



HM Government

Tailored Review of
The Equality and Human Rights Commission

November 2018

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i. Executive summary

The potential of the Equality and Human Rights Commission

The potential of the Equality and Human Rights Commission (EHRC or Commission) is to improve the lives of individuals and wider society through its unique powers as an enforcer of equality law and advocate for human rights. The Commission's stakeholders, including government and Parliament, expect it to carry out its duties robustly and on the basis of good evidence. It is Great Britain's independent national equality body and a United Nations-recognised National Human Rights Institution. To meet its potential the EHRC is expected to intervene, make the most out of its combined rights and equality remit, build a reputation to back its role as an empowered regulator, and leverage expertise and wider support to achieve tangible progress.

In the UK there is a long tradition of rights activism and the EHRC has an extensive and vibrant stakeholder base. Successive governments have demonstrated progress against a variety of causes and have embedded rights through a legal framework recognised as world leading. Rarely is the EHRC alone in pursuing an issue, and in most circumstances it can draw on the support of others to be more than the sum of its parts. The EHRC has the powers to achieve impact, and there are many who want to help it succeed.

Ten years on: the opportunity to refocus and set direction

The EHRC is ten years old. Across its first decade it can point to a variety of successes and it has a strong international reputation. This Review has found an organisation passionate about reducing inequality and enhancing the role of rights in society. However, the Review has identified a range of critical issues which mean at present the EHRC is not meeting its potential and its domestic reputation suffers accordingly. These issues need to be addressed by accelerating ongoing transformation work to ensure the EHRC is fit for its second decade.

The Review has found that the EHRC lacks a clear set of priorities, it is not seen as a robust regulator or enforcer of the law, its impact is not always explained or measured, its influence and engagement with stakeholders is often not effective, and its approach to gathering intelligence and advising the public in places does not meet the Commission's needs. The EHRC has taken action to improve – it has reorganised itself and replaced around two in five staff over the last year. It has introduced a new measurement framework and intends to focus projects on how it can achieve impact. This is to be welcomed, and the recommendations of this Review are intended help the EHRC realise these improvements in practice. This Review recommends that the EHRC should be retained, but for the current model to be effective, and for the EHRC to be seen as a key actor in this space, the EHRC needs to focus on its unique functions and integrating its equality and human rights remit to achieve the greatest impact on inequality: most important among these functions are well-targeted enforcement and regulation.¹

The Review has found a supportive group of stakeholders, who are committed to the concept of the EHRC but question the effectiveness of the organisation. They see the Commission in practice as an information provider first and an enforcer and agent of change

¹ Through this review enforcement and regulation refers to the breadth of the EHRC's powers as described in the introduction and at Annex A. This spans effective influence and 'nudge' through to legal action. 'Enforcement' here does not refer exclusively to legal action in the courts.

second – but would wholeheartedly support the Commission taking a clear and proactive approach to enforcement in the future.

Key recommendations

The Review's recommendations are set out in a table at Annex A. Key among these are:

- **Vision:** the EHRC should reset its vision to focus on use of its unique powers as an enforcer and regulator of equality law.
- **Effectiveness and use of functions:** the EHRC should set a small number of priorities and communicate these clearly (c. 10 or less). It should turn its annual business plan into a short and sharp report sent directly to Ministers, the Women and Equalities Select Committee and the Joint Committee on Human Rights on impact and mission for the year gone and the year ahead. It should set out in all work how it intends to achieve change and results. It should introduce an approach to communications, engagement and influence focused on impact and delivery of priorities.
- **Efficiency:** the EHRC's budget for the next spending review should be set on the basis of proven impact and effectiveness and EHRC making good use of its powers.
- **Governance:** good practice in recent Commissioner recruitment rounds identified by the EHRC and the Government Equalities Office (GEO) should be continued, with a focus on filling skills gaps on the Board. Government should continue the minimum commissioner tenure of three years for future appointments, unless there are exceptional circumstances, for instance to fill a shorter-term skills gap.
- **Form:** considerations of form should be secondary to improving effectiveness. The EHRC should remain independent and at arm's length from government in its current form as a Non-Departmental Public Body. Changes to direct reporting to parliament and appointments, as described above, should further align the EHRC to international principles.

Delivering the Review recommendations:

The EHRC should set out steps to respond to the recommendations in this Review within the 2018/19 financial year, and the Chair and the Minister should meet at least quarterly to assess progress and organisational capability to deliver.

Building on the EHRC's staffing changes of the last year, across all recommendations the EHRC and the GEO should continue to keep under review whether the EHRC has the right leadership and capability to drive through these changes. The role of Commissioners in taking the lead to help land this transformation is essential. Specifically the Board should feel empowered to lead a robust conversation on prioritisation and ensuring external engagement and impact of work is effective.

The Women and Equalities Committee conducts ongoing scrutiny of the work of the EHRC. The Review has invited the Committee to review how these recommendations are taken forward as part of its programme.

The Joint Committee on Human Rights is currently inquiring into Enforcing Rights, and has taken evidence on the role of the EHRC in human rights matters. Its

consideration of this Review relating to the EHRC's human rights functions would also be welcome.

Acknowledgements

The Review team would like to thank the EHRC and the GEO for their engagement with the Review, in particular to the staff who facilitated meetings and collated written evidence submissions. We are grateful to the members of the Challenge Panel who took time to consider emerging conclusions and brought new perspectives to the Review. Finally, we would like to extend thanks to the many interviewees who contributed their time to shape the conclusions of this Review.

1. Introduction

Chapter Summary

This chapter covers the role, functions and structure of the EHRC in its national and international context. It outlines how the EHRC has changed since its formation in 2007 in terms of functions, resources and staffing. It describes the approach of this Review.

The chapter highlights that the EHRC has a set of unique powers, primarily to enforce the Equality Act 2010, as well as a broader range of duties and powers in relation to equalities and human rights. As a statutory Non-Departmental Public Body, sponsored by the GEO, the EHRC operates independently of government. Its Board, currently comprised of 12 Commissioners, is responsible for establishing the strategic direction and oversight.

Overview of the Equality and Human Rights Commission

The EHRC has operated since 2007, established by the Equality Act 2006. It began as a merger of existing gender, race and disability Commissions, and gained a wider remit, including religion or belief, sexual orientation, age, gender reassignment and human rights.

The EHRC has enforcement powers related to both the Equality Act 2010, which replaced previous anti-discrimination laws, and the Human Rights Act 1998, which gives domestic effect to the European Convention on Human Rights. The EHRC enforces the Equality Act 2010, which protects against discrimination in the workplace and wider society. It also enforces the public sector equality duty, which requires public authorities to take a range of equality and anti-discrimination matters into consideration when making decisions. It has powers to promote human rights and bring legal proceedings on human rights grounds in some situations. The headline differences between the EHRC's equality and human rights duties and powers is that the EHRC is required to enforce the Equality Act 2010, but only promote human rights; some enforcement powers, most notably provision of legal assistance to individuals, apply only to the Equality Act 2010.

Box 1: Protected characteristics under the Equality Act 2010

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">• Age• Disability• Gender reassignment• Marriage and civil partnerships• Pregnancy and maternity | <ul style="list-style-type: none">• Race• Religion or belief• Sex• Sexual orientation |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|

Functions from the Equality Act 2006

Under the Equality Act 2006, the EHRC has a number of general duties, specific equalities and human rights functions, and enforcement powers, which extend to England and Wales. These functions, duties and powers are summarised below and set out in detail in Annex B.

In Scotland, the EHRC is responsible for equalities and shares responsibility for human rights with the Scottish Human Rights Commission. In practice the EHRC seeks permission from the Scottish Human Rights Commission before engaging in human rights matters that are within the legislative competence of the Scottish Government. It does not cover Northern Ireland, which has its own equality and human rights bodies.

General duties

Through its general duty the EHRC must have regard to supporting a society which promotes human rights, respect, dignity, equality of opportunity, and anti-discrimination and prejudice.

Specific duties

The EHRC has specific equality and diversity duties to work towards the elimination of discrimination and promote awareness and specific human rights duties to encourage compliance with the Human Rights Act 1998, and to promote understanding of human rights.

General powers

The EHRC's general powers include provision of information and advice, issuing codes of practice, conducting inquiries, advising central and devolved government on the effects of laws and proposed laws on equality and human rights and monitoring UK's compliance with international human rights law. The EHRC must also publish a review on progress towards equality and human rights every five years, though in practice it does this every three years.

Enforcement powers

The EHRC has a set of unique enforcement powers primarily to enforce the Equality Act 2010. The Commission has the power to investigate breaches of the Equality Acts and require organisations or individuals to take action, for example through issuing 'unlawful act notices', action plans or agreements. The Commission may also assist an individual in legal proceedings relating to the Equality Act 2010, or instigate Judicial Review proceedings in relation to equality or human rights. Pre-enforcement is also of crucial importance. The EHRC often corresponds with organisations who are at risk of breaching the law, which can lead to changes in practice.

History of the Equality and Human Rights Commission

Changes to functions

A review in 2011 concluded that the EHRC should be retained but substantially reformed. This was in order to increase its accountability and to improve its effectiveness and value for money. This followed the qualification of the EHRC's accounts from 2006-08 to 2009-10, arising from issues including employment of consultants and use of grants.

The following reforms were made:

- The grants budget was removed. This was used to fund other organisations to deliver specific projects.
- The section 12 duty to monitor progress and report was changed from every three years to every five years.
- The good relations duty at section 10 and its associated power at section 19 were repealed.
- The EHRC's power to make arrangements for the provision of conciliation in non-workplace disputes was repealed.
- Funding to deliver a helpline service was removed. This service is now contracted out by the GEO.
- A new framework document was implemented to establish tighter financial controls on the EHRC.

- The appointment of a new smaller Board with stronger business skills and experience, and clearly defined roles.

Repeal of the EHRC's general duty was proposed, but was not pursued following a vote against this in the House of Lords.

Changes to resources

The EHRC's budget has reduced from its peak of £70.3 million in 2007 to £18.3 million in 2018, following successive spending reviews. It will reduce to £17.6m in 2019. Staff numbers have reduced from 530 in 2010 to 179 in 2018. A comprehensive budget review of the Commission in 2012 identified funding of £17.1m per year as required for the EHRC to discharge its functions effectively, though as described in the efficiency chapter, the EHRC no longer agrees with this figure.

Structure

The EHRC's Board is currently comprised of 12 Commissioners responsible for establishing the strategic direction and oversight of the EHRC. The Board holds the Chief Executive Officer and the staff to account by monitoring performance against the EHRC's strategic priorities and ensuring effective use of resources.

Two statutory committees advise the EHRC about the exercise of its functions in Scotland and in Wales. The EHRC has three additional non-statutory committees, Audit and Risk Assurance Committee, Human Resources and Remuneration Committee, and Disability Advisory Committee to support and inform decision-making and the work programme.

