 2004

CentreLGS is the AHRB Research Centre for Law, Gender and Sexuality.

The purpose of CentreLGS is to act as a national and international focal point for academics, practitioners and policy-makers who work in the area of gender, sexuality and the law. It consists of 30 scholars in three institutions: the Universities of Kent, Keele and Westminster.

CentreLGS aims to support current research and develop new initiatives in this field through regular policy forums and conferences, the publication of books and articles, exchange and visiting scholar programs, and the supervision of postgraduate research students.

SUMMARY

CentreLGS warmly welcomes the proposal to establish a Commission for Equality and Human Rights. The formation of the CEHR presents the United Kingdom with a unique opportunity to consolidate achievements in legislating for equality, and to move towards a fairer and more inclusive society. There is much in this White Paper to be celebrated. We hope that the CEHR will provide the foundation for a proactive, ongoing debate around equalities and human rights issues in the UK.

However, there remains much more to be done. We urge the Government to commit now to a timetable for harmonising UK equality and discrimination legislation by means of a single Equality Act. We also consider that a commitment is needed as soon as possible from Government on the level of funding for the CEHR.

These are our other main recommendations:

Involving Stakeholders

1. The CEHR should implement a continuing process of staff training in each equality area and in human rights. It is crucial that the commissioners and others appointed in relation to any one equality strand have some understanding and full commitment to the other equality strands.
2. If there are to be transitional commissioners prior to the launch of the CEHR, then commissioners should also be appointed in respect of the new strands.
3. The Government should make an express commitment to continue, if not increase, funding for capacity building in the new strands prior to the CEHR's launch.
4. The CEHR, once established, should engage in an ongoing programme of regional consultations to encourage blue-skies thinking on equalities and human rights issues.
5. Provision should be made for the CEHR to establish strong channels of communication with academic centres in relevant fields.

Support for Equalities and Human Rights Cases

6. The CEHR should have a discretion to continue support for combined human rights and equality cases where the equality element has fallen away. It should also have a discretion to support freestanding human rights cases.

Promoting Good Relations

7. The CEHR should have the power to fund social, economic and cultural initiatives that aim to promote good relations between groups, and not merely traditional methods of communication and training.

Working with Individuals, Businesses and the Public Sector

8. The shadow CEHR should begin concrete work on policy and practice issues arising from intersectionality. The CEHR should also consider the evidence on the effects of mainstreaming in local government, especially problems of deferral of responsibility and action, in developing its own mainstreaming strategies.
9. Provision should be made for the CEHR to undertake policy and advice work on discrimination issues affecting minority businesses.

Activities at Regional Level

10. Offices in some regional areas should not be ruled out at this stage, particularly given variations in access to legal aid and voluntary sector services.

RESPONSE TO CONSULTATION QUESTIONS

We set out below our response to the consultation questions.

1. ***How can the CEHR ensure that all stakeholders have meaningful opportunities to shape its priorities and how it works?***

1.1. The CEHR can ensure meaningful participation by all stakeholders through focusing on institutional structure, and importantly, on the interim period before its launch in 2006/2007.

1.2. *Structure.*

One of the most important ways in which the CEHR can enable stakeholders to shape its priorities is for *all* Board members to be committed to *all* equality areas, even if their focus is normally only on one dimension. **To that extent, we welcome the commitment at paragraph 5.8 of the White Paper that the Board will *not* comprise of separate 'champions' for each area.** Experience with local government equalities structures in the 1980s shows that a separate-strand focus at board level leads to conflict and competition for attention, status and resources between equality areas. Such an approach also does little to challenge possibly narrow views held by high status figures within each group, who have little incentive to think across groups or consider intersectional issues.

1.3. *Interim Period before launch of CEHR.*

Staff training on equality areas. We understand that many staff from the current commissions – the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission – probably have considerable knowledge of other grounds. However, given the important cross-strand focus of the CEHR, and the recent addition of new strands, it would be counter-productive if such knowledge were assumed and not actively promoted. **We recommend that the aim of encouraging expertise in all areas also becomes the focus for staff training in the new CEHR.** Such training would also fit with the objective, set out at paragraph 10.9 of the White Paper, for shared

understanding between the three commissions to be developed in the interim period before the CEHR is launched.

Staff recruitment to the CEHR. We suggest that an effort is made to recruit staff from outside the current commissions to the workforce of the CEHR. There is an opportunity, at the interim stage, for the CEHR to begin employing individuals with useful working knowledge of the new strands.

Transitional Commissioners from the new strands. The White Paper states that three transitional commissioners will be appointed to the shadow Board, which will prepare the way for the full CEHR (paras 10.11 and 11.8). The transitional commissioners will be nominated from the CRE, the EOC and the DRC, and their aim will be to ensure continuity (para 10.11, White Paper). **If there are to be transitional commissioners from the existing commissions, it is extremely important that two commissioners are also appointed to the shadow Board in respect of the new strands.** Whilst all Board members would be expected to understand and promote all strands, the interim stage will provide the nascent CEHR with a vital opportunity to avoid any possibility of an asymmetry of influence between the new strands and their more established counterparts.

