



THE GOVERNMENT REPLY TO THE THIRTEENTH REPORT FROM
THE JOINT COMMITTEE ON HUMAN RIGHTS
SESSION 2009-10 HL PAPER 72, HC 183

Equality and Human Rights Commission

**Presented to Parliament
by the Secretary of State for the Home Department and
Minister for Women and Equalities
by Command of Her Majesty**

July 2010

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Introduction

1.1 The Joint Committee on Human Rights published the report of its enquiry into the Equality and Human Rights Commission on 15 March 2010.

1.2 The Committee's inquiry which resulted in its report was intended as the first of a series of opportunities to discuss significant human rights issues and the EHRC's work. However, the Committee felt obliged to extend its inquiry to examine concerns about issues of EHRC's leadership and management which had arisen during the previous year.

1.3 The report's conclusions accordingly cover both the human rights aspects of the Commission's work, and management and governance at senior levels in the Commission. Although the report was published at the end of last Parliament and addressed to the previous Government, it deals with issues of both importance and concern to the Coalition Government.

1.4 The Coalition Government has therefore carefully considered all the Committee's conclusions, and this document sets out its response.

Response to the Committee's conclusions and recommendations

2.1 The Coalition Government's response to the conclusions and recommendations in the Joint Committee on Human Rights' Report into the EHRC is set out below:

- 1. We agree with the main findings of the EHRC's human rights inquiry. As several of our previous inquiries have concluded, embedding a culture of human rights in public authorities in the UK would drive service improvements which would benefit people who use them. The Commission has a major role to play in leading this process. Our concern is with whether the EHRC is doing enough to devise and disseminate a culture of respect for human rights in public authorities, the main aim our predecessors identified for the Commission. (Paragraph 15)***

The Coalition Government also agrees with the broad findings of the EHRC's Human Rights Inquiry and like the Committee also looks to the EHRC to take concrete steps to implement the Inquiry's recommendations.

- 2. The publication of a human rights strategy is evidence that the EHRC is seeking to approach its responsibilities for human rights matters on a more systematic basis than hitherto; but, in our view, the Commission is not yet fulfilling the human rights mandate set out in the Equality Act. (Paragraph 26)***

Under section 9 of the Equality Act 2006, the Equality and Human Rights Commission (EHRC) has a statutory duty to promote understanding of the importance of human rights; to encourage good practice in relation to human rights; to promote awareness, understanding and protection of human rights; and to encourage public authorities to comply with section 6 of the Human Rights Act 1998.

The Coalition Government looks forward to the EHRC taking action to implement the recommendations for the Commission made by its own Human Rights Inquiry, which will help it to fulfil its statutory duties on human rights.

3. ***We agree entirely with the strong criticisms of the human rights Minister that the EHRC's human rights strategy is "too full of aspiration and too light on what I would call concrete goals that can be delivered within a specified time frame". (Paragraph 27)***

The Coalition Government notes the Committee's comment.

4. ***An important next step will be for the human rights strategy to be redrafted to make it, as the Minister said, less aspirational and more concrete. We recommend that the EHRC redraft its human rights strategy so that it is more focused and includes timescales, milestones and indicators of success. A revised strategy should clarify how a stand alone human rights strategy relates to the EHRC's overall strategy for 2009-12. The Commission should ask for public views on the existing strategy now and aim to launch its revised strategy later in 2010. (Paragraph 28)***

The Coalition Government would like to see the Commission take a genuinely strategic approach to human rights, to translate the actions recommended by its Inquiry into specific projects and outputs, and to report on progress.

5. ***In our view, merging three equality bodies and developing a strong corporate board for the new body, making use of the expertise and talents of all commissioners, are challenging tasks and we conclude that in the early years of the EHRC's existence this was not done successfully, for which the Chair must bear responsibility. (Paragraph 48)***

The Coalition Government agrees with the Committee that the task of setting up the new Commission, in the timescale required, was a challenging process, and one which did not go as well as it could have done. The background to this has been examined in some detail by the Committee of Public Accounts (PAC) in the course of its fifteenth inquiry, Session 2009/10. As a contribution to that inquiry, the Government Equalities Office (GEO) and the EHRC commissioned an independent review into lessons from the establishment of the Equality and Human Rights Commission, and the conclusions of this review were circulated by the GEO to other Government Departments. The Government's response to the PAC's conclusions, in particular regarding the machinery of government aspects of EHRC's creation, are set out in the Treasury Minute responding to the 15th Report, published on 15 July 2010.