As a statutory Non-Departmental Public Body the Commission operates independently of government. The Commission is sponsored by the GEO and the Minister for Women and Equalities. Since 2018, the GEO has been part of the Department for International Development. A framework document between the Commission and its sponsor department formalises this relationship in terms of accountability and governance.²

Approach to setting direction

The EHRC outlines its mandate, set by Parliament, as '*to challenge discrimination, promote equality of opportunity and to protect and promote human rights*'. It has a strategic planning and reporting cycle, outlined below, to set its aims and objectives:

- **Is Britain Fairer:** an evidence publication, put out every three to five years. Historically this has drawn data from public and other sources, but has not set out recommendations - the EHRC intends to do this in the future.
- **Three-year strategic plan:** the EHRC published its last plan in 2016 that set out a number of high-level aims and priorities.
- **Business plan:** the EHRC's annual business plan outlines actions the Commission will take to achieve its aims in the coming year.
- **Annual report and accounts:** the EHRC describes progress against its annual business plan in its annual report.

² Government Equalities Office and EHRC, *Framework document*, 2018
<https://www.equalityhumanrights.com/en/who-we-are/how-we-work-government>

- **In year prioritisation:** the EHRC has operational decision making groups that meet regularly to re-allocate resources to respond to emerging issues and consider potential legal cases.

National context

The EHRC operates within a wider landscape of advice and enforcement services. These include, for example:

- The **Advisory, Conciliation and Arbitration Service**, which provides free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law.
- The **Citizens Advice Bureau**, which advises members of the public on a wide range of issues including discrimination.
- The **Equality Advisory and Support Service**, which advises and assists individuals on issues of equality and human rights issues. This service was previously run by the EHRC and provides the Commission with intelligence that can lead to enforcement activity.
- **Employment Tribunals**, which are responsible for hearing claims from people who think an employer or potential employer has discriminated against them.

The EHRC has similar functions to other arm's length bodies, both in its regulatory role, such as the Charity Commission, and in its role in promoting issues and providing advice, guidance and research, such as the Social Mobility Commission. To carry out its functions the EHRC works with a range of arm's length bodies within Britain as well as government, non-governmental organisations and lobby groups to understand issues affecting specific communities and groups.

International context

The EHRC is one of three UK National Human Rights Institutions, part of the United Nations human rights system. It is also Britain's national equality body, as required by European Union race and gender directives.

The EHRC meets international standards for an independent human rights body and has been awarded 'A' status (the highest level of accreditation) as a National Human Rights Institution (NHRI) by the Global Alliance of National Human Rights Institutions (GANHRI), an international association of NHRIs from across the globe.³ The GANHRI, through its Sub Committee on Accreditation, oversees the compliance of NHRIs, including the EHRC, with the United Nations 'Paris Principles' of human rights protection and promotion by meeting six main criteria of: mandate and competence; autonomy from government; independence; pluralism; adequate resources; and adequate powers of investigation.⁴ As an 'A' status NHRI, the EHRC fully meets the Paris Principles and is therefore able to participate (and take the floor) in sessions of the United Nations Human Rights Council in Geneva.

³ Office for High Commission on Human Rights, *Global Alliance of National Human Rights Institutions*, accessed June 2018 [<https://nhri.ohchr.org/EN/Pages/default.aspx>]

⁴ Office for High Commission on Human Rights, *Global Alliance of National Human Rights Institutions Sub Committee on Accreditation*, accessed June 2018 [<https://nhri.ohchr.org/EN/AboutUs/GANHRI/Accreditation/Pages/default.aspx>]

What is the Government’s view on equalities and human rights?

The Review asked relevant government departments to provide the official position on these issues. The UK Government’s view on equalities and human rights is supportive of the Commission’s functions and can be summarised as follows:

<p>Equalities</p>	<p>The UK Government’s record on equalities is one of the best in the world and we are determined to ensure that this remains the case as, and after, we leave the European Union. We are committed to protecting and promoting equality and to eliminating discrimination. Because decades of domestic legislation and transposed European Union law have already been consolidated into the Equality Act 2010, this Act is the cornerstone of domestic equality law.</p> <p>The Government is committed to ensuring that all the protections in the Equality Act 2010 and equivalent legislation in Northern Ireland will continue to apply once we have left the European Union. The effect of these commitments will be to ensure the continued protection of people’s rights not to be discriminated against, harassed or victimised in the provision of goods, services and public functions, housing, transport and education. These are rights provided by the Act, but supported by our longstanding commitment to equalities.</p> <p>We are absolutely clear that no one should suffer discrimination because of who they are or where they come from, and we will continue to take steps to ensure this is the case.</p>
<p>Human Rights</p>	<p>The UK has a longstanding tradition of ensuring our rights and liberties are protected domestically and of fulfilling our international human rights obligations.</p> <p>Rights are protected domestically through the Human Rights Act 1998 – which gives further effect to the European Convention on Human Rights – and through the devolution statutes, as well as other key pieces of legislation such as the Equality Acts, and the common law.</p>

Approach to this review

Tailored reviews are required to look at a series of issues. First, the review must provide assurance to government and the public on the continued need for a public body, both its functions and its form. Then, where appropriate, the reviews make recommendations to improve the efficiency, effectiveness, and governance and accountability arrangements. All tailored reviews are carried out in line with the Cabinet Office *Guidance on Reviews of Non-Departmental Public Bodies*.⁵

The most significant findings of this Review relate to the effectiveness of the organisation - how it prioritises and how it achieves impact and influence. The Review is therefore ordered with effectiveness at the start.

⁵ Cabinet Office, *Tailored Reviews: Guidance on Reviews of Public Bodies*, 2016
<https://www.gov.uk/government/publications/tailored-reviews-of-public-bodies-guidance>

Process

Following Cabinet Office guidance, an independent lead reviewer was appointed, in this case a senior civil servant from the Department for Education. The lead reviewer was supported by existing GEO resource, independent of the relationship between the sponsorship team and the Commission. A Challenge Panel was established to bring a range of external perspectives to the process. The Challenge Panel comprised individuals with an interest in equalities and human rights and experience in strategy, government and business.

The Review was conducted transparently. The Review team engaged and consulted with the EHRC and the GEO throughout.

Evidence and Stakeholder Engagement

The Review team identified relevant stakeholders in consultation with the Commission and the GEO sponsorship team. The Review team conducted interviews and roundtables with around 80 stakeholders from the Commission, government, the non-governmental sector and wider interest groups to achieve a diversity of views. A full list of stakeholder organisations is at Annex C.

The Review team set out in all interviews that evidence would not be attributed to individuals, to create an open forum. Throughout the review therefore, 'stakeholders' refer to the average view of the majority of stakeholders from the public, private, and voluntary sectors. On occasion, the Review refers to specific groups of stakeholders where views were more specific (for example, stakeholders that represent individuals that share protected characteristics).

The Review draws on evidence from the EHRC Stakeholder Tracking Research (2017) that captured the views of over 500 stakeholders. The questions asked in the Review's in depth interviews supplements and, on occasion, challenges some of these findings which is explained where relevant. Analysis of data and evidence requested from the EHRC and GEO supports the Review's findings.

An assessment of this evidence forms the conclusions and recommendations of the Review.

2. Effectiveness and functions

Chapter Summary

This chapter covers how the EHRC uses its functions to deliver its responsibilities to reduce inequality and promote human rights. It considers this in terms of its approach to strategy setting and prioritisation, how it achieves impact and influence and how it gathers intelligence to inform this.

This chapter finds that the EHRC's functions are appropriate: it has been given a specific statutory role and it has the powers to make progress against it. While the EHRC has potential, the Review found the EHRC is not perceived as an enforcer of the law, and its priorities were unclear to the majority of stakeholders interviewed. The EHRC can cite many examples of success, but the approach to impact and regulation is inconsistent, as is its approach to engaging stakeholders in these matters.

This chapter makes a series of recommendations to improve effectiveness of the EHRC, key being:

- The EHRC needs to demonstrate a clearer strategic approach via its **prioritisation and strategy setting** – at the moment the EHRC has too many priorities which are not well understood. The EHRC should set out a small number of priorities annually (suggested less than 10), directly to Ministers and the Select Committees.
- A **focus on impact and influence** – and the importance of explaining its impact - needs to run through everything the EHRC does. Building on new plans and frameworks to improve measurement and the outcomes of projects, all EHRC publications should clearly state how it plans to achieve impact. The EHRC should set out how it will intervene, who it will partner with and where it will avoid duplication of effort.
- The EHRC needs a **new approach to gathering intelligence and engaging with stakeholders**, especially in England, for example through the creation of an 'England Committee' to replicate the success of the Scotland and Wales Committees. The Review recommends specific roles for Commissioners, a new plan for advice and intelligence, going beyond the current helpline and reflecting best user-focused practice, and a refresh of the website to reflect the EHRC's focus on prioritisation and impact.

These recommendations are the most important in the Review. While they build on the transformation work the EHRC has begun in the last two years, there is a need to demonstrate and communicate that change is now happening in practice and to accelerate it. In implementing these recommendations, the EHRC should consider whether it has the right specialist and leadership skills in place to deliver effectively.

Effectiveness and functions: overview

The EHRC's functions are set out in the Equality Act 2006, core among them to enforce the Equality Act 2010 and promote understanding of human rights. While the Equality Act 2006 says what the EHRC should do in general, it does not prescribe what the Commission should do in specific terms. There are no metrics in the Equality Act 2006 against which to measure the EHRC's success. It is therefore incumbent on the Commission to demonstrate

that it is effective via evidence-based decisions on priorities, and proof of influence, impact and positive social change.

The essential conclusion of the Review is while the EHRC can list successes, at the moment its approach to strategy and prioritisation leads to plans that are broad and unspecific. The impact of this is a high volume of work that does not always achieve impact, and a lack of clarity among key stakeholders about what the Commission is for. The EHRC is not seen as a robust enforcer of equality law, despite some demonstrable impact, partly because its activity is not well understood. The Review has found clear Parliamentary and public pressure (as represented by key stakeholders) towards the prioritisation of the EHRC's functions that enforce the Equality Act 2010, over other functions. To respond, the Commission should use the opportunity of its ten-year anniversary and its 2018/19 strategic planning round to reset its vision, strategy and commitment to impact to ensure it is fit for the future.

The Review has considered the functions and powers of the Commission alongside effectiveness and outcomes. The Review found that the EHRC uses its functions – for example its powers to investigate and engage in public debate, to enforce the law and support individuals in legal cases - and that they are appropriate for its general objectives to enforce the Equality Act 2010 and promote human rights. However, at present, the EHRC's powers to inform, advise and intervene do not deliver the outcomes they could, and there is a perception that the EHRC does not strike the right balance between provision of research and information and enforcing the law. This is for various reasons including the EHRC's broad approach to prioritisation and that the EHRC's new approach to impact, based on theory of change models, is yet to be evaluated to ensure it is fit for purpose. The conclusion of the Review is while the EHRC makes a case for additional functions, until it can demonstrate effectiveness it is unclear that new functions would be well used. New powers could be considered once the EHRC's new approach to effectiveness is proven.

A theme that emerged through the Review was that the Commission can be most effective when it uses its unique functions, which is what many stakeholders interviewed want to see. No other organisation has powers to enforce the Equality Act 2010 (including the Public Sector Equality Duty) and take a regulatory approach; no other organisation has an official, independent, national platform to promote human rights and reduce discrimination. Most of its other functions are not unique and are carried out in varied ways by government, lobby groups, political parties, international bodies and others. To be effective the Commission needs to be clear about what its unique role in society is and choose carefully to maximise what it, and only it, can add to the drive to reduce inequality.