Continuity of Funding. Funding to support capacity-building in connection with the new strands is vital to their long-term success. There has been no express commitment by Government to continue the funding for capacity-building projects that has been provided through the DTI in 2003-04 and 2004-05 through to the launch of the CEHR in late 2006 or early 2007. **In order to provide the background for the CEHR effectively to fulfil its remit with respect to the new strands, Government should make a commitment at least to continue (if not increase) the existing level of funding for capacity-building projects at least through to the CEHR's launch date.**

1.4. Further Specific Suggestions.

Brainstorming sessions. It is important for the CEHR to encourage 'blue-skies' thinking and to be able to respond to new trends in the way that inequality and discrimination evolve and are understood over time. **In**

order to facilitate this, and to maintain meaningful connections with stakeholders, the CEHR should build into its core activities an ongoing programme of regional consultations. This could take the form of regular forums around the country that gather feedback from academics, lawyers, voluntary sector organisations and other concerned individuals. The forums would provide support for the CEHR's local and regional agenda. There should be structures in place that provide for the results of brainstorming and other sessions to feed directly into the CEHR's policy work.

Research Links. Academic centres, such as CentreLGS and the Human Rights Centre at the University of Essex, can offer useful and distinct approaches to CEHR work. Likewise, academic centres can benefit from an ongoing dialogue with the CEHR in developing their own research and policy directions. For example, academic centres can provide access to:

- comparative work;
- wider empirical research; and
- literature reviews.

Importantly, academic centres can also develop new theoretical and analytical perspectives on equalities and human rights questions. All of these features can enhance the research function of the CEHR. **In order to capitalise on these benefits, the CEHR should develop strong channels of communication with academic centres in relevant fields.**

2. ***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.***

2.1. **Continuing support for cases.** We are strongly of the opinion that the CEHR *should* have a discretion to continue support for cases that have drawn both on discrimination and human rights arguments after the discrimination element of the case has fallen away.

2.2. Discretion to support freestanding human rights cases. We believe that the CEHR should also have a *discretion* to support freestanding human rights cases. Part of the rationale for creating a joint body is its ability to address gaps in the scope of both equality and human rights law. Freestanding human rights cases can:

- *explore remedies* for those people falling outside the recognised grounds, or outside the scope of current equalities legislation (such as those experiencing discrimination on the grounds of age (until 2006), class and country of origin, and those experiencing sexual orientation and/or religious discrimination in the provision of goods and services);
- *highlight new ways of viewing equality* where the legal issues at hand do not appear to fit with the current scope of UK discrimination law, such as domestic violence and sexual violence; and
- *enable the CEHR to maintain essential working expertise* of human rights law that will assist it in its responsibility to keep the Human Rights Act under review (see White Paper, para. 3.34).

We understand that there have been concerns that the Commission would be overwhelmed if it were given the power to support freestanding cases.¹ We understand these concerns, but note that the Commission will already be sifting requests for support across the existing strands.²

We would further comment that the object of maintaining a cohesive approach to equality and human rights would be greatly strengthened by the Government's ratification of protocol 12 to the European Convention on Human Rights, which gives freestanding status to the non-discrimination provision in the Convention.

¹ Joint Committee on Human Rights: 'Commission for Equality and Human Rights: Structure, Functions and Powers' (Eleventh Report of Session 2003-04).

² We regret that the White Paper did not devote more space to analysing the issues surrounding freestanding cases. Paragraph 3.16 of the White Paper states that support will not be needed because courts and tribunals are required to act compatibly with human rights, and because individuals can apply for legal aid. The fact that courts and tribunals have an obligation to act compatibly with human rights does not address the very real need for institutional support to be made available to individuals who are considering bringing freestanding cases.

Furthermore, citing legal aid as a reason for failing to provide such institutional support does not take into account the problems of eligibility and coverage highlighted in the Constitutional Affairs Select Committee's recent report on civil legal aid (Constitutional Affairs Select Committee: 'Civil Legal Aid: adequacy of provision' (Fourth Report of Session 2003-04)). In the light of such practical issues, it is unrealistic to rely on legal aid provision in order to support individuals in freestanding human rights cases.

3. ***What other areas of activity should the CEHR support at local level to further its overall mission to promote good relations between different communities?***

3.1. We support the proposed statutory duty to promote good relations among groups protected by discrimination legislation, and between those groups and wider society (White Paper, para 6.3).

3.2. **We are particularly concerned that the CEHR should have the power to fund social, economic and cultural initiatives rather than projects that focus merely on linguistic or textual descriptions of how to achieve good relations.**

3.3. In addition to the proposals set out in Chapter 6 of the White Paper, we suggest that the CEHR should take an active role in the following two areas:

- arts media; and
- housing and social infrastructure projects.