6. ***We have no strong view on the size of the EHRC board and can see the advantages of a larger board, if it can be led effectively. We are concerned, however, that the Minister has not taken action to broaden the political background of commissioners, in line with the Deloitte recommendation. The EHRC operates in a political environment, dealing with issues which are often the focus of national debate. Commissioners should include people affiliated to all of the main parties, as well as those without party affiliations. In our view, the Commission's credibility across the political spectrum would be enhanced if it included at least one commissioner with links to the Conservative Party. (Paragraph 52)***

The Coalition Government recognises the importance of ensuring that there is no political bias in the appointment of Commissioners. Appointments are made entirely on candidates' ability to meet the required standard, not on their political affiliation. Political activity questionnaires are completed on application for these positions but the results are not disclosed to those involved in the selection of Commissioners at any time during the recruitment process. The Government intends shortly to advertise to bring in new skills, especially from the commercial private sector, onto the Commission Board

7. ***In our view, the reappointment of the Chair and Deputy Chair of the EHRC should on this occasion have been subject to open competition, to help restore confidence in the organisation and its leadership following the well-publicised difficulties the EHRC faced in 2009. The Minister's decision simply to reappoint Mr Phillips without any parliamentary involvement could undermine the perceived independence of the Commission and put its accreditation as a national human rights institution at risk. (Paragraphs 56 and 57)***

The Coalition Government agrees that the process should have been more transparent but notes that it is accepted practice for re-appointments of Chairs and Deputy Chairs of public bodies not to be subject to open competition. This was the practice previous Ministers followed on this occasion.

- 8. Although our strong preference remains for the appointment of EHRC commissioners to be taken out of the hands of ministers, we regret that the Human Rights Minister was not more closely involved in the decision to reappoint the Chair on this occasion. If Ministers are to decide who should Chair the EHRC, the Human Rights Minister should be involved. (Paragraph 58)**

The Coalition Government thinks it right that the Commission Board, responsible for considerable sums of public money, should be appointed by, and accountable to, Ministers as set out in the 2006 Equality Act. It will ensure that the Minister with responsibility for Human Rights is consulted in the process of future appointments to the Chair of the EHRC, irrespective of which Department has sponsorship responsibilities.

- 9. We recommend that the appropriate select committees should be informed by the Government whenever the holder of a post subject to pre-appointment hearings is reappointed. (Paragraph 59)**

As part of its plans to increase the transparency of government, the Coalition Government is committed to strengthen the powers of Select Committees to scrutinise major public appointments. The Government is currently considering a range of options for doing this, and will ensure that the Joint Committee's recommendation is taken account of in this process.

- 10. The recruitment of Dr Brewer's successor appears to have proceeded at a leisurely pace even before the Government's late intervention to query the salary expectations of candidates led to the competition being suspended, apparently until after the next Budget. There is every possibility that the post will have to be re-advertised and that the appointment of a new chief executive will be further delayed. It is unacceptable for a body of the size and significance of the EHRC to operate without a permanent chief executive for as long as eight months and with there seemingly being no prospect of an appointment being made until much later in 2010, especially given the costly interim arrangements. (Paragraph 66)**

The Coalition Government agrees that it is important that EHRC appoint a permanent Chief Executive. Because of the current spending review and the review of Non-Departmental Public Bodies, Ministers have asked the EHRC to suspend the recruitment process until there is greater clarity about the size and functions of the EHRC later in the year. In the meantime, the Government notes that the current Director-General has made considerable progress in improving the accountability and management of the Commission. Following the end of his contract at end-

January 2010, his interim appointment was extended on a short-term basis to the end September 2010, at an annual equivalent rate of £150,000. This compares to the previous Chief Executive, who was paid £185,000 a year.

- 11. We welcome the fact that Mr Phillips has now relinquished his controlling share in the Equate consultancy. It would appear, however, that it took some time before Mr Phillips was persuaded to take the action necessary to address the perception of a conflict of interest caused by his involvement with Equate. We regret that he did not terminate his involvement with Equate when the issue was first raised by Dr Brewer. We again suggest to Mr Phillips that his personal website should be amended to remove references to the Equate consultancy. (Paragraphs 76 and 77)**

The Coalition Government notes the Committee's conclusions.

- 12. We recognise the claims of other departments [than the GEO to sponsor the EHRC] and recommend that deciding which department has responsibility for the EHRC should be a first order issue when machinery of government changes are contemplated. It is not acceptable for human rights to be an afterthought, as it sometimes appears to have been in the past. We believe that the Minister for Human Rights and the sponsoring department for the EHRC should be situated in the same place. (Paragraph 81)**

The Coalition Government does not agree with this conclusion. Human Rights and anti-Discrimination law are separate areas of legislation and the two lead Departments (respectively the Ministry of Justice and the GEO) liaise as necessary.

- 13. We regret that Mr Phillips' reappointment was not subject to open competition. Parliament should have been given the opportunity properly to scrutinise the Commission's performance under his leadership. As a consequence of his reappointment, Mr Phillips is now in a position to demonstrate that he can work with others and establish the EHRC on a firm footing. (Paragraph 85)**

The Coalition Government notes the Committee's conclusion.



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