Effectiveness and functions: findings and recommendations

Vision and mission for the next decade

The Commission's current vision statement is: *'We live in a country with a long history of upholding people's rights, valuing diversity and challenging intolerance. The Commission seeks to maintain and strengthen this heritage, while identifying and tackling areas where there is still unfair discrimination or where human rights are not being respected'*.

The EHRC's recent stakeholder survey found that the EHRC is primarily perceived as a provider of information (74 per cent agreed with this), rather than an enforcer of the law or catalyst for change (47 per cent and 46 per cent respectively).

Box 2: headline stakeholder views⁶

Stakeholder tracking research commissioned by the EHRC in 2017 captured the views of over 500 stakeholders. It found that in terms of the Commission's role, stakeholders view the organisation as (in rank order):

- An information provider (74 per cent)
- An influencer (57 per cent)
- An evaluator (56 per cent)
- An enforcer (47 per cent)
- A catalyst for change (46 per cent)

The research identified that stakeholders viewed the Commission as being most effective at publishing relevant information and providing appropriate advice and guidance. Stakeholders perceived it as being least effective as an 'enforcer' or 'catalyst for change' in directly eliminating discrimination and reducing inequality.

The Review tested these findings through in-depth interviews with key stakeholders to build the evidence base for how the Commission's vision and mission is perceived. The main findings of these interviews were:

- The EHRC's main stakeholders understand in broad terms what the EHRC is for and are clear about the value of the unique functions of the EHRC, specifically its duties and powers to enforce the Equality Act 2010 and the Public Sector Equality Duty therein. Enforcement and regulation in all of its forms was considered the most valuable activity the Commission can undertake (i.e. from litigation to quality advice to organisations at risk of breaching the law), bar a few organisations with a particular interest in international human rights or research. There was strong support for putting enforcement and regulation at the core of the EHRC's approach.
- In terms of perception, when respondents to the EHRC's stakeholder survey were asked how they would speak to others about the organisation, just under half of respondents (47 per cent) suggest they would speak 'very highly' or 'highly' about the Commission – suggesting the majority would be neutral or negative. It is more likely to be seen as 'authoritative' but less likely to be seen as 'agile' or 'visible'.
- The Review heard consistently that stakeholders did not believe that under its current vision the EHRC has struck the right balance between breadth of effort and impact. There was no question about the volume of the EHRC's work, but it was questioned how far this translates into tangible outcomes.
- Groups that represented or worked on behalf of individuals that share particular protected characteristics wanted to see the EHRC taking a greater 'proactive' role to reduce inequality. Some organisations were satisfied with current approaches. (usually those connected to areas where Commission has done recent work). Others were unclear why the Commission had chosen not to focus on their areas; there was an acceptance of the need for prioritisation but a desire for clarity and transparency around the choices the EHRC makes too.

⁶ Unpublished – EHRC stakeholder tracking research 2017

The Review notes that the current Chair of the EHRC has described his intention for the Commission to become a more ‘muscular’ enforcer of the law. This was noted positively in many interviews. The Commission’s return to the fundamentals of their statutory functions, those unique to the EHRC that can drive real change, is an appropriate basis for a new vision. The opportunity should be taken to articulate this formally.

Recommendation:

The EHRC should use the opportunity of its 10 year anniversary to re-set and focus its vision on its unique functions, to enforce and regulate across the most challenging rights and equality issues, continuing what it has begun informally through its public statements. This should be the anchor for its next strategic plan.

Prioritisation and decision-making

How the Commission decides what to focus on is the foundation of its effectiveness. The breadth of the EHRC’s remit, the variety of issues it could potentially champion and the constraints of finite resources place a premium on choosing the right activities. As most of the Commission’s budget is spent on staff, the opportunity cost of picking projects that have less impact or influence is significant. The reputational cost of appearing to have unclear priorities is steep. This section covers evidence found by the Review in relation to these issues.

The EHRC’s current prioritisation approach has two parts: a longer-term proactive strategy and planning cycle, and a shorter-term reactive function. This approach, of a plan but with resources kept in reserve to react to situations, is appropriate.

- **Proactive approach:** the EHRC is required by the Equality Act 2006 to set a strategy which it does every three years. The next will be in 2019. Each year it also publishes a business plan, which sets out commitments it will take forward. This is underpinned by the three-yearly evidence report ‘Is Britain Fairer’. The Board is responsible for establishing the strategic direction of the EHRC. It is supported by the Executive group, which implements the Commission’s Strategic and Business Plans and takes day-to-day operational decisions that require resources or that have high levels of strategic, reputational or operational risk.
- **Reactive approach:** the EHRC has a fortnightly ‘Prioritisation Group’ that meets to discuss emerging issues, potential legal cases, or other information that might suggest the EHRC should take action. Delivery Group monitors delivery of the Business Plan and makes decisions about allocation of resources, including re-planning or stopping work, and considers new proposals for work, which come from Prioritisation Group. This is informed by a Programme Management Office that reviews and quality assures projects and programmes.

To determine how well these processes are working, the Review looked at the EHRC’s documentation and processes, and focused on the question of prioritisation in interviews.

The EHRC’s 2016-19 strategic plan sets out high-level objectives. It has four strategic aims (for example, ‘*significant impact*’) and 21 broad priorities beneath these (for example, ‘*Access to justice and treatment in the criminal justice system*’). All but two of the stated priorities are unspecific, meaning there is no way to judge objectively whether the priority

has been achieved or not.⁷ The Commission's 2018/19 Business Plan has over 30 commitments (for example, '*work to improve educational outcomes for children with special educational needs and disabilities*') and around 100 stated actions to achieve these (for example '*hold an enquiry to examine the drivers and impacts of different types of school exclusions...*'). Around 80 per cent of the Business Plan commitments and around one third of the stated actions are unspecific. The EHRC has previously published separate aims and success measure documents (most recently for the 2016/17 business plan).⁸ These explanations are helpful and should become part of the main EHRC strategic documents.

The EHRC agrees that more should be done to prioritise clearly. EHRC has taken a number of steps, some of which may improve the capacity of the organisation to make better choices and operate strategically:

- A new Target Operating Model was introduced in 2017, which reorganised the EHRC's staff around six domains that cut across protected characteristics. The domains are education, health, work, living standards, justice and personal security, and participation. The rationale is this model will encourage better joined-up working, allow for integration of equality and human rights approaches, and provide a clearer structure for organising work.
- Under the new model, the EHRC has retained a reactive function that operates across domains and can respond to emerging issues.
- The Commission has refreshed its workforce significantly, with around 70 hires over the last year (c. 40 per cent of all staff). The focus has been to recruit personnel with the right strategic skills to operate across boundaries in a flexible way.
- The EHRC is committed to using the next strategic planning round to prioritise more effectively. For example, in previous versions of the progress-monitoring document 'Is Britain Fairer' EHRC has not identified recommendations to tackle the most challenging inequality trends and statistics. It intends to do so now. A new approach to prioritisation has been positively reviewed by internal auditors and will now be used in practice.

The Review also sought views on the EHRC's prioritisation approach with stakeholders:

- Some stakeholders used some of the EHRC's strategic documents. Notably, 'Is Wales Fairer' was used by the Welsh Government to set their own equality strategy. Some campaign groups have described how the statistics in 'Is Britain Fairer' are helpful to their work.
- Stakeholders surveyed by the EHRC believe they understand the general role of the Commission, with 80% reporting a very or fairly good understanding. However, no stakeholder we interviewed had a clear understanding of what the priorities of the EHRC were, or why the EHRC has prioritised certain things. It is not necessary for every stakeholder to understand this, but the Review found that the low level of understanding had a negative impact on the reputation of the Commission.

⁷ Following method from Institute for Government article: *Single departmental plans have improved but they need to go further*, 2018 <https://www.instituteforgovernment.org.uk/blog/single-departmental-plans-have-improved-they-need-go-further>

⁸ EHRC, *Aims and Success Measures 2017/18*, 2017. <https://www.equalityhumanrights.com/sites/default/files/business-plan-2017-2018-aims-and-success-measures.pdf>

- Stakeholders were almost entirely unaware of the Commission’s move to domain working and do not understand how this model relates to the Commission’s work plan or to the Commission’s role as enforcer of the Equality Act 2010.
- Interviews found that there is the perception that some characteristics are overlooked (Age, Religion and Belief in particular) or that issues significant to some stakeholders are not being addressed (for example some issues of religious dress, or transphobic hate crime). Stakeholders acknowledge the EHRC cannot focus on everything, but if the EHRC has made a conscious choice not to focus on some things stakeholders did not understand why, which also has a negative reputational impact.
- Because of a lack of clarity on prioritisation, there were questions raised about why the EHRC had intervened publicly on some issues (for example, Grenfell in general and comments on Hackitt review of building regulations in specific) or whether an issue is genuinely of greater importance than other inequalities in society (access to Premier League football stadiums, though this was initiated when the EHRC was under the sponsorship of the Department for Digital, Culture, Media and Sport). Inevitably, some stakeholders disagree with certain pieces of work, but these findings reflect a wider trend where stakeholders do not understand what the EHRC is for.

The Review concludes that the current approach to prioritisation is not delivering for the EHRC and its stakeholders. Is Britain Fairer, the Strategic and Business Planning process are resource-intensive and have not in recent years led to clear priorities for the organisation to deliver against.

EHRC describes itself as on a journey of improvement. The EHRC should use the opportunity of the ongoing transformation and the impetus of this Review to simplify and grip the crucial issue of prioritisation. New priorities will need to be reinforced by the EHRC’s leadership team to ensure they are reflected in decisions throughout the organisation and with stakeholders. To build confidence with stakeholders and the public the EHRC needs to make choices and explain both what it plans to focus on and what it will not. It needs to ensure domain working is understood, and that the potential benefits of breadth and cross-silo working domains might bring do not dilute prioritisation; if this cannot be shown to bring benefits the EHRC should look at this again. How the EHRC goes about its in-year prioritisation should be informed by strategic prioritisation and domains working. To deliver a new prioritisation approach the EHRC should start from a clear position on what it believes to be the greatest issues of inequality in society – and develop a strategy from that.

Recommendations:

- **The EHRC should show it has fundamentally changed its approach to strategic and in-year prioritisation to deliver against its unique powers. At a minimum, the Commission should aim to articulate the top c. 10 or fewer outcomes it wants to achieve. It should consider setting out what its major delivery priority is for any given year – in terms of enforcement and regulation.**
- **Is Britain Fairer and the Strategic Plan should say clearly what EHRC’s view is on the greatest issues of inequality, how it intends to address these issues using its unique powers, and how the EHRC will demonstrate impact. This should also explain what the Commission will not focus on in any given year, and why. This should then be summarised so it can be used effectively by the Board, Prioritisation Group and Delivery Group, and stakeholders.**

- **The EHRC should cease to produce its Business Plan in its current form as it contains too many priorities and lacks clarity. It should be replaced with a short report on priorities and impact (both achieved and planned) sent directly and in parallel to Ministers and the Women and Equalities Select Committees and the Joint Committee on Human Rights, and put on its website, at the start of each financial year.**

Impact and influence

The impact and influence of the EHRC is a measure of how, in general terms, its activity leads to tangible outcomes and how, in specific terms, its projects and programmes achieve their stated aims. The Equality Act 2006 does not set expectations for results. So as with prioritisation, it is incumbent on the EHRC to explain how it will achieve impact.