3.4. **Arts media.** The CEHR should consider funding groups that use arts media as a way of promoting good relations and raising awareness of equalities issues. For example, funding could be made available for local theatre groups to undertake creative work in schools with a particular focus and brief to address issues of diversity and/or discrimination. In addition, the CEHR could support community projects in prisons around issues of race, sexism and/or homophobia.

3.5. **Housing and social infrastructure.** The CEHR has a role in encouraging housing providers and agencies involved in urban design to think broadly and imaginatively around the way that environment impacts upon communication and relations between ethnic and social groups. For example, the CEHR could support community urban design projects in multi-ethnic areas or between different generations, which have a particular 'good relations' focus.

4. ***We would welcome comments on the strategies for working with individuals, businesses and the public sector that are set out in this chapter.***

We set out our comments in this section according to the sub-headings used in Chapter 7.

4.1. **Supporting individuals.**

4.1.1. *Intersectional Discrimination.* The White Paper raises the issue of intersectional (or 'multiple') discrimination at paragraph 7.9. This issue requires a concerted effort on the part of the CEHR. In particular, empirical research is required on how many cases before Employment Tribunals have engaged, or currently engage elements of intersectional discrimination. **We recommend that the shadow CEHR begin formulating a strategy for addressing intersectional discrimination as soon as practically possible, as intersectionality feeds into the debate around the future of equality law and the harmonisation of discrimination legislation.** Ideally, the CEHR should establish a working party, and/or an internal committee on the issue.

The CEHR should engage in consultation and facilitate discussion on how practitioners and policy makers should address intersectional issues in their work. An example of such a document is the Ontario Human Rights Commission discussion paper 'An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims.'³ The Commission should also take a lead in drafting and disseminating policy documents and codes of practice on intersectionality, and providing guidance to the judiciary on intersectional cases. For example, providing training on intersectionality to Employment Tribunal chairs would greatly assist in developing a more flexible approach to complex discrimination.

4.1.2. *Mainstreaming.* Local government has considerable experience, spanning many years, of working to achieve effective mainstreaming.

³ Produced by the Policy and Education Branch of the Ontario Human Rights Commission, October 2001. Available at <http://www.ohrc.on.ca/english/consultations/intersectionality-discussion-paper.pdf>.

We recommend that the CEHR draw on research into equality initiatives in the context of local government in order to develop its mainstreaming strategy and to avoid a range of potential pitfalls.

One example of how local government experience can prove useful is the issue of how to ensure that momentum is maintained across each of the strands. Often, the most effective way of ensuring that this happens is to advise relevant organisations to appoint individual policy-makers to act as focal points for each strand. Without these focal points, there is a risk that know-how will dissipate within institutional structures. Local government policies have oscillated between having relatively senior specialist officers responsible for developing each strand and following a more diffused mainstreaming approach. Research suggests that both routes are needed and should be co-ordinated together in order to provide the most effective institutional promotion of equalities agendas.

We would also suggest that advice is given to organisations on putting place internal monitoring processes to measure the effectiveness of their mainstreaming exercises.

4.1.3. *Trade Unions.* Alongside the measures outlined in Chapter 7, we also consider that the CEHR should work closely with trade unions in establishing advice and information channels for individuals, both on equality and on human rights issues.

4.2. Supporting businesses.

We would like to see the specific needs of minority-owned businesses and co-operatives addressed as part of the CEHR's work to support businesses in Chapter 7. **In particular we recommend that the CEHR undertake policy and advice work on discrimination and harassment experienced by minority-owned businesses from suppliers, customers and employees.**

5. ***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?***

5.1. Whilst we agree with the arguments against a one-size-fits-all approach, we are concerned that the CEHR maintain a focus on long-term strategic continuity (White Paper, para. 8.12). Without duplicating legal aid provision, the CEHR will clearly have to take a realistic and more proactive role in some areas, which have less of a legal advice infrastructure than others. For example, the Constitutional Affairs Select Committee recently found that ‘advice deserts’ exist in many areas of the UK, where individuals find it impossible to obtain legal aid advice on particular issues.⁴ **We recommend that offices in some, if not all regions are not ruled out at this stage, particularly as regional variations in legal aid coverage and provision of voluntary sector services may become increasingly apparent as preparations progress for the CEHR.**

5.2. Furthermore, whilst equality *may* make good economic sense, CEHR functions should not be pursued from within organisations – such as Regional Development Agencies – whose prime objectives are economic development and regeneration.

⁴ The Committee chose, as an example, problems in Northumberland, where there were no housing or immigration advice providers, and only two employment law advice contracts (note 2, above, para. 52).

FURTHER INFORMATION

Method of Consultation

This response is the result of collaboration between Centre members across the three participating institutions. Members were invited to attend, or send comments to a co-ordinating meeting in July 2004. As a result of that meeting, a draft response was produced and circulated to Centre members for further feedback prior to preparation of the final document.

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