The EHRC publishes a list of its most significant successes on its website including legal cases to increase protection for older people in care, an investigation into disability related harassment that was followed by a change to the law, and partnership with police forces to reduce disproportionate use of stop and search.⁹ The EHRC also submitted to the Review, a list of specific projects. Examples included:

- Pre-enforcement work with Clinical Commissioning Groups to encourage compliance with human rights and equality law, which has led to policies being withdrawn and re-written.
- Engagement with the Scottish Government and Scottish Local Authorities to warn them of potential legal action in relation to low payments for children in kinship care, which led to significant investment.
- Its report on race 'Healing a Divided Britain' which was influential in the establishment of the UK Government's Race Disparity Audit.
- A number of high profile legal cases EHRC has initiated or intervened in to achieve successful outcomes in relation to employment tribunal fees, Personal Independence Payments, disability bus access and the gig economy.

In some cases, the EHRC has identified a clear gap and intervened; in others, it has added its voice to an ongoing debate or campaign to shift the balance. There is no single rule that can be drawn from these successes – but it demonstrates that the Commission has potential and can deliver. As described below, a challenge for the Commission is that this impact is not something most stakeholders are aware of.

The Review looked at several parts of the EHRC's work that contribute to its impact beyond examples provided to the Review: its output of publications, legal action and wider enforcement, and the plans the Commission has to improve its impact.

Over the last year (to June 2018), the Commission published 64 documents. This includes 33 research reports, 20 pieces of strategic advice and guidance, three information briefings, three reports on the inquiry in to housing and disabled people, two United Nations Treaty Monitoring reports, an annual Business Plan and an annual report for each of Scotland and Wales. It has provided 22 Parliamentary briefings, 17 of these on the European Union Withdrawal Bill. The majority of these publications (47 out of 64) were intended to provide

⁹ Equality and Human Rights Commission, *Our Major Achievements*, accessed June 2018 <https://www.equalityhumanrights.com/en/what-we-do/our-achievements>

information. Others provide advice, aim to influence policy or monitor compliance with United Nations Treaties or the Equality Act 2010. The EHRC also submits evidence to inquiries and consultations. Over the same period the EHRC has put out around 70 press releases and news reports. Media coverage has increased by 15 per cent over the same period, with 70 per cent of this coverage being positive.

The protected characteristic with greatest coverage in publications was Disability (16 publications), the characteristics with fewest were Age (no publications), Sexual Orientation (no publications), Religion and Belief (one publication) and Gender Reassignment (one publication). This is only a sample of a year, but it suggests the EHRC has made choices about which areas of inequality it will pursue over others.

In terms of specific enforcement activity, the EHRC has increased the volume of legal cases it has undertaken under section 28 (provision of legal assistance) and section 30 (Judicial Review and other proceedings) of the Equality Act 2006, from 27 cases completed in 2016/17 to 45 in 2017/18 and 37 ongoing cases in 2018/19. The EHRC aims for a 10 per cent increase in volume of legal casework for 2018/19, which it is confident it will achieve. The EHRC has funded over 160 'non-strategic' cases through its 'Disability discrimination: access to justice' scheme and legal support programme in recent years. The Commission reports a success rate of around 65 per cent in its legal interventions and plan to improve on this. The new Legal Director is committed to improving the understanding of the EHRC's powers across the organisation and taking a much more coordinated approach to enforcement.

While legal assistance is a high-profile way to show impact, the EHRC's enforcement powers are broader. The Commission described its early-stage enforcement work aimed at ensuring compliance with the Equality Act 2010 on over 150 incidents in England and Wales in 2017/18. This ranges from a single letter to an organisation to extended correspondence and meetings to resolve an issue. Some will result in formal Section 23 agreements. This is an important part of the EHRC's work and it is not well known about or understood, which contributes to the perception of inactivity.

Box 3: an example of effective and integrated enforcement and impact in Scotland

A case was picked up in Scotland where a British Sign Language (BSL) user had been in hospital for seven days without BSL support. The National Health Service (NHS) health board settled with the individual following EHRC intervention. The EHRC then used its Section 23 powers (entering agreements) to change behaviour through monitoring outcomes. Follow-up research identified other NHS boards without adequate BSL policies. The EHRC went to NHS Scotland to highlight this as a Scotland-wide issue to change policy. The CEO of NHS Scotland required action plans to be developed by each health board to improve provision of BSL services. Progress against action plans is being monitored by NHS Scotland.

The EHRC is committed to a more consistent and evidence-based approach to its impact. It has taken a range of actions as part of its new operating model to review and improve its impact:

- In 2017, the EHRC published a new impact model and measurement framework, that brought together four previous frameworks; it is acquiring a case management system to systematise its legal work.

- The Commission's theories of change and project management approach have been refreshed to encourage staff to think about outcomes and impact in greater depth when planning work.
- The EHRC is undertaking after-the-event evaluations of several historic projects to shine a light on its impact.
- Research has also been commissioned to assess where legal enforcement work is effective, building on earlier Barings work that highlights the potential for this kind of legal work in general.¹⁰
- The EHRC is reviewing its enforcement strategy to reflect a desire to enhance the impact of this work and to undertake a greater volume of formal enforcement activity, for example, more investigations or 'own name' Judicial Reviews.

The Review asked interviewees about the impact and influence of the EHRC. Key findings were:

- The EHRC's stakeholder survey found on several questions about impact most respondents held a neutral or negative view. In terms of the EHRC's specific regulatory objectives, 44 per cent of those in the EHRC's survey believed or strongly believed that the EHRC is an effective and credible regulator and National Human Rights Institution – meaning the majority (56 per cent) responded neutrally or negatively to this question. The same survey found a perception that the EHRC is 'very' or 'fairly' effective at publishing relevant information (64 per cent); but only 45 per cent believed the EHRC was 'very' or 'fairly' effective at eliminating discrimination.
- The EHRC can achieve significant impact with targeted use of its powers. Recent enforcement activity of the gender pay gap, though initiated by government, showed that letters alone can drive compliance.
- The EHRC has demonstrated the potential of partnership working with government and with others, for example Citizens Advice or businesses in their 'Working Forward' maternity scheme. These approaches could be applied more consistently, and the logic for whom it plans to partner with could be expressed clearly.
- The EHRC's treaty monitoring work is considered of a high quality, though stakeholders believe the Commission's potential is in making the most of its domestic powers.
- The EHRC Chair was cited a number of times as a key influencer, but stakeholders had less consistent relationships with the EHRC staff; a number were unsure who a named contact might be.
- Instances were cited where the EHRC is currently undertaking or is planning to undertake work in a similar space to others. The EHRC had not reached out to some key national stakeholders in relation to domains for which they are responsible, which increases the risk of duplication of effort and dilution of impact in the future.
- The EHRC's plans for enforcement are not understood outside the organisation. For instance, stakeholders did not know what enforcement activity is planned following recent publication on disability and housing inquiry, which made many recommendations, but was less clear on EHRC's future role. The EHRC can explain what it will do next in this specific case but this has not been communicated outside the organisation.
- Almost half of respondents to the EHRC's survey feel the Commission grasps the issues that are important to them or their organisation. However, interviewees felt that impact is lost in volume of output and the EHRC only grasps issues of

¹⁰ The Baring Foundation, *Successful Use of Strategic Litigation by the Voluntary Sector on Issues Related to Discrimination and Disadvantage: Key Cases from the UK*, 2017

importance to stakeholders in part. For some stakeholders, there is a risk that public statements can create confusion about what is a priority for the EHRC, where it is not coupled with clear engagement and explanation.

- EHRC can describe how it aims to achieve impact in various situations, most specifically in terms of influencing government, but stakeholders did not see the EHRC as effective in this regard. The most common explanations for why this might be were the EHRC did not prioritise its 'asks' of those it tries to influence, there was a lack of regular engagement at a working level, or that it took an 'expert' role, providing detailed comments and assistance with factual matters rather than trying to shape outcomes.

The conclusion of the Review is while the EHRC can have significant impact and influence, this is not consistent or visible. The EHRC has taken action to try to remedy this. Its 2017 measurement framework and new impact models for how to achieve change are conceptual tools for improving and standardising its approach, which auditors have commented on positively. However, the Review has found that while the Commission is increasing some of its impactful work – for example volumes of legal cases – the new approach is not yet consistent or visible to stakeholders. The current approach to regulation, in particular influence and engagement with stakeholders, should be revisited to ensure the EHRC can turn its recommendations into action. Moreover, the Commission's ability to create a coalition for change relies on it also being seen as effective. This is an essential counterpart to improved prioritisation. The EHRC should describe transparently how it has made an assessment of where other organisations are best placed to deliver against the challenges identified by the Commission so the EHRC can use its resources to best effect. In its strategic documents the Commission should describe alongside its priorities where it will aim to achieve impact and how it will do this.

Recommendations:

- **The EHRC should refresh and clarify its approach to regulation and consider the skills needed in the organisation to deliver against this. This partly means ensuring the work the EHRC chooses has a clear approach to achieve outcomes with organisations in breach or potential breach of the law. It also means refreshing its communications, engagement and influencing approach to ensure its work and its approach is understood by key stakeholders.**
- **The EHRC should make a clear assessment across domains and protected characteristics to identify where it can have impact, and where others are already undertaking activity that the EHRC could support or partner with. This should be part of how the EHRC explains and justifies its priorities. This should consider how EHRC can influence through a wide range of potential partners including legislators, the media, public relations companies, employers, government departments and so forth.**
- **All publications should describe how the specific piece of work will achieve impact, be it next steps in enforcement or otherwise. This is to continue with the EHRC's commitment to embed impact in its work, and signal to stakeholders how the EHRC intends to act.**

Gathering intelligence and providing advice

The EHRC's efficiency and delivery of its functions rests on a two-way relationship with its main stakeholders. The Commission needs information from the public and experts on a regular basis to set its long-term strategy and, in the short term, to understand breaches of the law or systemic issues where it should intervene. The EHRC also has a duty to promote understanding and good practice and may provide advice and guidance across its remit. The EHRC is effective in this regard if it gathers the right information to enable good decision-making and, where it chooses to provide it, individuals and organisations can access or be directed to relevant and accurate advice.

The EHRC takes a range of steps to gather intelligence:

- Commissioners and staff have a wide variety of networks and stakeholder contacts – but the EHRC has raised concerns about the quality of its links to the frontline, individuals and organisations working to address breaches of the law and reduce inequality.
- The EHRC is dissatisfied with the intelligence it receives from the Equality Advisory and Support Service helpline (helpline), currently contracted out to an external provider via the GEO. It would prefer to have direct control over the service. 20 call handlers respond to around 3,000 calls a month; around 40 cases are referred to EHRC a month. While meeting its KPIs, EHRC believes the current model creates barriers to communication, and it is unable to interrogate the raw information received by the helpline, as EHRC might like. EHRC have asked for control of the helpline to revert to them. The EHRC legal directorate is working with the helpline to improve the quality of information it receives. The Review team observed the multiple steps and hand-offs that get in the way of a streamlined process.
- Prioritisation Group is the mechanism by which the EHRC considers new intelligence and information to decide whether it should be recommended to be taken on. The EHRC uses a specific set of prioritisation criteria to decide which new or emerging issues, including legal cases, which do not form part of planned projects work are taken on. The criteria includes how a proposal fits with strategic priorities, whether it is the most effective lever to achieve change, the human and financial resources available, the impact on the EHRC's portfolio and reputation, whether it offers value for money and the stakeholder engagement required.
- The Board is provided with regular horizon-scanning documents that set out broad social trends and policy shifts to provide a wider context.
- The EHRC has commissioned work on 'audience segmentation' to understand how different parts of society think about this agenda and how it might engage most effectively.

Box 4: The EHRC's outreach approach in Wales

The EHRC has a statutory Wales Committee, which takes a different approach to outreach. The Committee holds open sessions to recruit Committee members and secure a diverse Board. The Committee takes a local approach to engagement, holding meetings with senior public service chiefs, equality campaigners or support groups and employers. Staff complete 'learning points' templates after all stakeholder engagement to inform the Committee and improve intelligence. This activity is backed up by twice-yearly exchange networks and an annual conference.

Separate to gathering intelligence and the helpline the EHRC has several ways it provides information:

- The EHRC has set up a pilot for a new, smaller, helpline to provide advice to equality advisors (for example from law clinics or voluntary advice organisations) to help them improve and develop.
- The EHRC publishes its guidance and research on its website, and uses Twitter or other media to share advice from other organisations of relevance. Of all the communication channels, the website is viewed as being most useful, with the EHRC's survey finding that just over half (56 per cent) see it as 'very useful' or 'quite useful'.

The Review asked stakeholders about their experience of how the EHRC goes about gathering stakeholder information and providing advice:

- At a high level, the EHRC's survey found the majority of stakeholders to be neutral or negative about their relationship with the Commission. 39 per cent of stakeholders rate their relationship with the Commission as either 'very good' or 'quite good'.
- The EHRC is perceived as a provider of advice, and around three in five (63 per cent) agree that the advice provided by the Commission is valuable but it is also seen as one of many in this space. For example, stakeholders cited the benefits helpline and factsheets provided by Disability Rights UK, the advice of the Advisory, Conciliation and Arbitration Service, Citizens Advice Service and various free guides by law firms.
- The helpline is generally perceived as a poorer service than the helplines offered by the equality bodies that preceded the EHRC (for example, the Disability Rights Commission), which is not as well advertised or known about, especially outside of England.
- More broadly, the helpline and website were both considered outdated models for gathering and providing information. They do not align with the approach other large corporate organisations or advice bodies take.
- While some major stakeholders receive updates or newsletters, this is not consistent. It is not the responsibility of the EHRC to ensure that stakeholders keep themselves up to date, but it is in the EHRC's strong interest that stakeholders are aware of what it is doing.

The conclusion of the Review is that EHRC does not get what it needs in terms of front line intelligence. While stakeholders see EHRC as providers of advice, the Commission is seen as one of many, and not always the most relevant. The helpline may not work to EHRC's satisfaction in terms of advice provision or intelligence gathering but it is only one component of a relatively weak system for identifying where the EHRC should intervene, especially in England. The EHRC has submitted to the Review that European Union equal treatment directives require them to provide direct independent assistance to victims of discrimination in pursuing their complaints about discrimination. However, the European Union equal treatment directives leave to Member States the choice of form and methods to deliver this requirement.

Recommendations:

- **EHRC should set out a plan to reset its approach to intelligence gathering capability to ensure it has genuine intelligence from the front line. Outreach**

across England is particularly important and EHRC should aim to replicate success of the Scotland and Wales Committee in England, for example through creation of an England Committee, with Commissioners given specific responsibilities to convene different interest groups.

- **The helpline should not be the long-term solution to advice provision and evidence gathering. The EHRC, in partnership with the GEO, should plan a broader user-focused, multi-channel, approach to advice provision, and assess what the right level of helpline provision should be within this and how much of this should be done by the EHRC directly. Current helpline arrangements could be extended or continued while new plans are developed.**
- **As part of the EHRC's delivery of its commitments to prioritisation and impact, the EHRC website should be refreshed as the public face of this new approach.**

European Union exit

The legislation that creates the EHRC is domestic and will continue after the UK exits the European Union. EHRC has a programme of work in relation to European Union exit that includes horizon scanning and review of programmes but also proactive work to influence the debate around rights. In planning for European Union exit, the GEO and the Department for International Development will engage with the EHRC where relevant

The EHRC intend to pay to stay as a member of Equinet, the pan-european organisation of equality bodies, as it argues this bolsters the EHRC's international role. This will cost around €3000 in fees, and the EHRC estimates around £10,000 annually in travel. This is a matter for the EHRC, but if the Commission proceeds with these plans, it should look to bear down significantly on costs of travel.

Devolution

The Review considered the EHRC's relationship with the devolved administrations and took evidence from the Scottish and Welsh Governments. It asked the Scottish and Welsh Governments about their engagement with the EHRC in terms of strategy setting, effectiveness, impact, and the interface with devolved issues:

- In Wales, the Review found that the Commission engages closely with the Welsh Government and has built strong relationships with officials and Ministers. The Welsh Government described how the EHRC had effectively influenced policy in Wales through lobbying on specific priorities, for example those emerging from 'Is Wales Fairer'. In addition, the Wales Committee was seen by the Welsh Government as an important function to ensure the EHRC understands the Welsh context.
- In Scotland, the Review found that overall the Scottish Government believes the EHRC makes an important contribution to promoting and protecting equality in Scotland. Additionally, the Scottish Government believes the EHRC has the potential to further develop its human rights functions in co-operation with the Scottish Human Rights Commission. The Scottish Government described how the EHRC tends to involve itself in particular policies, for example in assessing the equality impact of the City Deals, and would welcome a greater focus from the EHRC on influencing the

work of the Scottish Government at a strategic level. In specific, they would welcome greater dialogue and coordination on how the EHRC enforces the Public Sector Equality Duty.

The Commission should consider how in implementing recommendations on prioritisation, influence, impact and intelligence gathering this can be used to shape a future strategic relationship with the devolved administrations.

Are functions needed and should they be changed?

The Equality Act 2006 sets out both the functions and duties of the EHRC. These functions enable the EHRC to enforce the Equality Act 2010 and to intervene in court proceedings and Judicial Review under the Human Rights Act 1998. However, in the Equality Act 2006 all functions have equal weighting. Therefore, as highlighted above, the EHRC should prioritise the functions that underpin its uniqueness and contribute the most to reducing inequality – and explain how all of its work will achieve impact.

In an international context, specific functions and duties of the EHRC as Britain's National Human Rights Institution and national equality body are required by the United Nations human rights system and the European Union race and gender directives respectively. It is well regarded in its discharge of these functions.

The EHRC has asked for additional functions. In specific, it has asked for:

- Extended human rights enforcement powers that would allow it to fund individuals for litigation on only human rights grounds as it can in equality cases.
- Enhanced section 20 powers so that the Commission can undertake investigations into suspected breaches of the Human Rights Act.
- Enhanced section 20 powers so that the Commission can compel the disclosure of evidence before triggering the formal investigation process.
- Specific powers enabling the EHRC to issue notices and/or sanctions for failure to comply with the Equality Act 2010, for instance in relation to compliance with Gender Pay Gap reporting (at present it can make applications to court, but not issue fines directly).
- Enactment of secondary legislation so that the Lord Chancellor (Equality Act 2006 Section 28 (7)) and Secretary of State (Equality Act 2006 Section 28 (8)) can make Orders, either in general or in specific cases, to increase the number of cases in scope that the EHRC is able to support.

The Review tested this with stakeholders and did not find strong views in favour or against extended powers.

Overall, the conclusion of the Review is that the EHRC's functions are needed and should be delivered by an independent organisation. Currently, the approach to prioritisation and delivery means that functions are not used optimally – which leads to the perception of the Commission as an information provider over an enforcer and lacking in a clear strategy for its enforcement work.

Recommendation:

The EHRC should resolve issues of effectiveness and impact before changes to functions are considered. Once the ongoing transformation is embedded and improvements to effectiveness can be demonstrated, the government should

consider the EHRC's powers taking into account the context of European Union exit.

3. Efficiency

Chapter Summary

This chapter covers the EHRC's budget and the efficiencies it has made through its newly introduced Target Operating Model. It considers efficiencies in relation to estates, ICT, shared services and digital.

This chapter finds that the EHRC has already made efficiencies in ICT and estates. However, the EHRC has recently suggested that its budget should rise by 30 per cent, and it no longer agrees to £17.1m as the base amount to fulfil the EHRC's statutory duties.¹¹ This amount was identified in a 2012 Comprehensive Budget Review.

This chapter makes a series of recommendations to continue to improve efficiency of the EHRC, and recommends that future budgets should be subject to the organisation's effective approach to prioritisation and impact.

Efficiency: findings and recommendations

Budget

The EHRC's budget will reduce to £17.6m in 2019-20 from its peak of £70.3m in 2007-8. Because of a smaller budget, the EHRC has reduced its staff from 530 in 2010 to 179 in 2018. However, the EHRC has had consistent underspends of over £1 million and over £500,000 in 2017/18. The EHRC describes the main causes of this to be factors such as the restructure and operating model and issues with poor forecasting and optimism bias. The EHRC describes that it has put in place a more robust business planning and budget-monitoring framework designed to tackle the issue of underspend and ensure delivery outcomes.

The EHRC's budget is divided between Capital, Administration and Programme funding. The EHRC believes that the way in which this is classified does not accurately reflect the nature of its work and impacts effective operations. For example, all research and work to develop and deliver the website is currently classified as Administration, which the EHRC sees as more aligned to its front-line activity such as enforcement or information and guidance provision. The EHRC considers that a review of the current classification is required to better reflect the costs of its frontline activities as Programme expenditure. It believes this will enhance its effectiveness by allowing greater flexibility.

An amount agreed through the 2012 Comprehensive Budget Review of the EHRC stated £17.1m as the base amount to fulfil the EHRC's statutory duties. However, the EHRC now believes the budget should rise by around 30 per cent. While the Review does not draw conclusions about what an appropriate budget might be, a clear purpose and set of priorities should be the starting point to determine the right level of resources.

¹¹ Joint Committee on Human Rights, *Defending Rights: Attitudes to Enforcement* inquiry transcript, 2nd May 2018
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/enforcing-human-rights/oral/82385.html>

Recommendation:

In preparation for the expected 2019 spending review, the EHRC and GEO should work together to set out a case for a new budget settlement, based on priorities the EHRC sets, effectiveness and impact, with the EHRC's budget reviewed as a standalone line of expenditure. In doing so, a new case should be made for the split between programme and administration classification.

Target operating model

The EHRC states that it has introduced a new Target Operating Model, which has reviewed people, estates, ICT and infrastructure.

People

The EHRC has had a high staff turnover and a reduction in headcount of 24 posts as part of the Target Operating Model. It has recruited around 70 new staff to bring in new skills in order to deliver its domains model. The EHRC has adopted a model of generic grade profiles covering three core skill sets to replace the 100 different long and prescriptive grade profiles with a revised pay structure. Alongside this, it has developed new performance management arrangements with measurable objectives and development plans for staff accompanied by behavioural requirements for each level. The EHRC describes how it has re-structured in to a networked organisation (strategy and policy, delivery, improvement and impact) with a smaller leadership team and clearer internal decision-making bodies. This has not been without its challenges, including redundancies, union disputes and seven pending Employment Tribunals. The EHRC describes how it continues to work with recognised trade unions and staff to maintain and improve positive and productive relations following the implementation of its Target Operating Model. A staff panel described to the Review team the EHRC as an '*energetic and positive*' environment to work in.

Estates

The EHRC operates from four main offices – Manchester, London, Cardiff and Glasgow. It has created efficiencies through the closure of regional offices in Birmingham, Leeds, Newcastle, and moving to one floor in the Manchester office, relinquishing around 20 per cent of net internal area. Wherever possible, the EHRC has co-located under Memorandum of Terms of Occupation agreements with other government holders. This has resulted in a significant two-thirds reduction in estates costs from £4.2 million in 2010/11 to forecast £1.4 million in 2018/19. With the aim of enabling flexible and joined up working, the EHRC has refurbished its Manchester office and plans to begin refurbishment of its London office this year.

Overall, the EHRC has 10.48 square meters of office space per full-time employee. This includes all meeting spaces, breakout spaces, ICT data centre, communications rooms and storerooms. This exceeds the government workplace standard of eight square metres per full-time employee. The purpose is to create more space between desk rows and in common areas to ensure EHRC premises are fully accessible, particularly for staff using wheelchairs.

Recommendation:

Before the end of the current lease for its London office in 2023, the EHRC should explore a range of options for the future of its London operations.

ICT

The EHRC has invested in new infrastructure technology, including full upgrade to virtualised server and storage infrastructure, new video conferencing for improved cross-site working and laptop devices to enable desk sharing and support flexible and remote working. The Review found the video conferencing facilities to be highly effective. This is designed to reduce travel expenditure and the Commission hopes it will lead to greater efficiency through agile and more joined-up working.

Shared services

The EHRC states that it is open to considering greater use of shared services options relating to HR, IT, Finance, Procurement, People, Information, Estates management and Facilities. It describes that on balance, given the nature of the EHRC as an organisation, its independent role, and the small size of its corporate services function, it is yet to see evidence to support greater use of shared services, though detailed appraisal of the costs and benefits were last completed in 2012. The EHRC currently utilises Civil Service shared services where it meets the needs of the organisation, including; Civil Service Learning, Civil Service Resourcing, the Procurement Knowledge Network, Regulators Procurement Forum and Crown Commercial Services.

Recommendation:

As part of a future budget bid, the EHRC should set out cost/benefit analysis of implementation of shared service solutions, against retaining these functions in house.

Digital

The EHRC does not provide transactional services to members of the public. Its main digital channels are its website, with over two million visitors each year, and social media, with over 26,000 Twitter followers. The EHRC adheres to the Digital Service Standard except that it has its own website, as the EHRC is an independent body and therefore needs to be seen to have its own website. Therefore, the EHRC states there is no scope for additional savings.

In addition, the EHRC has digitised several back office services such as procurement and human resources; however, it states that scope for savings is limited. It has a digital by default policy for all documents, although printed versions are available on request for accessibility purposes.

4. Governance and accountability

Chapter Summary

This chapter covers the formal governance and accountability arrangements of the EHRC. It outlines the compliance of the EHRC with the principles of good corporate governance as set out in Cabinet Office Guidance¹² through a self-assessment completed by the EHRC and reviewed by the GEO sponsorship team.

This chapter finds that the EHRC rated itself as largely compliant with all five broad areas of good corporate governance. The GEO reviewed this and concluded that the EHRC's self-assessment was a broadly accurate reflection of the EHRC's governance and accountability arrangements. While the EHRC recognised improvements in the recent public appointments process, it believes there is potential to go further and requests a greater role for Parliament. The Review found that there was potential to achieve steps towards this to align with best practice identified by the United Nations Sub Committee on NHRI Accreditation, within the existing Public Appointments process.

This chapter makes a number of recommendations to improve the governance and accountability arrangements of the EHRC, and the Commissioner appointment process, notably to allow the GEO to observe Board meetings at least in part and to continue with the three year minimum tenure for Commissioner appointments, unless there are exceptional circumstances.

Governance and accountability: findings and recommendations

Principles of good corporate governance

Good corporate governance is central to the effective operation of all public bodies. The EHRC completed a self-assessment of its own model against the principles of good corporate governance as set out in Cabinet Office Guidance.¹³ Through the process, the EHRC identified any areas of non-compliance with the principles and explained why an alternative approach had been adopted and how this approach contributed to good corporate governance. The self-assessment showed that the EHRC self-rated as largely compliant with all five areas and as having the appropriate controls, processes and safeguards in place. This was checked by the GEO sponsorship team who concluded that this was a broadly accurate reflection of current governance and accountability arrangements.

Accountability

The EHRC has confirmed that it is compliant with all aspects of statutory accountability and arrangements for managing public money. The EHRC has a Risk and Assurance framework, which it publishes in its annual report and accounts. The Audit and Risk Assurance Committee sets the annual audit programme to provide ongoing assurance on practice and financial controls. This is supported by internal decision-making structures. However, as

¹² Cabinet Office, *Tailored Reviews: Guidance on Reviews of Public Bodies*, 2016 (pages 30-38) <https://www.gov.uk/government/publications/tailored-reviews-of-public-bodies-guidance>

¹³ Cabinet Office, *Tailored Reviews: Guidance on Reviews of Public Bodies*, 2016 (pages 30-38) <https://www.gov.uk/government/publications/tailored-reviews-of-public-bodies-guidance>

highlighted in Chapter Two, a new prioritisation approach should be used to shape agendas and the leadership of conversations at Board and executive meetings.

The EHRC also has governance and accountability arrangements with the GEO as its sponsor. The EHRC has expressed frustration at changes to Ministerial Sponsorship arrangements. The GEO has been under three different government departments during the first half of 2018 alone. This creates challenges for the EHRC in building relationships with the relevant senior Ministers and adapting to new administrative processes across finance, human resources and communications.

Regular meetings take place between the GEO and the EHRC and performance information is shared. In recent years, the GEO has not been routinely invited to observe EHRC Board meetings. A senior member of GEO staff should now be invited to attend. The GEO's attendance will enable both organisations to be kept up to date with each other's priorities, successes and impact. It will also provide ongoing assurance to the GEO that the EHRC has in place good corporate governance and accountability arrangements.

Recommendations:

- **The GEO sponsorship team should ensure the EHRC is supported in making the relevant finance, human resources and communications contacts to enable a smooth transition following machinery of government changes.**
- **A senior representative from the GEO should be invited to attend EHRC Board meetings as an observer.**
- **Based on the Commission's revised approach to prioritisation and impact Key Performance Indicators for monitoring the EHRC's work should be updated.**

Roles, responsibilities and appointments

At the start of the Review, the EHRC did not have the minimum 10 Commissioners appointed by the Secretary of State. This shortage of Commissioners resulted in instances where the Human Resources and Remuneration Committee was not quorate. This has since been rectified with five new Commissioners appointed in May 2018. Consequently, the EHRC is in the process of developing an up to date matrix of Board member diversity characteristics. The Chair is appointed by the Secretary of State following an open recruitment process, and compliant with the Code of Practice issued by the Commissioner for Public Appointments. The Equality Act 2006 specifies that the appointment of a Commissioner must be for a specified period of not less than two years or more than five years. However, in practice, the current Chair was appointed for a three-year tenure and the five new Commissioners were appointed each with a tenure of four years. The Governance Code on Public Appointments states that Ministers decide on the length of tenure.¹⁴

While the EHRC recognised improvements in the recent public appointments process, it believes there is potential to go further and requests a greater role for Parliament. The Review found that it was possible to achieve steps towards this to align with best practice

¹⁴ Cabinet Office, *Governance Code on Public Appointments*, 2016
<https://www.gov.uk/government/publications/governance-code-for-public-appointments>

identified by the United Nations Sub Committee on NHRI Accreditation, within the existing Public Appointments process, for example in relation to Commissioner tenure.

The Chair is actively involved in the selection process for non-executive Board Members. However, the EHRC requests that this role be defined within documentation.

Recommendations:

- **To meet NHRI accreditation best practice, Commissioner tenure should continue to be a minimum of three years for future appointments, unless there are exceptional circumstances, for instance to fill a shorter-term skills gap.**
- **The Chair's active role in the selection process and chairing of selection panel should be outlined in the Framework document.**
- **The approach to longlisting and selecting Commissioners on the basis of skills gaps and achieving a balance of expertise across characteristics should be continued.**

Effective financial management

The EHRC has confirmed that it is compliant with all aspects of effective financial management. The GEO sponsorship team agreed with this assessment. Administrative issues, in part because of errors made in the process of setting it up, which led to a qualification of the first three sets of EHRC accounts in 2006-07, 2008-09 and 2009-10, are no longer a risk.

Communications

The EHRC states that it is compliant with all communications principles in relation to stakeholders, public, marketing and public relations. The EHRC uses a range of channels to communicate with stakeholders, including website, social media, monthly newsletters and events. However, in Chapter Two, the review has recommended that the approach to stakeholder engagement in terms of gathering front line intelligence for the EHRC be improved.

The EHRC publishes the minutes of all its Board meetings, with any redactions made in accordance with the Freedom of Information Act.¹⁵ The minutes of the meetings show the items discussed at Board meetings.

Conduct and behaviour

The EHRC confirms it is compliant with principles for conduct, behaviour and leadership for Commissioners and staff. The EHRC has rules and procedures in place for managing conflicts of interest as contained within the Governance Manual and staff policy. The register of interests of all Commissioners is available on its website. The EHRC has recently undertaken a review of its approach to the management of Board and Committee member declarations of interest using National Audit Office best practice principles. The Audit and

¹⁵ Equality and Human Rights Commission website (accessed June 2018)
<https://www.equalityhumanrights.com/en/about-us/corporate-reporting>

Risk Assurance Committee have recently endorsed additional work to further strengthen its approach.

The EHRC is currently embarking on a full review of its human resources policies. The Commission currently has in place a Dignity at Work policy and a Performance Management policy that sets out the standards of behaviour expected of all staff. In addition, the EHRC has procedures for dealing with Gifts, Hospitality and Interests. A Disciplinary policy sets out the process for dealing with any breaches.

Transparency and diversity

The EHRC is transparent and open in terms of the information it makes available to the public. It publishes the following on its website: framework document, minutes of Board meetings, expenditure on transactions over £500, which goes beyond the government's minimum requirements, and salary information. The Commission also voluntarily published its Gender Pay Gap, which is negative, meaning that on average, women working for the EHRC are paid 7.5 per cent more than men.

The EHRC has a diverse workforce that is 60 per cent female, 15 per cent with a declared disability, 12 per cent of Black Minority Ethnic (BME) origin, nine per cent with sexual orientation as Lesbian, Gay Bisexual, 34 per cent having a religion or belief, 38 per cent having caring responsibilities, 46 per cent as married or in a civil partnership and 1 per cent transgender. It regularly monitors workforce diversity and publishes a report.

The EHRC states that it has a range of initiatives in place to remove barriers to progression and improve diversity at all levels. For example, it describes a Positive Action Working Group of staff, sponsored at Executive Director level, that is leading work to set targets for diverse recruitment, promote targeted learning and development initiatives and focus on the development of BME and disabled colleagues. To promote employee wellbeing, the EHRC has appointed Mental Health First Aiders in all EHRC offices and has an Occupational Health and Employee Assistance Programme, which provides services including advice for managers dealing with illness, and counselling for vulnerable staff. The EHRC describes that it has recently commissioned an internal equality review of its policies, processes and practices, to assess against best practice.

5. Form

Chapter Summary

The EHRC's current form is a Non-Departmental Public body, broadly defined as a “*body which has a role in the processes of national government, but is not a government department or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers*”.¹⁶

This chapter examines the current model, applying the Cabinet Office ‘three tests’ for whether a body should be at arm's length from government. It considers a range of alternative delivery models. This is explored in relation to independence and NHRI accreditation, which is more closely connected to the kind of organisation the EHRC is than what the EHRC does.

This chapter finds that the EHRC meets the Cabinet Office three tests for a Non-Departmental Public Body and that alternative delivery models are unlikely to improve the effectiveness of the functions of the EHRC. It finds that while the EHRC seeks greater independence, connected to its NHRI status, changes to form carry risks of disruption.

This chapter recommends that the EHRC should remain as a Non-Departmental Public Body to avoid potential disruption and enable a focus on improving strategy setting and prioritisation. The chapter notes recommendations from elsewhere in the review that reflect changes the EHRC would like to see, short of recommending a change in form.

Form: findings and recommendations

From the perspective of the EHRC, the form of the organisation is related closely to independence. Under standard Non-Departmental Public Body arrangements the EHRC's budget is set in a similar way to that of its parent department, via negotiations with Treasury. Public appointments share the approach for similar bodies. The EHRC can brief parliamentarians or anyone else directly, but its statutory documents are laid in Parliament by the Secretary of State. While in practice these issues do not directly impinge on what the Commission can prioritise or issues it can champion, a different kind of independence could bolster the EHRC's credentials as an NHRI and have potential practical benefits, including in relation to budget setting and Commissioner appointments. However, the Commission describes how it exercises operational independence within current arrangements and is generally regarded to operate independently; as evidenced by the perception of the majority of stakeholders surveyed.¹⁷ From an international perspective, independence is connected to the EHRC's status as an ‘A’ rated NHRI by the GANHRI. The main issues raised in the last Sub Committee on Accreditation report were in relation to appointments and to the

¹⁶ Cabinet Office, *Public bodies guidance*, accessed May 2018 <https://www.gov.uk/guidance/public-bodies-reform>

¹⁷ Unpublished – EHRC stakeholder tracking review 2017. The EHRC is seen as independent by 56% of stakeholders surveyed.

tenure of Commissioners.¹⁸ The accreditation report did not suggest that the EHRC's future status was significantly at risk.

The Review asked stakeholders about the form of the EHRC:

- Those who had a view on the form of the organisation emphasised the need for stability, and the need to prioritise improvements to effectiveness and impact over structural change.
- Several interviewees raised the risks of change, specifically from models that would result in EHRC reporting more directly to parliament. In specific, they queried whether this would have a material impact on issues of concern (for example appointments or budget setting) and suggested there was no guarantee that these processes would become any easier.

Box 5: National Human Rights Institution accreditation

The GANHRI accreditation process considers the following principles:¹⁹

- **Mandate and competence:** a broad mandate, based on universal human rights norms and standards, which is clearly set out in legislation.
- **Autonomy from government:** the relationship between the government and the NHRI must be clearly defined so as to avoid any undue Government interference
- **Independence guaranteed by statute or Constitution:** an NHRI must be independent from government in its structure, composition, decision-making and method of operation.
- **Pluralism:** the decision-making and staff body should be diverse
- **Adequate resources:** an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities.
- **Adequate powers of investigation:** an NHRI must have sufficient powers to report on human rights violations, monitor government action or inaction and promote human rights.

The EHRC's most recent accreditation report in 2015 made the following observations and recommendations:

- The current appointments process for Commissioners enshrined in the Law is not sufficiently broad and transparent. The EHRC is encouraged to advocate for the formalisation and application of a process that is broad, attracts a diverse range of potential candidates, promotes consultation and uses pre-determined publicly available criteria. This recommendation has been implemented and used in the recent Commissioner recruitment round.
- The Sub Committee on Accreditation encourages the EHRC to advocate for changes to its enabling law to provide for remunerated full-time members amongst

¹⁸ Sub Committee on Accreditation Report, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, 2015, (pages 18-21)

<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20NOVEMBER%202015-English.pdf>

¹⁹ GANHRI Sub Committee on Accreditation, *NHRI Accreditation at a glance*, 2017

http://ennhri.org/IMG/pdf/ennhri_s_at_a_glance_final_and_covers.pdf. See also a summary of the accreditation process, prepared by the European Network of National Human Rights Institutions, at http://ennhri.org/IMG/pdf/ennhri_accreditation_at_a_glance.pdf

its decision-making body, with a term of between three and seven years, with the option to renew once.

- The Sub Committee on Accreditation emphasises that, in order to address the requirement for a stable mandate, the enabling law of a NHRI must contain an independent and objective dismissal process.
- The Sub Committee on Accreditation considers it important that the enabling laws of a NHRI establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature.
- The Sub Committee on Accreditation encourages the EHRC to advocate for appropriate amendments to its enabling law in order to ensure the adequacy of the EHRC's funding and safeguard its financial independence.
- The Sub Committee on Accreditation encourages the EHRC to advocate for changes to its enabling law to mandate it with explicit responsibility to encourage ratification or accession to international human rights instruments.

The GANHRI's "Status of Accreditation Chart"²⁰ of 21 February 2018 confirmed that the EHRC continues to be accredited with 'A' status.

The three core tests for continuing as a Non-Departmental Public Body

The government's presumption is that if a public function is needed then it should be undertaken by a body that is democratically accountable at either national or local level. A body should only exist at arm's length from government if it meets one of three tests set out by the Cabinet Office.²¹ The Review has considered the three tests in relation to the EHRC:

1. Is this a technical function, which needs external expertise to deliver?

Yes. The Commission's role as an enforcer, an advisor on the effect of laws, and monitoring the UK's compliance with its international human rights obligations requires specific technical expertise. Although the Commission's functions of enforcement, strategic litigation, inquiries, research insight and analysis and information and guidance do not require unique 'technical' skills, it is critical that these functions are undertaken by an organisation with equality and human rights expertise.

2. Is this a function, which needs to be, and be seen to be, delivered with absolute political impartiality?

Yes. Enforcement of equalities and human rights duties needs to be and be seen to be independent of government. In addition, in order to maintain its 'A' status as a NHRI, the Commission must be independent from government and the non-governmental organisation sector.

3. Is this a function that needs to be delivered independently of ministers to establish facts and/or figures with integrity?

²⁰ GANHRI, *Accreditation status as of 21 February 2018*, 2018 (page 8)

<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/Status%20Accreditation%20Chart.pdf>

²¹ Cabinet Office, *Tailored Reviews: Guidance on Reviews of Public Bodies*, 2016

<https://www.gov.uk/government/publications/tailored-reviews-of-public-bodies-guidance>

Yes. The functions relating to the Is Britain Fairer? review on progress against equalities and human rights duties need to be delivered independently.

Alternative delivery models

The Review considered a number of specific alternative delivery models as follows:

	<p><u>Abolish</u> There is a continuing need and a legal requirement for a national equality body and NHRI, which are independent of government. The Commission currently fulfils both these roles. As such, a national equality body and National Human Rights Institution should continue to exist in some form.</p>
	<p><u>Move to local government</u> A national, rather than a local model is required for consistency in use of enforcement powers and enables country level issues to be identified and pursued.</p>
	<p><u>Move to voluntary sector</u> As a NHRI, the Commission must be independent of the non-governmental sector. A considerable level of technical expertise is needed to deliver the functions, which may be difficult for a voluntary sector organisation to finance and then maintain. Moreover, it is in the public interest that the body is accountable to Parliament.</p>
	<p><u>Commercial model</u> There are no existing service providers in the private sector that could deliver these functions due to the specific technical expertise required. In addition, it is in the public interest that the body is accountable to Parliament.</p>
	<p><u>Merge with another body</u> While the Commission has similar functions to other arm's length bodies, both in its regulatory role, and in its role in promoting issues and providing advice, guidance and research, its specific role in relation to equality and rights is unique. In addition, the statutory duties of the Commission, particularly in terms of enforcement as a regulator, would not fit with other non-statutory bodies. Therefore, a broader remit or additional duties through merging with another body would not be appropriate or beneficial at this time.</p>
	<p><u>Delivery by a non-ministerial department</u> In some instances, Non-Ministerial Departments (NMDs) report directly to Parliament, instead of having a sponsoring Minister report on their behalf. However, as this is relatively uncommon, the NMD option is viewed as "<i>only rarely</i>" the right choice as NMDs have limited accountability to Parliament.²² This change would also bring administrative disruption.</p>
	<p><u>Direct reporting to Parliament</u> The Parliamentary and Health Service Ombudsman, the National Audit Office and the Electoral Commission are examples of public bodies that report directly to Parliament. The Scottish Human Rights Commission reports directly to the Scottish Parliament. This is a model suggested by the EHRC, particularly as it would give a different kind of independence from government, which it believes better aligns with international principles. The</p>

²² HM Treasury, *Managing Public Money*, 2012 (page 57)
<https://www.gov.uk/government/publications/managing-public-money>

	Review considered whether a change in form – and the administration and potential disruption that would accompany it - would be outweighed by potential benefits. Also, given findings in relation to effectiveness the Review considered whether a change would assist the Commission to improve strategy setting and prioritisation. The Review concludes that a change at this point is not necessary, despite the Commission believing it is desirable.
	<p><u>Separate bodies for protected characteristics and human rights</u></p> <p>Most stakeholders highlighted the need for an integrated body that works to reduce discrimination across protected characteristics. This reflects the intersectional nature of society and the way in which individuals experience discrimination. The key benefit of an integrated equality and human rights body is the potential of human rights to provide a unifying central thematic focus which lends coherence to the body’s work and enhances its ability to act as an ‘agent of change’.²³ By engaging with the multifaceted nature of inequality, merged bodies are able to work beyond the defined parameters of equality law. Stakeholders reported that the Commission had expanded its human rights work and that there was further potential to build on this integration to drive societal change.</p>

International comparisons

The Review found that while internationally there is no single standard national equality body or NHRI model, the Commission’s model is similar to the majority of other bodies. The EHRC adopts the ‘commission’ model, which accounts for more than half of NHRIs.²⁴ Ombudsman institutions are the next largest group. They have similar mandates but are usually headed by a single member, who is the decision maker, rather than a pluralist approach with a number of decision makers.

As a national equality body, the Commission reflects the majority of equality bodies in Europe in that it deals with grounds of discrimination beyond race and gender in a range of public and private contexts. However, the Commission has a greater number of litigation powers compared to other equality bodies in Europe. According to Equinet, the majority of national equality bodies in Europe are the ‘promotion’ type.²⁵ They focus on supporting good practice, raising awareness and providing legal assistance. Other equality bodies are tribunal type (investigating individual instances of discrimination) and combined tribunal-type and promotion-type. The Commission combines a range of these functions for historic reasons that reflect the development of the UK anti-discrimination approach. While there are merits in other approaches – notably the unambiguous enforcement function of ombudsman - type models, at this point the Review concludes building effectiveness around the current statute is the proportionate response.

Conclusion

In conclusion, the Review finds the current form provides sufficient independence, has met core tests for NHRI accreditation and is likely to pass future accreditation thresholds. The

²³ O’Cinneide, *The catalytic potential of equality and human rights commissions*, 2016

²⁴ Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, 2010
http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf

²⁵ Equinet, *European Directory of Equality Bodies*, 2018
http://www.equineteurope.org/spip.php?page=tableau_neb§ion=mandate&subsection=type

Review recognises the importance of these issues. Key recommendations that make progress towards issues raised in the context of independence and accreditation are:

- The Review recommends the EHRC should directly report to the Parliamentary Select Committees (and Ministers) each year with a focused report on impact and plans.
- The minimum tenure for future Commissioner appointments should continue to be three years, unless there are exceptional circumstances. The improved appointments process should be embedded, and the role of the Chair clarified in the EHRC's framework document.
- The EHRC's budget should be reviewed as a standalone line of expenditure as part of the expected 2019 spending review.

Recommendation:

The EHRC should remain as a Non-Departmental Public Body.

Annex A – Recommendation implementation check list

Delivering the Review recommendations:

The EHRC should set out steps to respond to the recommendations in this Review within the 2018/19 financial year, and the Chair and the Minister should meet at least quarterly to assess progress and organisational capability to deliver.

Building on the EHRC’s staffing changes of the last year, across all recommendations the EHRC and the GEO should continue to keep under review whether the EHRC has the right leadership and capability to drive through these changes. The role of Commissioners in taking the lead to help land this transformation is essential. Specifically the Board should feel empowered to lead a robust conversation on prioritisation and ensuring external engagement and impact of work is effective.

Recommendation	Owner	Update
Effectiveness and functions		
<i>Vision and mission for the next decade</i>		
1. The EHRC should use the opportunity of its 10 year anniversary to re-set and focus its vision on its unique functions, to enforce the law and regulate across the most challenging rights and equality issues, continuing what it has begun informally through its public statements. This should be the anchor for its next strategic plan.		
<i>Prioritisation and decision-making</i>		
2. The EHRC should show it has fundamentally changed its approach to strategic and in-year prioritisation to deliver against its unique powers. At a minimum, the Commission should aim to articulate the top c. 10 or fewer outcomes it wants to achieve. It should consider setting out what its major delivery priority is for any given year – in terms of enforcement and regulation.		
3. Is Britain Fairer and the Strategic Plan should say clearly what EHRC’s view is on the greatest issues of inequality, how it intends to address these issues using its unique powers, and how the EHRC will demonstrate impact. This should also explain what the Commission will not		

Recommendation	Owner	Update
<p>focus on in any given year, and why. This should then be summarised so it can be used effectively by the Board, Prioritisation Group and Delivery Group, and stakeholders.</p>		
<p>4. The EHRC should cease to produce its Business Plan in its current form as it contains too many priorities and lacks clarity. It should be replaced with a short report on priorities and impact (both achieved and planned) sent directly and in parallel to Ministers and the Women and Equalities Select Committees and the Joint Committee on Human Rights, and put on its website, at the start of each financial year.</p>		
<p><i>Impact and influence</i></p>		
<p>5. The EHRC should refresh and clarify its approach to regulation and consider the skills needed in the organisation to deliver against this. This partly means ensuring the work the EHRC chooses has a clear approach to achieve outcomes with organisations in breach or potential breach of the law. It also means refreshing its communications, engagement and influencing approach to ensure its work and its approach is understood by key stakeholders.</p>		
<p>6. The EHRC should make a clear assessment across domains and protected characteristics to identify where it can have impact, and where others are already undertaking activity that the EHRC could support or partner with. This should be part of how the EHRC explains and justifies its priorities. This should consider how the EHRC can influence through a wide range of potential partners including legislators, the media, public relations companies, employers, government departments and so forth.</p>		

Recommendation	Owner	Update
7. All publications should describe how the specific piece of work will achieve impact, be it next steps in enforcement or otherwise. This is to continue with the EHRC's commitment to embed impact in its work, and signal to stakeholders how the EHRC intends to act.		
<i>Gathering intelligence and providing advice</i>		
8. The EHRC should set out a plan to reset its approach to intelligence gathering capability to ensure it has genuine intelligence from the front line. Outreach across England is particularly important and the EHRC should aim to replicate success of the Scotland and Wales Committee in England, for example through creation of an England Committee, with Commissioners given specific responsibilities to convene different interest groups.		
9. The helpline should not be the long-term solution to advice provision and evidence gathering. The EHRC, in partnership with the GEO, should plan a broader user-focused, multi-channel, approach to advice provision, and assess what the right level of helpline provision should be within this and how much of this should be done by the EHRC directly. Current helpline arrangements could be extended or continued while new plans are developed.		
10. As part of the EHRC's delivery of its commitments to prioritisation and impact, the EHRC website should be refreshed as the public face of this new approach.		
<i>Functions</i>		
11. The EHRC should resolve issues of effectiveness and impact before changes to functions are considered. Once the ongoing transformation is embedded and improvements to effectiveness		

Recommendation	Owner	Update
can be demonstrated, the government should consider the EHRC's powers taking into account the context of European Union exit.		
Efficiency		
12. In preparation for the expected 2019 spending review, the EHRC and GEO should work together to set out a case for a new budget settlement, based on priorities the EHRC sets, effectiveness and impact, with the EHRC's budget reviewed as a standalone line of expenditure. In doing so, a new case should be made for the split between programme and administration classification.		
13. Before the end of the current lease for its London office in 2023, the EHRC should explore a range of options for the future of its London operations.		
14. As part of a future budget bid, the EHRC should set out cost/benefit analysis of implementation of shared service solutions, against retaining these functions in house.		
Governance and accountability		
15. The GEO sponsorship team should ensure the EHRC is supported in making the relevant finance, human resources and communications contacts to enable a smooth transition following machinery of government changes.		
16. A senior representative from the GEO should be invited to attend EHRC Board meetings as an observer.		
17. Based on the Commission's revised approach to prioritisation and impact, Key Performance Indicators for monitoring the EHRC's work should be updated		
18. To meet NHRI accreditation best practice, Commissioner tenure should continue to be a minimum of three years for future		

Recommendation	Owner	Update
appointments, unless there are exceptional circumstances, for instance to fill a shorter-term skills gap.		
19. The Chair's active role in the selection process and chairing of selection panel should be outlined in the Framework document.		
20. The approach to longlisting and selecting Commissioners on the basis of skills gaps and achieving a balance of expertise across characteristics should be continued.		
Form		
21. The EHRC should remain as a Non-Departmental Public Body		

Key risks	Assessment
People capability	
Clear, measureable objectives	
Communication and perception (internal)	
Communication and perception (External)	

Annex B - Statutory duties and functions of the Commission

Duties under the Equality Act 2006

General Duty

The Commission's general duty is to exercise its functions with a view to encouraging and supporting the development of a society in which:

- people's ability to achieve their potential is not limited by prejudice or discrimination;
- there is respect for and protection of each individual's human rights;
- there is respect for the dignity and worth of each individual;
- each individual has an equal opportunity to participate in society;
- there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights

Equality and Diversity

As a national equality body, EHRC must:

- promote understanding of the importance of equality and diversity;
- encourage good practice in relation to equality and diversity;
- promote equality of opportunity;
- promote awareness and understanding of rights;
- enforce the Equality Act 2010; and work towards the elimination of unlawful discrimination and towards the elimination of unlawful harassment.

Human Rights

As a National Human Rights Institution, EHRC must:

- promote understanding of the importance of human rights through teaching, research and public awareness and educational programmes;
- promote awareness, understanding and protection of human rights and efforts to combat discrimination, especially through use of media channels;
- make recommendations to Government, Parliament and other competent bodies, on existing and proposed laws and processes that will impact on human rights;
- promote the harmonisation of national law, policy and practice with international human rights law and standards; and
- encourage public bodies to comply fully with the Human Rights Act; and cooperating with the United Nations and other bodies dedicated to promoting and protecting human rights.

Functions

Inquiries

The Commission has statutory inquiry powers to explore systemic issues, gather evidence and develop possible solutions.

Information and guidance

The Commission provides information and guidance to help people understand their rights and responsibilities and improve compliance with the law.

Advising on laws

The Commission advises Government and Parliament on the effect laws, or proposed laws, have on equalities and human rights. It also monitors and advises the UN on the UK's compliance with its international human rights obligations.

Enforcement powers

The Commission is responsible for enforcing the Equality Act 2010 and has powers to intervene in court proceedings in human rights and issue proceedings for judicial review under the Human Rights Act 1998. It can also assist individuals in bringing equalities cases and intervenes in existing proceedings to provide legal and policy guidance to courts. It undertakes cases on a strategic basis and has a range of enforcement powers set out in the Equality Act 2006.

Research, insight and analysis

The Commission carries out research, insight and analysis to expose patterns of discrimination, inequality and human rights abuses and proposes solutions. This includes a statutory report on the state of equalities and human rights in Britain, published every three years.

Annex C – Stakeholder organisations interviewed

10 Downing Street
Age UK
Barclays
Board of Deputies of British Jews
British Telecom
Cabinet Office
Chair, Women and Equalities Select Committee
Church of England
Churches Together Wales
Citizen's Advice
Colm O'Conneide, Faculty of Laws, University College London
Department for Business, Energy, and Industrial Strategy
Department for Digital, Culture, Media and Sport
Department for Work and Pensions
Disability Rights UK
Disability Wales
Equality and Diversity Forum
Equality and Human Rights Commission
Evangelical Alliance
Fawcett Society
Former Chairs of the Equality and Human Rights Commission
G4S Equality Advisory and Support Service Helpline
Government Equalities Office
HM Treasury
Housing for All Wales
Institute for Government
Liberty Human Rights
Ministry of Housing, Communities and Local Government
Ministry of Justice
Muslim Council of Britain
Oxfam Wales
Refugee Council
Runnymede Trust
Scottish Government
Scottish Parliament Equalities and Human Rights Committee
Scottish Human Rights Commission
Stonewall
Thomas Paine Initiative Global Dialogue
Wales Council for Voluntary Action
Welsh Government